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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 9th September 2025*
Date of Decision: 5th February 2026

\+ CS(OS) 1778/2015 and I.A. 10004/2023, 35277/2024 and 37257/2024

PAPPU SINGH & OTHERS .....Plaintiffs
Through: Dr. Amitabha Sen and Ms. Aditi Pandey, Advocates.

versus

GAMMON INDIA AND ANR .....Defendants
Through: Mr. Aniruddh Singh, Advocate for D1.
Mr. Tarun Johri and Mr. Vishwajeet Tyagi, Advocates for D2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This suit is filed on behalf of the Plaintiffs seeking compensatory damages of Rs.50 lakhs to Plaintiffs who are legal heirs of the deceased workers and to those Plaintiffs who were grievously injured in the incident of 12.07.2009. Compensation to the tune of Rs. 25 lakhs is claimed for Plaintiffs who suffered minor injuries. Exemplary damages are sought for the alleged reckless act of the Defendants in proportion to their net worth along with costs of the proceedings, amongst other reliefs.

2. It is stated in the plaint that an accident that took place at around 05:00 AM on 12.07.2009 at Delhi Metro construction site in Zamrudpur, New Delhi, where Pillar No. 67 (‘Pillar-67’) of the elevated metro railway

track collapsed, resulting in death of seven individuals, including six daily wage labourers and one site engineer and serious injuries to 15 others. The victims were engaged as construction workers by Defendant No.1/Gammon India Private Ltd. ('Gammon'), which was awarded the contract to carry out the work of the project under the supervision of Defendant No.2/Delhi Metro Rail Corporation ('DMRC'). Plaintiffs include those who suffered injuries as also those who are dependants/legal heirs of 06 deceased workers.

3. It is stated in that collapse of Pillar-67 was not a result of any natural cause/calamity or sabotage or unavoidable accident but was a direct consequence of gross negligence of and breach of duty by the Defendants as well as reckless disregard for safety protocols. Admittedly, cracks had developed in Pillar-67 prior to its collapse and this fact was well known to both the Defendants and *albeit* initially the work was stopped, it was resumed after two months overlooking the clear warning signs and without conducting essential safety and structural integrity tests such as load testing, thereby exposing the workers to risk, only to meet the deadline for the Commonwealth Games.

4. It is stated that the impact of collapse of a 200-ton mass was so much that the entire road underneath carved in. The collapse was either due to faulty design or use of inferior and sub-standard material by Gammon or both. The incident took place when Gammon was carrying out construction to connect Central Secretariat with Badarpur. 10 segments were to be erected in the concerned stretch, of which 5 had been completed and when the 6th segment was being erected, the launching girder collapsed causing a portion of the bridge to fall. Defendants acted negligently and recklessly and

did not care to follow the construction guidelines/norms, as per which the faulty design and/or the visible cracks in Pillar 67 ought to have been rectified immediately and the cantilever should have been repaired without any delay. The structure supporting the girder was not properly designed which also contributed to the collapse coupled with faulty erection of the girder.

5. It is stated that neither any first aid facilities nor ambulances were available at the construction site and the rescue operations were far from satisfactory. Bodies of workers who died were extricated with JCB equipment/tools and hand implements, which was a completely inhuman approach and the same procedure was followed for those workers who were alive and buried under the *malba* and this further periled their lives. The injured were not taken to nearby private hospitals to save money but were taken to AIIMS or Safdarjung Hospital, which were at a considerable distance from the site and this delayed the treatment. Even with respect to compensation, Defendants made every attempt to evade their liability and shifted the blame on one another. Indisputably, the workers belonged to economically weaker backgrounds and families of workers who died as also those who workers who were grievously injured, have not only suffered loss of primary income but also emotional trauma and financial distress apart from a serious impact on their future earning prospects.

6. For the sake of completeness narrative of facts, be it noted that the suit was filed in 2009 along with I.A. 9238/2009 under Order XXXIII Rule 1 CPC. Plaintiffs filed I.A. 3271/2010 under Order VI Rule 17 for amendment of the plaint, which was allowed vide order dated 27.04.2012. I.A. 9238/2009 was allowed on 14.05.2015 and the suit was numbered as a

regular suit and summons were issued to the Defendants. Written statements were filed by both the Defendants to which replications were filed by the Plaintiffs. On 13.12.2018, issues were settled by the Court and parties were directed to file their lists of witnesses and evidence by way of affidavits. Plaintiffs filed list of witnesses with 3 witnesses of which PW1 and PW2 were expert witnesses, while PW3 was Plaintiff No. 9. Gammon examined Mr. Nandan Kumar Jha, Assistant Accountant in Gammon as D1W1 and Mr. Amit Dubey, Stenographer in the office of Labour Commissioner as D1W2. DMRC examined Ms. Shweta Verma who at the time of filing the affidavit was working as Additional General Manager/HR/O&M with DMRC, as D2W1 and Mr. Asghar Ali who at the relevant time was working as Executive Engineer (Civil) with DMRC, as D2W2. D2W3 was Mr. Chirag Gautam, Junior Judicial Assistant, South-East District, Saket Courts Complex, who produced the report given by Indian Institute of Technology, Roorkee, Uttarakhand ('IIT Roorkee Report') (Ex.D2W3/1). Be it noted that this report was also filed by D2W2 and was separately exhibited as Ex.DW2/2.

7. Examination-in-chief of PW1 and PW3 was led by way of affidavits and they were both cross-examined. PW2 expired before giving his evidence. After the evidence of Plaintiffs was closed, an application was filed by DMRC under Order XVI Rule 1(2) CPC for issuance of summons to Ahlmad of the Court of Chief Metropolitan Magistrate, South East District, Saket Courts for production of original IIT Roorkee Report dated 29.04.2010. Summons were also issued on filing of I.A. 37257/2024 to the concerned officer in the office of Deputy Labour Commissioner to produce documents evidencing payments made by Gammon to the Plaintiffs. D2W2

separately filed copy of the IIT Roorkee Report with his evidence affidavit along with report dated 04.05.2009 by Professor Mahesh Tandon ('Tandon Report') of M/s Tandon Consultant Private Ltd. By order dated 29.04.2024, Court allowed two applications and permitted D2W1 and D2W2 to file fresh evidence affidavits and replace the earlier ones, which the witnesses did and filed fresh affidavits. On 05.03.2025, the evidence was closed and the suit was listed for hearing.

8. Before proceeding further, it will be useful and relevant at this stage to refer to the issues settled by Court on 13.12.2018, which are as follows:-

1. Whether the, suit has been signed and verified by a duly authorised and competent person? OPP
2. Whether the plaintiffs are entitled to any compensation as prayed for, in view of already having received the ex-gratia compensation and as under the Workmen Compensation Act? OPD
3. Whether the defendants are responsible for the faulty design and construction failure of the elevated metro railway track? OPP
4. Whether the defendants violated public policy and the design and construction guidelines while constructing the elevated metro railway track? OPP
5. Whether the defendants' wanton and reckless disregard for the safety norms and labour laws arid lack of preparedness and adequate facilities aggravated the plight of the victims? OPP
6. Whether the defendants are liable to pay exemplary damages for the loss of lives and grievous injuries suffered by the plaintiffs? OPP
7. Whether the present suit is barred under Section 3(5) of the Workmen's Compensation Act, 1923? OPD
8. Relief?

9. On Issue No.1, Gammon argued that the suit was filed without authorization from 7 Plaintiffs while the Plaintiffs argued that they had

executed a Special Power of Attorney dated 20.07.2009 in favour of Smt. Sreerupa Mitra Chaudhury, Chairperson of Shramik Referral Centre, an Institution dealing with the conditions of labourers, authorising her to file the suit.

10. Issues no.2 and 7 relate to the maintainability of the suit and the right of the Plaintiffs to seek compensation respectively, on common ground that they had received compensation under the 1923 Act. The argument was that the suit is barred under Section 3(5) of the 1923 Act, which provides that no suit claiming damages shall be filed by an employee in any Court of law in respect of an injury, if he has instituted a claim for compensation in respect of the injury before the Commissioner and in the instant case, compensation money was deposited by Gammon before the Labour Commissioner, which was disbursed to the Plaintiffs and accepted by them without demur and protest and therefore, the suit deserved to be dismissed on this ground alone.

11. It was further argued that Plaintiffs suppressed the factum of having received compensation in the plaint and even after Gammon filed an affidavit dated 07.05.2015, detailing the payments made, this fact was not disclosed in the evidence affidavit filed by PW-3. Gammon had to undertake the onerous task of summoning old records from Labour Commissioner's office to prove the payments made to the Plaintiffs, in the wake of their denial. For the first time Plaintiffs disclosed receipt of payments in the written synopsis filed on 28.07.2025.

12. It was urged that D1W1/Shri Nandan Kumar Jha, Accountant of Gammon, furnished details of the payments made to the Plaintiffs in his evidence affidavit Ex. D1W1, but was not cross-examined on this aspect and even a suggestion was not put that payments were not made. The closest that

Plaintiffs' counsel came on the issue of compensation was when he questioned the basis and/or quantum of compensation determined by Gammon. In answer to Q. 25 during cross-examination, D2W1/Smt. Shweta Verma, the then Labour Welfare Officer stated that Gammon had paid compensation to the Plaintiffs. Shri Amit Dubey/D1W2, from the office of Deputy Labour Commissioner produced the Disbursement Register which reflected entries of payments as also the record containing payment receipts. None of this was disclosed by the Plaintiffs and it is trite that one who comes to the Court with unclean hands must be non-suited and given no relief.

13. It was further argued that Plaintiffs have failed to establish a case of inadequate compensation. Not an iota of evidence has been produced on the aspect of nature or extent of injuries suffered by Plaintiffs No. 2, 3, 7, 8, 9 and 11 to claim compensation for the injuries. In fact, no Plaintiff came forward to give evidence, save and except, PW3/Mahadev Singh, Plaintiff No.9, who in his evidence affidavit, made a vague and bold statement that he was grievously injured in the Delhi Metro mishap and suffered some problem in one eye and a rod was put in the thigh, without mentioning the extent of disability suffered and without producing any medical record to support the injury and treatment. No evidence of the expenses incurred on treatment was filed. None of the Plaintiffs produced any medical document from the concerned hospitals, where the Plaintiffs were treated. There is no pleading, let alone proof of nature of injuries, extent of disablement, monthly wages or earnings, lost wages or loss of income, number of dependents of Plaintiffs etc., in order to support the claim of Rs. 25 lakhs as compensation. Likewise in the case of deceased workers, no evidence was

led on the age, number of dependents, wages etc. to claim enhanced compensation of Rs.50 lakhs.

14. Counsel for DMRC adopted the arguments of Gammon to the extent of maintainability of the suit as also lack of evidence by Plaintiffs to substantiate their claims for compensation. Additionally, it was argued that Section 41 of the Metro Railways (Construction of Works) Act, 1978 ('1978 Act') grants protection to DMRC in respect of an action taken in good faith. The argument was that the incident that happened on the fateful day of 12.07.2009 was a mere accident, which had occurred during construction of metro works and no negligence can be attributed to DMRC. Moreover, acting in good faith, DMRC paid *ex-gratia* compensation to the legal heirs of deceased Plaintiffs as also to those who suffered injuries, both major and minor, in 2009 itself. Section 41 is extracted hereunder for ease of reference:-

> *"41. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against the Central Government, the metro railway administration or any officer or other employee of that Government or the metro railway for anything which is in good faith done or intended to be done under this Act.*
>
> *(2) No suit, prosecution or other legal proceeding shall lie against the Central Government or the metro railway administration or any officer or other employee of that Government or the metro railway for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act."*

15. Learned counsel for the Plaintiffs responded to these arguments and in respect of Issues 2 and 7, urged that the suit was not barred under Section 3(5) of the 1923 Act since no proceedings were instituted by the Plaintiffs to claim compensation before the Commissioner for workmen compensation. As a matter of record, Gammon on its own volition deposited the meagre compensation with the Commissioner and the same was disbursed to the

Plaintiffs, who being illiterate and belonging to poorest of the poor strata of the society and having no knowledge of the legal proceedings, accepted the same without understanding the consequences thereof.

16. In respect of Issue No.3, counsel for the Plaintiffs urged that evidence of Defendants' witnesses unambiguously proved that both Defendants were equally responsible for the faulty design and other deficiencies in the construction of the elevated metro railway track. In cross-examination, D1W1 stated that Gammon was awarded the subject contract by DMRC and admitted that there was a basic flaw in the design of the pillar, which was part of this project. He also deposed that Gammon was responsible for the failures and was thus blacklisted by DMRC for a period of two years, after the accident. He stated that the record showed that a crack had developed in Pillar 67, owing to a fault in the design. D2W2 stated in his cross-examination that day-to-day supervision was the responsibility of Gammon and DMRC only verified the documents sent by Gammon after inspection on site.

17. Counsel for Gammon argued that the said Defendant was not responsible for the faulty design and construction failure. The cracks were taken seriously as soon as they were noticed in the pier cap of Pillar-67 in early April, 2009 and construction work was stopped. Defendants immediately convened meetings with M/s Arch Consultancy Pvt. Ltd. Detailed Design Consultant ('DDC') to deliberate on the issue. DMRC sought opinion from an independent consultant namely M/s Tandon Consultant Pvt. Ltd. ('TCPL'), whose officials made a site visit on 02.04.2009 and gave a detailed report. In a meeting held between the stakeholders, Gammon suggested carrying out a full load test, however, this

suggestion was not given any weightage by DMRC. In response to Questions 12 to 18 put to D2W2/Shri Asghar Ali, DMRC's engineer, he admitted that Gammon had requested for a full load test, but further stated that DDC and TCPL were firmly of the opinion that designs were fine and providing a steel strut would sufficiently address the cracks. The fact that Gammon proposed a full load test is also fortified by paragraph 2.0 of IIT Roorkee Report. In consonance with the opinions given at the relevant time before the accident, it was decided that a steel strut or bracket would be placed for strengthening the structure, which was done and thus Gammon cannot be held responsible.

18. It was further argued that design of the cantilever pier was the responsibility of DDC, a different entity, under the project. Under the subject contract BC-25, which was a part design and build contract, being executed by Gammon for DMRC, the detailed design drawings for construction purposes were to be developed through DDC and Arch Consultancy. As per the contract, DDC was to be engaged by Gammon from pre-qualified list of DDCs maintained by DMRC and all design drawings developed by DDC were approved by DMRC. Therefore, any fault in the design of the cantilever was the responsibility of DDC and DMRC. In fact following the accident, DMRC had levelled charges of misconduct against Gammon and imposed a penalty of Rs.5 crores along with an order of blacklisting for two years among other penalties. Gammon challenged these actions in arbitration proceedings, which culminated in an arbitral award dated 08.03.2017 (Ex. D1W1/P3), where in paragraph 4.5.1, the Arbitrator has observed that Gammon was not responsible for the accident and in paragraph 4.5.3 held that imposition of penalty of Rs.5 crores was

unsustainable. DDC, which was responsible for the faulty design is not even arrayed as a party in the present suit by the Plaintiffs despite being a necessary party. IIT Roorkee Report highlights that the accident was at best a result of collective judgment error on part of a group of persons, who had taken the decision to go ahead with the construction but there is no wilful negligence.

19. On the issue of expert witnesses produced by the Plaintiffs, it was argued that PW1/Shri Banibrata Mondal's evidence is irrelevant, as he only testified on the basis of newspaper articles and gave no independent expert opinion. Moreover, no permission was sought to produce the expert witness under Rule 6, Chapter XI of Delhi High Court (Original Side) Rules, 2018 ('2018 Rules'). In order to fill up this lacunae, Plaintiffs produced PW2 as the second expert witness, who expired before tendering his evidence.

20. On Issue No.4, counsel for Plaintiffs argued that IIT Roorkee Report (Ex.DW2/2) clearly established that collapse of the elevated metro railway track was the result of a combination of faulty design and sub-standard construction material. The report categorically attributes the failure to specific deficiencies in the design of the cantilever arm and inadequate strength of the concrete used, based on comprehensive technical investigation and analysis. It has come forth that there was a serious lapse in quality control protocols including insufficient monitoring of the concrete mix and inadequate steel reinforcement, particularly, in overlapping areas, which were critical for structural stability. The report underscores that despite appearance of visible cracks in the pillar prior to the incident, no load tests were conducted, demonstrating a gross disregard for mandatory safety checks. Reference was made to certain findings in the report and it

was emphasized that the findings are a direct indictment of the conduct and responsibilities of the Defendants and form a cogent basis to attribute liability of the accident on them.

21. Counsel for Gammon argued that Gammon cannot be held liable for violation of public policy or design and construction guidelines. No evidence has been led by the Plaintiffs to establish any violation and the entire case is predicated only on IIT Roorkee Report, filed at the fag end of the trial by DMRC. Importantly, the report notes that construction was carried out as per the drawings and there was a system of checks built into the construction procedure. The committee came to a conclusion that though some lapses had occurred, but on the whole, this was a typical case of collective judgment error without any wilful negligence. The so-called deficiencies noted in the report are without any basis and contrary to the finding that the material used for construction met the relevant specifications. Moreover, the alleged deficiencies are not quantified and the findings are merely conjectural.

22. Counsel for DMRC submitted that no evidence has come on record to substantiate the allegation of wilful negligence on the part of Defendants, much less DMRC. As soon as the cracks were observed on 01.04.2009, work was stopped and glass tell-tales were affixed to assess if the cracks were likely to widen. An independent expert Mr. Mahesh Tandon was appointed to give a report on the cracks and in the report dated 15.04.2009 it was observed that there was no design deficiency and pier caps in near vicinity with similar arrangements had not shown any sign of distress. It is clear from the report that the maximum principal stress developed at any point was 0.16 MPa and 0.83 MPa due to self-weight and presently applied

loads respectively, making it a total of 0.99 MPa. Further, the tensile strength of M45 Grade concrete was 3.8 MPa, which showed that stresses developed due to existing applied loads were too low to initiate any cracking. After the report was examined, a meeting was held between all stakeholders on 15.04.2009, however, Gammon did not provide any further detail such as method statement, design calculation etc. to support the suggestion of carrying out the load test and hence, no test was carried out. DMRC had taken all necessary precautions before and after the accident. Plaintiffs have led no contra expert evidence and no reliance can be placed on the evidence of PW-1, since his deposition was based purely on newspaper articles and police charge sheet, with no independent analysis as an expert and in fact in the cross examination he admitted that he had never seen the design or drawings of Pillar 67.

23. It was argued that the *ex post facto* analysis by IIT, Roorkee fortified the stand of DMRC that looking at the actual loads on the pier cap of Pillar 67 at the time of collapse, theoretically, even if no reinforcement was provided, the pillar would not have collapsed and hence, it is obvious that some other factors led to the accident. Report also brings out that the construction of the pier cap Pillar 67 was as per sanctioned specifications and drawings and while the detailing of reinforcement was deficient, the extent to which this may have contributed to the collapse, could not be quantified. Finally, the conclusion of the committee was that this was a case of collective judgment error without any wilful negligence and therefore, even if Plaintiffs rely on this report, the findings and conclusion in the report do not aid their case of 'wilful negligence'.

24. It was also urged that in any event, there are contradictions in the IIT

Roorkee Report inasmuch as on one hand, Committee agreed with the Tandon Report with respect to FEM analysis and observed that even if there was no reinforcement, the civil segment would not have failed, but on the other hand confirms that there was a design deficiency coupled with other factors which led to the accident. It was also argued that the work in question was awarded by DMRC to Gammon on a lumpsum basis and the accident was an insurable event under Clause 6 of GCC and therefore, assuming there was negligence, it is Gammon which is responsible for paying compensation to the Plaintiffs. Gammon has failed to show whether it received any amount from the Insurance Company under the Contractor's All Risk Policy. Furthermore, as per Clause 8.7 of GCC, Gammon was responsible for safety of all employees, employed directly or through petty contractors or sub-contractors.

25. On Issue No. 5, counsel for Plaintiffs urged that despite early warnings and visible structural issues at the construction site, including the appearance of cracks in pier cap of Pillar 67 on 28.01.2009, as admitted by D2W2 Mr. Asghar Ali, no effective measures were taken by the Defendants to suspend the work indefinitely till all the defects in the design were rectified. IIT Roorkee Report highlighted deficient bendings of reinforcements and failure to account for lateral loads and torsional forces. Defendant no. 2's witness has admitted that work was stopped only on 01.04.2009, i.e. after over two months from when the cracks were noticed. This shows that both the Defendants carried on work with complete disregard to safety of workers and allowed the damage to get out of control. Further, the work was resumed soon thereafter on 11.07.2009 and within hours of resumption of work, the pillar collapsed at 5 A.M on 12.07.2009.

The proximity of accident to resumption of work speaks volumes that the cracks were not fully repaired and had the Defendants carried out the full load test, the unfortunate incident may not have occurred.

26. It was urged that work was resumed in a haste without ensuring safety norms and the negligence of the Defendants is aggravated by the manner in which the bodies of the deceased labourers were retrieved using cranes, displaying a disturbingly inhuman and insensitive attitude towards the dead. No effort was made to trace victims' families, most of whom were impoverished and had lost their only source of income. No inquiries were made into the nature of injuries to assess the measure of compensation. There was complete absence of post-incident rehabilitation measures and medical follow-ups. In view of the grossly negligent and apathetic conduct of the defendants, Issue No. 5 deserves to be decided in favour of the Plaintiffs.

27. Counsel for Gammon contended that the Defendants were not reckless or negligent, as alleged and no evidence has been led by the Plaintiffs to establish this. PW3/Plaintiff no.9 is not a witness to the cracks or the rescue operations and thus his testimony on this issue ought to be discarded. Moreover, the witness has joined Gammon much after the appearance of cracks, when investigations into the cracks were already ongoing and remedial measures were underway. Defendants acted with due care and caution upon noticing the cracks. Investigations were promptly undertaken and independent expert opinions were sought during the assessment process. The unfortunate accident occurred due to unforeseeable circumstances, without any negligence on the part of the Defendants. Nonetheless, post the accident, Defendants were quick to offer financial and

medical aid to the victims of the accident. The injured workmen were taken to the nearest Hospitals including AIIMS, Safdarjung and Moolchand. Relatives of the deceased workers were picked up from the Railway Station and taken to hotels, where arrangements of their stay were made. The bodies of the deceased were handed over to the relatives after completing all formalities at the hospitals and Police Stations. Proper arrangements for sending the bodies of the deceased to their respective native places were made by sending escorts from the site. Financial assistance for the last rites of the deceased was provided.

28. On behalf of DMRC, it was argued that Plaintiffs have not led any evidence to establish any negligence on the part of DMRC. As a matter of record, immediately after the cracks were observed on 01.04.2009, the work was stopped and glass tell-tales were affixed to assess whether the cracks would increase or not. An independent expert namely, Prof. Mahesh Tandon from Tandon Consultants was appointed by DMRC to give a report on the cracks observed at the site. The Report was rendered on 15.04.2009, wherein it was observed that "*The adequacy of design & detailing for early thermal cracking as well as flexural stresses has been investigated. Also, the adequacy of reinforcement at pier–pier cap interface has been investigated. The said requirements have been found to be duly accounted for and provided in designs as per the relevant codal provisions and accepted practices. While certain improvements can be suggested for future designs. The occurrence of cracks cannot be attributed to inadequacy of design and detailing. …… It may be noted that at present only 1/3rd of the design load is mobilized on cap. Further, pier caps in near vicinity with similar arrangement and both spans in position have not shown any sign of distress.*

This confirms that the crack observed in this particular cap is not due to design/ detailing inadequacy."

29. It was submitted that while arriving at the conclusion that there was no design deficiency, it was also observed in the Report that the maximum principal stress developed at any point was 0.16 MPa and 0.83 MPa due to self weight and presently the total applied loads was 0.99 MPa. Further, the tensile strength of M45 grade concrete was 3.8 MPa, which showed that the stresses developed due to the existing applied loads were too low to initiate any cracking. It was observed that the settlement/deflections in the framework supporting the pier cap during concreting could result in cracks in the pier cap in the zone over pier. After the report was perused, a meeting was convened between all stakeholders on 15.04.2009, to discuss the cracks in Pier P67. However, Gammon did not provide any further details such as method statement, design calculation, etc., to carry out the load test, which it suggested. Hence, no load test was carried out. All necessary precautions were taken by DMRC before the accident inasmuch as work was stopped; cracks were monitored; and experts were engaged and only after the stakeholders involved in the construction of the Project were satisfied, work was resumed.

30. It was argued that Plaintiffs have led no expert evidence to prove wilful negligence by DMRC. Evidence of Banibrata Mondal PW-1 shows that the expert has deposed only on the basis of published news reports and charge sheet by the police and neither any independent analysis was made nor any expert opinion was given. Court was taken through the relevant part of Cross Examination of PW-1 as follows:-

> *"Q. Is it correct that you have given this affidavit basing your opinion on the newspaper reports?*

A. I have already stated in my affidavit in this regard.

Q. Is it correct that you have never seen the design or drawings of pillar no. 67?

A. Yes, I have never seen.

Q. Is it correct that you have never seen the IIT Roorkee report?

A. My affidavit clarifies the same.

Q. Is it correct that you have never seen and independently verified and examined the designs prepared by M/s Arch Consultancy?

A. My affidavit clarifies the same. ....”

31. It was urged that the Expert witness never visited the site where the accident had occurred and did not see the drawings or the designs of Pier P67. Further, he had not even seen the chargesheet or the Reports of Prof. Mahesh Tandon and IIT, Roorkee nor did he carry out any independent assessment of the accident site and deposed on the basis of published documents and newspaper reports, which is not a credible evidence.

32. It was submitted that an *ex post facto* analysis was conducted into the cause of cracks and the accident by a committee comprising of members from the department of Civil Engineering, IIT and it can be seen from the report, Exhibit D2W3/1 that with respect to Finite Element Analysis of Pier and Pier Cap, committee agreed with Tandon Report and observed that *“...The results of the analysis in the distressed zone matched with those reported by TCPL, thus establishing that the consultant has made a correct appraisal of stresses within the body of the structure in their report to DMRC. ....It is thus apparent that under the action of the actual loads on the pier cap P67 at the time of collapse, theoretically even if no reinforcement would have been provided, still it should not have failed. Therefore, it appears that some other factor(s) may also have contributed to the failure.*” Further, on the aspect of cracks in pier cap Pillar-67, the

committee was of the opinion that reasonable steps had been taken to find the cause(s) of the cracks. Committee also observed that construction of the pier cap was done as per the sanctioned specifications and drawings and *albeit* reinforcement provided in the pier cap P67 was deficient, this alone was not enough to lead to the collapse.

33. On Issue No. 6, Plaintiffs argued that: (a) Defendants are squarely liable to pay exemplary damages for the loss of lives and grievous injuries sustained by the Plaintiffs due to their wanton, reckless and grossly negligent conduct and the haste to complete the work to meet the deadline for the commonwealth games; (b) evidence on record points to the structural deficiencies in the construction, including bending of steel reinforcement and failure to account for lateral and torsional forces in the design of the pier and pier cap junction; (c) cracks in Pillar-67 were visible much prior to the collapse and were in the knowledge of Gammon and yet they continued the construction activity, recklessly endangering the lives of all workers involved; (d) construction was resumed without taking adequate remedial measures, leading to the tragic collapse that resulted in the death of many labourers and one engineer and grievous and permanent injuries to several others, many of whom are unable to work any more; and (e) cross-examination of Mr. Asghar Ali, D2W2 proves that both Defendants are liable for the accident. The evidence relied upon by the Plaintiffs is as follows:-

> "*Q10. Who was responsible to repair the cracks in pillar no.67 prior to the date of the accident?*
>
> *Ans. Defendant No.1.*
>
> *Q12. Who accorded approval for resumption of construction in and around Pillar No.67 on 11.07.2009?*
>
> *Ans. The Management of Defendant No.2 accorded approval for*

resumption of construction on 11.07.2009. Vol. When the cracks developed in and around Pillar No.67, the DDC of the Defendant No.1 informed the Defendant No.2 that steel struts could be installed in order to deal with the cracks that had developed. To this end, the DDC of the Defendant No.1 provided its suggestion and design for installation of the steel strut. Accordingly, an approval was given by the Defendant No.2 to the Defendant No.1 to install such a strut. The Defendant No.1 fabricated and installed the steel strut. At this stage, the DDC of Defendant No.1 stated that the cracks that had developed could be overcome by the steel strut.

Q14. Was it incumbent upon the Defendants to carry out a full load test prior to resumption of work on 11.07.2009?

Ans. No, it was not incumbent upon the Defendants to carry out a full load test prior to resumption of work.

Q15. Is it correct that Gammon specifically requested the DMRC to carry on a full load test prior to resumption of work on 11.07.2009?

Ans. A meeting was conducted between the parties on 15.04.2009 where preliminary discussions ensued in respect of carrying on a load test prior to resumption of work on 11.07.2009, then says there was no preliminary discussion as to the load test but the discussion revolved around the cracks in pier 67. However, Gammon did not provide any further details such as method statement, design calculation, etc. to carry on such load test. This issue was not broached by Gammon after the meeting on 15.04.2009. In this view, no load test was carried out.

Q27. (Shown Q/A 12) Do you agree that without the approval of the Defendant No.2, Gammon could not resume construction on 11.07.2009?

Ans. It is correct."

34. It was vehemently argued that conduct of the Defendants evidences that they have no concern and value for human life and by offering meagre amounts towards compensation they have trivialized the gravity of the accident and resultant loss of lives. This is a case which warrants imposition of exemplary damages so that it serves as a deterrent against such callous corporate conduct.

35. On Issue No. 6, counsel for Gammon urged that imposition of exemplary damages is not warranted in the present case. In support reliance was placed on the judgement in ***Common Cause, A Registered Society v.***

Union of India and Others, (1999) 6 SCC 667, where the Supreme Court dealt with the issue of 'exemplary damages' and applying the law laid down to the present case, the ingredients warranting award of exemplary damages are absent in the present case inasmuch as the conduct of Gammon is far from being malicious, cruel or insolent. Relevant passages from the judgement are as follows:

> *"130. In a suit for damages under the law of tort, the court awards pecuniary compensation after it is proved that the defendant committed a wrongful act. In such cases, the court usually has to decide three questions:*
>
> *1. Was the damage alleged caused by the defendant's wrongful act?*
>
> *2. Was it remote?*
>
> *3. What is the monetary compensation for the damage?*
>
> *131. ... How the damages would be calculated, what factors would be taken into consideration and what arithmetical process would be adopted would depend upon the facts and circumstances of each case.*
>
> *132. Now, the damages which can be awarded in an action based on tort may be contemptuous, nominal, ordinary or, for that matter, exemplary. In the instant case, we are concerned with the "Exemplary Damages" awarded by this Court by judgment under review.*
>
> *133. As pointed out earlier, the primary object of award of damages is to compensate the plaintiff for the harm done to him, while the secondary object is to punish the defendant for his conduct in inflicting the harm. The secondary object can also be achieved in awarding, in addition to normal 'compensatory damages, damages which are variously called as exemplary damages, punitive damages, vindictive damages or retributory damages. They are awarded whenever the defendant's conduct is found to be sufficiently outrageous to merit punishment, for example, where the conduct discloses malice, cruelty, insolence or the like.*
>
> *134. It will thus be seen that in awarding punitive or exemplary damages, the emphasis is not on the plaintiff and the injury caused to him, but on the defendant and his conduct.*
>
> *xxx xxx xxx*
>
> *136. The whole legal position was reviewed in Rookes v. Barnard and the House of Lords laid down that except in few exceptional cases, it would not be permissible to award exemplary damages against the defendant howsoever outrageous his conduct might be. ...*

137. Lord Devlin then set out the categories in which, in his view, exemplary damages could be awarded, as under:

> *"(1) where there has been oppressive, arbitrary or unconstitutional action by the servants of the Government;*
>
> *(2) where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff; and (3) where such damages are expressly authorised by statute."*

xxx xxx xxx

143. In an action for tort where the plaintiff is found entitled to damages, the matter should not be stretched too far to punish the defendant by awarding exemplary damages except when their conduct, specially those of the Government and its officers, is found to be oppressive, obnoxious and arbitrary and is, sometimes, coupled with malice….

xxx xxx xxx

155. In our opinion, these elements or considerations are extremely relevant in determining the amount of exemplary damages but, unfortunately, none of these factors has been taken into consideration and after recording a finding that the conduct of the petitioner was oppressive and that he had made allotments in favour of various persons for extraneous considerations, the Court awarded an amount of Rs 50 lakhs as punitive damages. How did the Court arrive at this figure is not clear. Why could it not be forty-nine lakhs fifty thousand?"

(emphasis supplied)

36. On behalf of DMRC it was submitted that no foundation has been laid by the Plaintiffs in the plaint to claim damages or exemplary damages. No evidence has been led to show that conduct of DMRC was so egregious so as to punish them with punitive damages. Only Plaintiff No.9 filed his evidence as PW3 and his deposition is far from satisfying the test of exemplary damages laid down by the Supreme Court in ***Common Cause (supra).*** On wilful negligence, DMRC referred to the judgments in ***Syad Akbar v. State of Karnataka, (1980) 1 SCC 30; Jacob Mathew v. State of Punjab and Another, (2005) 6 SCC 1;*** and ***Bharti Arora v. State of Haryana, 2024 SCC OnLine SC 3728.***

37. Heard learned counsels for the parties and examined their rival submissions as also the evidence on record.

Issues No. 2 and 7

38. I may first consider Issue No.7 since this relates to the maintainability of the suit. Case of the Defendants is that the suit is barred under Section 3(5) of 1923 Act because having accepted compensation before the Labour Commissioner, Plaintiffs cannot file a suit for damages in any Court of law for same injuries. Plaintiffs have rebutted this objection by arguing that Section 3(5) of 1923 Act debars filing of a suit for damages by an employee in any Court of law in respect of an injury if he has instituted a claim to compensation in respect of the injury before a Commissioner or if an agreement has been executed between the employee and his employer providing for payment of compensation in respect of the injury in accordance with provisions of Section 3(5) but in the instant case, Plaintiffs never instituted any case under the 1923 Act. Gammon on its own volition deposited the money with the Commissioner, which the victims or their families accepted having no knowledge or means to understand the legal implications.

39. Plain reading of Section 3(5) of 1923 Act shows that the provisions are in the nature of *'doctrine of election'*, which means that if an employee institutes a claim for compensation before the Commissioner or executes an agreement with the employer for payment of compensation, he elects to give away his right to file a civil suit for damages in respect of the same injury. However, it needs to be emphasised that the bar arises when the claim is 'instituted' by the employee i.e., the employee initiates proceedings of his own volition and this cannot encompass a case where an employer *suo moto*

deposits the money before the Commissioner and the employee accepts it. In such an event, the *'doctrine of election'* does not come into play. I am fortified in my view by a judgment of this Court in ***HDFC Ergo General Insurance Co. Ltd. v. Prakash Singh and Others, 2025 SCC OnLine Del 1428***, relevant paragraphs of which are as follows:-

> *"**8.** The first objection taken by the Appellant is qua the maintainability of grant of Compensation under the Motor Vehicle Act, 1988. It has been argued that the Claimants have already got the compensation under Workmen Compensation Act, 1923, the compensation under M.V. Act, 1988 is not maintainable, in terms of S. 167 M.V. Act, 1988.*
>
> *xxx xxx xxx*
>
> ***14.** In a similar case of Shantabai Parshuram Mule v. Sharda Prasadsingh, 1992 ACJ 270, Division Bench of Bombay High Court, while considering this aspect had observed that to institute a claim under Section 3(5) of the Workmen's Compensation Act, the workman must have **initiated a claim for compensation before the Commissioner.** The Section itself makes it imperative that a litigant, i.e. the dominus litis, must affirmatively go before the authority constituted under the Workmen's Compensation Act and claim that he wants to avail of his right to compensation as provided by the Act; the liability for which is created by section 3 of the Act. Thus, it was held that since the employer had suo motu deposited the compensation amount, before the Commissioner for Workmen Compensation, the mere filing of an Application by the Claimants for disbursement of the amount, cannot be treated as a Claim "instituted" under the Workmen's Compensation Act. Consequently, the Claim Petition for compensation under M.V. Act, 1988 was held to be maintainable.*
>
> ***15.** Similarly, in the case of National Insurance Company v. Mastan, (2006) 2 SCC 641, the Apex Court opined that Section 167 provides an option to the Claimant where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X, claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the 1923 Act. Since in the facts of the case, the Claimant **had initiated proceedings under 1923 Act for the purpose of obtaining compensation against his employer**, he was precluded from falling back upon the provisions of the 1988 Act, inasmuch as the procedure laid down under both the Acts are different, save and except those which are covered by Section 143 of the M.V. Act, 1988.*

16. *It was further expatiated that the exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal has been taken away by Section 167 of the Motor Vehicles Act in one instance, when the Claim could also fall under the Workmen's Compensation Act, 1923. A claimant, who becomes entitled to claim compensation under both the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, has the choice of proceeding under either of the Acts before the forum concerned, but not both. By confining the claim to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. However, Section 167 of the Act gives a Claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act, 1988, which deals with "no fault" liability in case of an accident and even Section 143 re-emphasises that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the Claim is made under the Workmen's Compensation Act, 1923.*

17. *In the case of Oriental Insurance Company v. DayaMava, (2013) 9 SCC 406, in similar situation it was reiterated that the deposition of compensation amount at the behest of the employer suo moto, cannot be termed as imitation of claim proceedings by the Claimant under the Workman's Compensation Act, 1923 and thus, the subsequent filing of the Claim Petition is tenable. However, it is noteworthy,* ***that the Apex Court upheld the deduction of Rs. 3,26,140 (paid to the claimants under the Workmen's Compensation Act, 1923) from the entire compensation amount computed under the M.V. Act, 1988*** *by observing that the deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as it awards compensation to the respondent Claimants under the enactment based on the option first exercised, and also ensures that the Claimants are not allowed dual benefit under the two enactments.*

18. *Similar view has been taken in the case of S. Lalitha v. Md. Zakir Hussain, (2004) 1 ACC 628 wherein it was reiterated that Section 167 of the M.V. Act, 1988 clearly stipulates that one cannot have multiple or double advantage for the same cause of action. In the recent judgment of United India Insurance Co. Ltd. v. Lalitha Rathan, 2017 SCC OnLine Kar 1554, a co-ordinate Bench of the Karnataka High Court, while discussing the law laid down in Dayamawa (Supra) and Mastan (Supra) has also made similar observations.*

19. *Thus, applying the above principles in the present case, it becomes clear that only if the Claimants have initiated proceedings under one Act, they are barred from seeking compensation for the same cause in the other Act, which is not the case at hand. Merely accepting the amount deposited suo moto by the Employer under Workmen Compensation Act would not tantamount to exercise of option by the Claimants, to claim compensation under Workmen Compensation Act."*

40. In light of the plain language of Section 3(5) and the view taken by this Court as above and the Division Bench of Bombay High Court in ***Shantabai Parshuram Mule and Others v. Sharda Prasadsingh and Others, 1991 SCC OnLine Bom 479***, this issue is decided in favour of the Plaintiffs and against the Defendants holding that the suit is maintainable as the compensation was only 'received' by the Plaintiffs when deposited by Gammon and they never instituted any claim before the Commissioner. Since Issue No. 7 is decided in favour of the Plaintiffs, Issue No. 2 is also decided in favour of the Plaintiffs and it is held that receipt of *ex gratia* compensation under 1923 Act cannot come in the way of the Plaintiffs for claiming further compensation, if they are otherwise entitled to it in law. Defendants have failed to discharge the onus of proving that receipt of *ex gratia* payments disentitles the Plaintiffs to claim compensation in the present suit.

Issue No. 1

41. Insofar as Issue No. 1 is concerned, Plaintiffs executed a Special Power of Attorney dated 20.07.2009 in favour of Smt. Sreerupa Mitra Chaudhury, Chairperson of Shramik Referral Centre, an institution dealing with disputes relating to labourers, authorizing her to engage counsels, sign and verify plaints etc., to give statement on oath and execute decrees of the Court etc. Therefore, it cannot be urged by the Defendants that the suit was without authorization from the Plaintiffs. This issue is decided in favour of the Plaintiffs and against the Defendants.

Issues No. 3 to 5

42. Plaintiffs examined two witnesses i.e., Mr. Banibrata Mondal/PW1, who was an expert witness and Mr. Mahadev Singh/PW3, Plaintiff No. 9.

Mr. Aurobindo Sen/PW2 was the second expert witness, however, he expired before his evidence was recorded. PW1 tendered his evidence by way of affidavit and the same was exhibited as Ex.PW1/A. PW1 stated in his evidence affidavit that he was an engineering graduate from Calcutta University and did his M.Tech from IIT Kharagpur in 1986 with specialization in Highway & Traffic Engineering and had professional training in concrete mixes, quality audit and project management techniques with professional experience spanning over 30 years in Design and Construction management for highways/expressways, urban roads and Rail/MRTS facilities. He referred to articles in the newspapers, from which he gathered knowledge of the incident that occurred on 12.07.2009 as also to the chargesheet filed by the Crime Branch of Delhi Police naming several persons, including DMRC officials, Gammon's contractor etc. He also deposed that DMRC had blacklisted the design consultant for Gammon India for 5 years. He also deposed with respect to the technical report rendered by Tandon Consultants and the findings therein as quoted by the then DMRC Chief. No independent expert opinion has been rendered by the expert witness with regard to the design or construction and/or public policy and the design and construction guidelines relating to construction of elevated metro railway track. PW1 in his cross examination by Gammon stated that he had read about the incident in the newspaper and being in the profession, he was shocked. He denied the suggestion that he had not visited the site nor made any assessment regarding the accident himself and/or that he had never personally read the chargesheet or any report of any authority to make analysis of the accident. He also denied the suggestion that his expert opinion was solely based on newspaper articles and/or that he was

deposing at the behest of the Plaintiffs.

43. In his cross examination by Defendant No. 2, PW1 stated that he had never worked on any project of DMRC and had never seen the design or drawings of Pillar-67. In answer to the suggestion that PW1 had neither seen the IIT Roorkee Report nor independently verified the designs prepared by M/s Arch Consultancy, PW1 answered *'My affidavit clarifies the same'*.

44. The only other witness produced by the Plaintiffs was Plaintiff No. 9, who deposed as PW3. He tendered his evidence by way of affidavit and the same was exhibited as Ex.PW3/A. PW3 deposed that he was grievously injured in the mishap that occurred on 12.07.2009, where according to him, six workers had died and several were injured. The accident happened when a pre-fabricated concrete segment of an under-construction metro via-duct collapsed along with the portion of the girder launcher. This was the section of elevated rail track that Gammon was constructing to connect the Central Secretariat with Badarpur and it collapsed in Zamrudpur area. He deposed that the accident happened between pillar Nos. 66 and 67 and that 10 segments were to be erected on the stretch of which 5 had been completed. Just when the 6th segment was being erected, the launching girder collapsed causing a portion of the bridge to fall. He further deposed that the accident occurred around 05:00 A.M., which is why there were less casualties but the impact of fall of 200 ton mass was that the road underneath caved in.

45. PW3 deposed that after the accident, he heard many local people stating that Pillar-67 had earlier developed cracks and work was stopped for some time due to the cracks but was resumed two weeks prior to the accident. He stated that according to him, both Gammon and DMRC were at fault and that the accident occurred because the cracks in Pillar-67 were not

properly repaired and it was possible that either the design was faulty or material used was sub-standard. The accident happened due to negligence of the Defendants and they were liable to pay compensation. On the aspect of rescue operations, PW3 deposed that the operations were a total failure. No first aid facilities were provided. He later got to know that the dead bodies were taken out by using JCB tools, which was inhuman and which must have surely put in danger the lives of buried construction workers and that no medical team was present at the accident site.

46. PW3 deposed that injured labourers, including him were not taken to the nearest hospitals and for saving money they were taken either to AIIMS or Safdarjung Hospital, which were very far away from the accident site. Personally, PW3 got no help from the Defendants and he had suffered extreme financial loss and emotional distress apart from grievous physical injury. He deposed that from newspapers he learnt that in the chargesheet filed by the Delhi Police, 24 persons including 11 senior DMRC officials were charge sheeted for negligence.

47. There was no cross examination of PW3 by Gammon. In cross examination by Defendant No. 2, PW3 stated that he was 8th class passed and that Gammon was paying his wages *albeit* he had no document to establish the employment. He explained the meaning of the term 'pre-fabricated concrete segment' and also stated that he understood the construction drawings of pillars No. 66 and 67 as he was working under the site engineer of Gammon. He stated that he worked with Gammon from 01.06.2009 to 13.07.2009. He denied having seen the IIT Roorkee Report or that of the Delhi Police. He also stated that he had not seen the cracks in Pillar-67 being repaired. In answer to the question as to who took PW3 to

the hospital, he stated that police officials took him to some Trauma Centre in Delhi and he was admitted for 8 days. On the nature of injury suffered by him, PW3 stated that he has developed a problem near his right eye and an iron rod was transplanted in his left thigh owing to the injury.

48. Mr. Nandan Kumar Jha deposed as D1W1 on behalf of Gammon. He tendered his evidence in examination-in-chief by way of affidavit, which was exhibited as D1W1/A. The witness primarily deposed on the compensation paid by Gammon before the Labour Commissioner to the Plaintiffs as also *ex gratia* payments made by DMRC, including the amounts paid and the details of the cheques/concerned banks. He also referred to the names of the beneficiaries, who had received the cheques. Photocopies of the cash receipts, relevant letters written to the Office of Deputy Labour Commissioner, cheques and related documents were marked as Mark-X to Mark-X30 as also Marks A to F, in the absence of the originals of the documents. The witness further deposed that after the accident, Defendants took immediate and prompt action and injured were rushed to nearby hospitals, namely, Moolchand Hospital, AIIMS Trauma Centre and Safdarjung Hospital. Mr. Anshuman Parthihar, Mr. Badan Singh and Mr. Niranjan Yadav were declared as 'brought-dead' by the hospital, while Mr. Amar Singh succumbed to the injuries after 12 days. All possible assistance was provided to the relatives of the deceased workers by Gammon. He further deposed that relatives of deceased workers were picked from the railway station and taken to hotels where arrangements of their stay were made. Bodies of the deceased were handed over to their relatives after completing formalities and arrangements were made for sending their bodies to their respective native places.

49. D1W1 was cross examined by the Plaintiffs, in which he admitted that Gammon was the contractor of DMRC and he had joined Gammon in March, 2008. He stated that his duty only related to accounts for the concerned project and he had no personal knowledge of engineering or construction of the project. He also stated that he learnt of the accident on 12.07.2009 in the morning when he was at the office in Sarai Kale Khan. He stated that he reached the site between 08:00 to 08:30 A.M., when ambulances and medical support staff had already reached the site and Gammon's staff also donated blood to the victims of the accident at Moolchand Hospital and AIIMS Trauma Centre. He denied having any knowledge of the cracks in Pillar-67 and/or his participation in making the assessment of the compensation paid to the victims and stated that the nature and extent of injuries were assessed by the hospitals and this was Gammon's yardstick for computing the compensation. As highlighted by the Plaintiffs, D1W1, in response to question No. 21, stated that according to him, there was a basic flaw in the design of the pillar, which was part of the project but volunteered that he was not entirely sure. In answer to question No. 49 on the culpability referred to in paragraph 2 of his affidavit, he stated that the reference was to Gammon. The witness admitted that Gammon was blacklisted by DMRC for two years after the accident and in answer to question No. 60, he stated that as per record, there was a crack in Pillar-67 on account of fault in the design.

50. DMRC examined two witnesses, namely, Smt. Shweta Verma as D2W1 and Mr. Asghar Ali as D2W2. D2W1 was working as Additional General Manager/HR/O&M with DMRC. She deposed that DMRC never objected to the quantum of compensation received by the Plaintiffs while

making the *ex gratia* payment. Relying heavily on the Contract Agreement executed between DMRC and Gammon, exhibited as Ex.D-1W-1/P-1, the witness deposed that the terms clearly provided that it was Gammon, which was responsible for compliance of safety, health and environment guidelines as also for maintaining respective insurance policies for protection of workmen and thus, no liability could be fastened on DMRC. She stated that as per Clause 7.3 of GCC, all labour employed, directly or indirectly, by the contractor shall be deemed to be persons employed by the contractor. She deposed that Rs. 5 lakh was paid to legal heirs of deceased workmen by DMRC and Rs. 50,000/- to those who suffered major injuries and Rs. 10,000/- to those who suffered minor injuries. This, according to her, was over and above their statutory compensation and therefore, Plaintiffs are not entitled to any relief from this Court.

51. In cross examination, D2W1 stated that her job profile entailed dealing with salaries, leaves etc. of the labour as also other issues relating to labour welfare. As Labour Welfare Officer pertaining to the accident, she ensured that victims were given immediate medical help followed by compensation. She denied having visited the site of the accident but stated that she visited AIIMS Trauma Centre and assured that the injured were given proper medical and monetary help. She stated that as per record, there were 7 fatal cases and 6 cases of major injuries and 8 cases of minor injuries, the terms meaning as defined by the medical authorities.

52. D2W1 stated in answer to question No. 28 that as per contract condition, Gammon was required to take all risk policy and sought time to revert with instructions if such a policy had been taken. Subsequently, the witness filed an additional affidavit dated 04.09.2024 stating that

Contractor's All Risks Insurance Policy bearing No. 5004/0003382 dated 18.09.2007 was taken by Gammon for the subject contract for the period 11.07.2007 to 10.01.2010.

53. The second witness on behalf of DMRC was Mr. Asghar Ali, D2W2, who was working with DMRC as Executive Engineer/Civil at the time of the accident. He deposed that he was actively involved in overseeing the execution of the subject contract and his role was to *inter alia* liaison with stakeholders and departments and to see that the works were in conformity with stated methods, laid down procedures etc. He had 3 Junior Engineers under him and he regularly visited the project site. He deposed that Plaintiffs were working with Gammon to whom DMRC had awarded the contract in question on 'Design and Build' basis, for which 100% responsibility rested with Gammon, including responsibility of preparing designs and drawings and completing the construction work.

54. D2W2 further deposed that on 28.01.2009, certain cracks were noticed in pier No. 67 and he along with other senior officials took all prudent and necessary steps to address that issue. Inspection of the site was immediately carried out on 01.04.2009 in presence of Gammon's Engineers and Detailed Design Consultant (DDC) of Gammon, to review the situation, since cracks appeared in the cantilever of the pier cap during launch of segmental span on pier Nos. P-67 to 68. Pursuant to the inspection, work was stopped on the same day and Gammon was directed to study and find out the cause and ramifications of the cracks. Following standard procedure, DMRC directed Gammon to put tell-tale signs on the surface of the cracks so that any minutest movement could be monitored and widening of the crack could be captured by cracking of the glass affixed on the surface.

55. D2W2 deposed that on 03.04.2009, DMRC also engaged an external/independent agency/expert, Professor Mahesh Tandon of M/s Tandon Consultants Pvt. Ltd. to evaluate possible reasons for appearance of cracks and site inspection was carried out. Gammon and its DDC opined that the civil structure was structurally safe and the combined opinion of all consultants, including M/s Tandon Consultants Pvt. Ltd. was that cracks as visible on the cantilever P-67 were not structural and the depth of the cracks was not going upto the reinforcement embedded in the concrete structure. All were of the view that all concreting was done as per quality assurance plan and compressive strength of concrete test cubes of pier caps were in order. This fact was fortified by the report rendered by a Committee constituted by IIT, Roorkee to render technical advice to Crime Branch, Delhi Police.

56. D2W2 further deposed that glass affixed on the surface never cracked even after three months, which meant that cracks never widened as was initially reported and were not structural. Despite this, the proposal of Gammon to install a strut connecting the base of the pier cap with the pier was accepted. IIT, Roorkee concluded in its report that the quality manual followed by the Defendants at the site had adequate checks and balances to ensure that good quality project is delivered. The report also confirmed that pier of P-67 was constructed, both dimensionally and specification wise as per relevant drawings and launching was done as per approved erection plan. The witness exhibited the report as Ex.DW-2/2. The witness emphasised on the conclusion of the Committee in the report that the unfortunate incident could be ascribed only to a *'collective judgment error'* on the part of a group of people, who had taken the decision to go ahead

with the construction and cannot be ascribed to any wilful negligence. He deposed that there was unanimous opinion that no wilful negligence could be attributed to the Defendants. He also deposed that officials of DMRC took all actions in good faith in due discharge of their official duties and hence, in terms of Section 41 of 1978 Act, no negligence can be attributed to the officials of DMRC.

57. In cross examination by counsel for the Plaintiffs and on being shown paragraph 7 of his evidence affidavit, D2W2 clarified that the date of 28.01.2009 in the affidavit related to the date when pier cap 67 was cast and so the two dates could not be related. He also clarified that the necessary steps adverted to in the affidavit did not relate to 28.01.2009 and instead related to cracks that had developed on 01.04.2009. D2W2 further stated that the first 'prudent and necessary step' taken by DMRC was to stop the work by Gammon on that stretch and further steps taken were set out in paragraph 8 of the evidence affidavit. He also stated that work relating to launching in and around Pillar No.67 was stalled until 11.07.2009 and no other work was carried out in this period. Witness explained the meaning and extent of 'full load test' suggested by Gammon and stated that it was not incumbent to carry out the said test prior to resumption of work since the structure in and around P-67 had no problem. Witness admitted that Gammon had suggested carrying out of load test prior to work resumption but this according to him was only a preliminary discussion and Gammon never provided any further details. In answer to question No. 19, witness stated that *ex post facto* analysis by IIT, Roorkee reflects that there were design deficiencies in the work in and around P-67 but this was held to be a collective judgment error and not a case of wilful negligence. He added that

on the date of resumption of work i.e., 11.07.2009, neither Gammon nor DDC nor DMRC were in possession of any evidence pointing out that work should not be resumed or that there were any design deficiencies. Moreso, Professor Tandon had certified that there was no design deficiency in the work of Gammon prior to the accident. In fact, DMRC had taken additional precaution of installing steel strut and therefore, there was no cause to second guess the safety of the structure.

58. To complete the factual narrative for the sake of record, it may be mentioned that statement of Mr. Chirag Gautam was recorded as D2W3, who brought the original report of IIT, Roorkee and exhibited the same as Ex. D2W3/1. The witness was not cross examined by the Plaintiffs.

59. Indisputably, the work of construction of the subject contract was awarded by DMRC to Gammon, which had in turn hired the DDC and employed workers and labourers to execute the work. It is equally undisputed that amongst the Plaintiffs are those who were injured while working at the site in question and employed by Gammon as also those who are dependants/heirs of deceased workers. Therefore, the accident is not in dispute, the employment is not in dispute and the injuries or death of the concerned victims is also not in dispute. The first question is whether the incident was the result of wilful negligence or an error of judgment and/or whether all requisite steps were taken by the Defendants to prevent the mishap. This question can be best answered by looking at the two technical reports as also the evidence of D2W2, who was working as Executive Engineer (Civil) at the relevant time with DMRC, in light of the fact that Plaintiffs have not led any evidence on the technical aspect of the incident and PW-1, although summoned as expert witness has given no independent

analysis and expert opinion. His evidence is based purely on newspaper articles and chargesheet filed by the Delhi Police. PW-2, the second expert witness of the Plaintiffs expired before his evidence could be recorded. Importantly, Plaintiffs have themselves heavily relied on IIT Roorkee Report.

60. D2W2 deposed that when the cracks were noticed, he along with other senior officials took all prudent and necessary steps to address the issue. Inspection of the site was carried out on 01.04.2009 in the presence of Gammon's Engineers and DDC. Pursuant to the inspection, work was stopped on the same day and Gammon was directed to study and find out the cause and ramifications of the cracks. Following standard procedure, DMRC directed Gammon to put tell-tale signs on the surface of the cracks so that any minutest movement could be monitored and widening of the cracks could be captured by cracking of the glass. He further deposed that the glass never cracked during the three months period, which meant that the cracks did not widen and therefore, there was no structural issue in the pillar or the pier cap. Despite this, Gammon's proposal to install a strut connecting the base of the pier cap with the pier was accepted. All required checks and balances were put in place, a fact endorsed by IIT Roorkee Report.

61. Coming to the Tandon Report, the remit of the enquiry was to evaluate possible reasons for appearance of cracks in pier cap of cantilever pier at Pillar-67 location, after occurrence of the cracks and prior to the incident. The Consultant visited the site along with representatives of DMRC and Gammon and observed 5 cracks of maximum width of 0.4 mm, 3 on one side and two on the other side of the pier cap. Consultant analysed the possible causes for the cracks basis an analysis model in single plane

(2D) using FEM technique and another model to consider effect of settlement of shuttering during concreting. The Consultant also considered the loads, stress contours, design and detailing aspects etc. and came to a conclusion that: (a) occurrence of cracks cannot be attributed to inadequacy of design and detailing; and (b) the stresses developed due to existing applied loads were far too low to initiate any cracking at the location even after neglecting the provided reinforcement. The conclusions are as follows:-

> *"10. Conclusions The following conclusions can be drawn from the above studies and observations:*
>
> *• The observations in para 1 of section 8 (i.e. Observation of FEM Study) indicates that the stresses (values) developed due to the existing applied loads <NE> cracking at the location where it has been observed even after neglecting the provided reinforcement.*
>
> *• The concreting of the pier / pier cap is done in two states with a construction joint at interface of top of pier and soffit of pier cap (figure 1).*
>
> *• Photographs of the formwork do not match with the drawings provided by the contractor (Annexure I).*
>
> *• The value of maximum principal stress for 10mm deflection of cantilever tip comes out to be 0.82MPa which exceeds tensile 24 strength corresponding to the M5 grade of concrete (partially set concrete).*
>
> *• The direction of crack plane (i.e. α) calculated for the same situation (10mm deflection at cantilever tip) as -37.28°. The negative sign of α indicate the inclination of crack plane to be in clockwise direction from vertical which matches with that observed at site.*
>
> *• Above two para(s) in conjunction with para 3 in section 8 (i.e. Observation of FEM Study) strengthen the possibility that likely cause of occurrence of cracks is attributable to settlement of formwork during concreting."*

62. The IIT Roorkee Report was rendered by a Committee constituted on the request of the Delhi Police after the incident on 12.07.2009. As noted in the report dated 29.04.2010, the Committee visited the site, collected

material samples, performed some Non-Destructive Testing on the fallen pier cap P-67 as also piers P-66 and P-67 to ascertain the quality of the constructed structure. Some factual findings from the report are as follows:-

(a) It is worth noting that the actual load on the pier cap at the time of this incident (during erection of span P67-P68) was less than the maximum anticipated design load during service for which it was designed. The question then is - why did the pier cap fail? The pier cap has been designed as cantilever and a span of 4.9 m is not large to make it an unconventional or special one. After going through the structural drawings of pier cap P67, the committee is of the opinion that the improper detailing of the reinforcement provided in the pier cap P67 is a contributory factor in the failure of the pier cap. The reinforcement detailing is deficient in the following respects:

i) There is no overlap between main tension steel or the pier and the pier cap and thus horizontal tensile crack developing on the out side of the vertical face of the pier cap where the top (tension) steel of the cantilever was terminated.

ii) Ties in the pier and the vertical stirrups in the cantilever were terminated very close to the respective theoretical critical section. Thus, the junction concrete was having no shear reinforcement (both vertical and lateral in the form of lies and stirrups) to hold the concrete at the junction.

Similar views have been expressed earlier by the Prof. Nagpal Committee and the independent consultant, TCPL. The above observations also corroborate the actual mode of failure in the pier cap. Further, the appearance of cracks in pier caps P67 and P66 at

nearly identical locations is a good indicator of some correlation between the crack location and the reinforcement detailing done in the vicinity of the cracks;

(b) The results of the analysis in the distressed zone matched with those reported by TCPL, thus establishing that the consultant has made a correct appraisal of stresses within the body of the structure in their report to DMRC. It is clear from the FE analysis that the maximum principal tensile stress at any point within the junction of pier and the pier cap is around 1.07 MPa which is less than the conservatively guesstimated tensile strength of 4.5/5.0 MPa for the designed M 45/M 50 grades concrete used in the pier cap/pier P67 respectively. The tensile strength of concrete is generally approximated as one tenth of its compressive strength. It is thus apparent that under the action of actual loads on the pier cap P67 at the time of collapse, theoretically even if no reinforcement would have been provided, still it should not have failed. Therefore, it appears that some other factor(s) may also have contributed to the failure. The independent consultant TCPL in its report has suggested that a subsidence of a few mm at the tip of pier cap P67 due to a formwork problem may lead to a similar type of cracking. However, the committee opines that in such an eventuality, the crack should have appeared immediately after the stripping of the formwork find the removal of the supports. A question which is difficult to answer is that why the steel strut fixed between the pier P67 and its cap, provided just before the launching of the span P67-P68, has not helped in any way in averting this mishap? It has been brought out in

the report of the Prof. Nagpal committee that the connection of steel strut to the pier cap was deficient and the assumptions made in the design of the strut that a part of the load transfer would take place due to friction have not been realized during execution at site. This committee agrees with these observations of the Prof. Nagpal committee. Thus, in view of the above, the results of FE analysis of pier cap P67 with steel strut in position are not of much relevance in the present context;

(c) Therefore, *prima facie* it may be stated that a review of the quality assurance and the quality control records as made available to the committee do not indicate lack of quality in construction as a contributor to the collapse of the pier cap P67;

(d) **i) Whether pier and pier cap no. P67 have been constructed as per the sanctioned specifications and drawings?**

The construction work on this section of DMRC was carried out as per the drawings approved by DMRC officials from time to time. There was a system of checks built into the construction procedure, wherein verification of formwork, placing of reinforcement etc. was done at each stage of work in compliance with the quality manual. The contractor has provided adequate check lists duly signed by the representatives of both the contractor and the DMRC in respect of various stages of construction of pier and pier cap P67 Deviation, if any in the drawing, for example use of 10mm dia. bar in place of the 16 mm bar provided in trio drawing on equal are replacement basis, has the necessary approval of DMRC official. Such a change in the diameter of bars is common. During site

inspection, only some bars were visible in the view available and the reinforcement was by and large in agreement with that shown in the relevant drawings. The committee has on record both sets of drawings, approved for construction by DMRC and without DMRC approval seized by the police from the premises of the contractor, it is on record that some times approval was convoyed orally and execution started at site where as the actual approved drawings arrived later. Some aberration of this type does take place in a large size project like this. Based upon the above, it is reasonable to say that the construction of the pier and pier cap P67 has been done as per the sanctioned specification and drawings;

ii) Whether height, length and breadth and other dimensions of pier nos. 66, 67 and 68 are as per the sanctioned specification and drawings?

Taking cognizance of the preconstruction stage check lists namely, i) formwork chocking, ii) reinforcement checking and iii) concrete pour cards in these three piers and the pier caps duly signed by the two representatives as part of quality assurance manual adopted at the work site with prior approval of the DMRC, it is reasonable to assume that those elements have been built as per the specifications. Further, based upon some random dimension measurements carried out by the committee members on the pier and the pier cap P67, it has been found that these elements have actual dimensions as indicated in the relevant drawings within the acceptable tolerance specified in the IRS code. In view of the above, the committee is of the opinion that the piers P66, P67 and P68 have been constructed both dimensionally

as well as specification wise as per the relevant drawings;

iii) Whether placing of launching girder on pier nos. 66, 67 and 68 is as per procedure. If no, then what are the procedural defects?

Use of launching girder is a standard procedure for erection of precast segments at site. Different steps followed are shown in drawings (pp 268-279, Report Vol. I). In this project, two different launching girders have been designed, one for erection of spans up to 31 m and the other to erect spans of 34 m length. Span P67- P68, which was being erected at the time of mishap is 34 m long. The position of launching girder during emotion is at a predetermined location only and after a span is erected and finally prestressed, the launching girder is moved to the next location by moving it on a track girder. Thereafter, the trade girder is moved to the next span location. An approved scheme for movement of Launching girder is explained in drawings (pp 274-277. Vol I). M/S Gammon India Ltd. had submitted the design details of the launching girder to be used by them, and the approval of the same by DMRC is on record on the drawings perused (drawings marked stage 5 are indicative of approval of competent authority from DMRC). Also two members of the IITR team inspected the installation of one such launching girder at a nearby site in Nehru Place and have also seen the functioning of sliders to facilitate the construction of curved span. like in the present case. Slider can have a maximum lateral shift of 500 mm from the centre line of the girder. This is adequate for construction of 34 m span with a 300 m radius. Although the committee has not witnessed

the actual mounting of the launching girder on Piers P67 and P68 when the accident occurred, it appears from the information available on record that the positioning of the launching girder for erection of spans, P66-P67, and P67-P68 was in accordance with the approved erection plan;

iv) Whether there are any structural/design defects in the existing pier nos. 66, 67 and 68 and pier cap P 67?

The excerpts of design note (259/BC-25/DN-46 pp 40-44 dated October 2008), giving design of pier cap P67 indicate that no design has been carried out for lateral load effects and the pier cap has been designed as a cantilever for different gravity load combinations by using the limit state method. This is as per the design basis report mutually agreed upon. The actual load on the pier cap at the time of accident was less than the maximum load for which it was designed. After going through the limited design calculations made available and the structural drawings provided, *prima facie* it appears that improper detailing of reinforcement, as indicated below, is one of the contributory factors to the failure witnessed.

a) There is no overlap between the main tension steel of pier and pier cap.

b) Both, the ties in the pier and the stirrups in the cantilever were terminated just close to the theoretical critical section thus leaving the junction portion without any shear reinforcement.

It is also a fact that the magnitude of tensile stresses computed by FEM in the concrete of the junction portion under the magnitude of loads acting at the time of accident are low and theoretically the

concrete would not crack even without any reinforcement unless there are other contributory factors present. The committee is of the opinion that the detailing of reinforcement provided in the pier cap P67 is deficient. However, the contribution of this deficiency alone in the failure witnessed cannot be quantified keeping in view the other issues;

v) Whether building material has been used at above said site as per sanctioned specifications?

The observations of the committee in respect of the 'Total Quality Management System' put in place in this project and its adequacy has already been discussed in section 4.4. All the materials used at the site were tested for quality in the field laboratory set up by Gammon India as well as by the independent test houses approved by DMRC. All the reports have been found to comply with the relevant Codal provisions. Further, during the second site visit, some random Non-Destructive Testing and concrete core sampling have been done to have an assessment of concrete quality in the piers P66, P67 and the two pier caps. The tests conducted are i) NDT using rebound hammer, ii) Core testing for estimation of the compressive strength of in-situ concrete and iii) Determination of cement contents in the concrete of pier and pier cap P67. The inferences drawn from these results are given section 5. Further, the details of the test results and the limitations of the test procedure are given separately in Annexure-4. The NDT testing using N-type rebound hammer indicates that the strength of concrete in the three piers and pier caps is close to the design strength or marginally lower. On the other hand, when the

same testing was done using M-type hammer on pier cap and pier P67, the values of the estimated compressive strength of in-situ concrete have been found to be lower than the design strength by about 16% in the pier cap and 25% in the pier P67. All the NDT observations, i.e. the rebound numbers, lie in a narrow range and are indicative of the uniformity of the construction quality. Further, the core test results also indicate that the equivalent cube compressive strength of the in-situ concrete is lower than the respective design strength. The chemical analysis of the concrete samples drawn from the cores extracted at site indicates lower cement content than the design mix in both the pier as well as the pier cap P67. Thus the committee is of the opinion that although the materials used meet the relevant specifications, there are some deficiencies related to the construction quality. However, the committee would not like to quantify the deficiencies in view of the limitations of these methods and the limited number of samples tested; and

vi) Whether any human error has been Involved or not?

All the stakeholders involved in this project have vast experience of executing such projects, both skill-wise and resource-wise. The quality manual followed at site has adequate checks and balances to ensure that a good quality product is delivered in time. In spite of all their efforts, a failure has occurred and it appears to be a system failure. Some lapses have definitely occurred at different stages as pointed out earlier. Moreover, when the crack was noticed in the pier cap P67 and it was thoroughly investigated by the experts and an independent consultant, there was still an opportunity to take

appropriate corrective measures. It is also on record that while investigating the cracks, some cores were drilled through the cracks and the depth of cracks was seen not to extend beyond the cover concrete. Also, glass tell-tales did not indicate widening of any crack. Since the evidence gathered at site was inconclusive to suggest that the observed cracks in pier caps P67 and P66 are associated with a structural deficiency, it was difficult to make an assessment of the actual cause of distress. Therefore, the Committee feels that the failure was a result of 'collective judgement error' on the part of the group of persons who had taken the decision to go ahead with the construction. However, the group has shown their concern on this matter and therefore, as a precautionary measure recommended constructing a strut to support the pier caps on piers P66, P67 and PG8. It is unfortunate that the strut did not help in averting the accident. This committee is, therefore of the opinion that though some lapses had occurred, but on the whole this is a typical case of collective judgement error without any wilful negligence.

63. From the IIT Roorkee Report, it emerges that the Committee was of the view that the incident was a result of *'collective judgment error'* on part of group of persons who decided to go ahead with construction despite tell-tale signs. However, precautionary measures, as recommended, were taken and a strut was constructed to support the pier caps, which unfortunately did not help in averting the accident. Committee concluded that there was no 'wilful negligence' on the whole, *albeit* also observing that the reason why the full load test was not conducted to determine the structural safety-cum-adequacy of a distressed structure was intriguing. Finally, in its concluding

remarks, Committee noted four factors, which cumulatively contributed to the collapse of pier cap Pillar-67, which are as follows:-

(i) Deficient detailing of steel reinforcement in the pier-pier cap junction which includes insufficient overlap between the pier and pier cap reinforcement;

(ii) Horizontal bending and torsional effects arising due to lateral loads i.e. braking/tractive efforts and seismic forces have not been accounted for in the design;

(iii) From the appearance and site records, the quality of construction appears to be satisfactory. However, the limited tests undertaken on pier and pier caps P66, P67 and P68, indicate that in-situ compressive strength of concrete in these elements is less 67 compressive strength. Also, the chemical analysis indicates that cement content in the concrete is lower than the specified values; and

(iv) The decision of DMRC of not resorting to load test and instead going for the strut arrangement appears to be a collective judgement error which was important with regard to safety and stability of the pier and pier cap P67.

64. It bears repetition to state that Plaintiffs did not lead expert evidence. Some findings of IIT Roorkee Report need emphasis: (a) the construction of pier and pier-cap Pillar-67 has been done as per sanctioned specifications and drawings; (b) piers Pillar-66, Pillar-67 and Pillar-68 have been constructed; (c) positioning of launching girder for erection of spans Pillar-66, Pillar-67 and Pillar-68 was in accordance with approved erection plan; (d) actual load on the pier cap at the time of accident was less than the maximum load for which it was designed; (e) improper detailing of

reinforcement in pier cap Pillar-67 could have contributed to the accident but this alone was not sufficient; and (f) *albeit* materials used met the relevant specifications, but there were some deficiencies related to construction quality. Conjoint reading of evidence of D2W2, which was not be demolished on technical aspects by the Plaintiffs and findings of Tandon Report and IIT Roorkee Report can only lead to one conclusion that Defendants cannot be blamed for wilful negligence and at the highest, the accident was a result of an error of judgment. All plausible steps were taken at the relevant time when cracks were noticed, from monitoring the widening of cracks by fixing glass tell-tales to installing strut etc. The experts have found no structural deficiency in the structure.

65. Significantly, after in-depth technical analysis, Committee also observed that all stakeholders involved in the project had vast experience of executing such projects, both skill-wise and resource-wise. The quality manual followed at site had adequate checks and balances to ensure that a good quality product was delivered in time. Inspite of all efforts, a failure had occurred, which seemed to be a system failure. While investigating the cracks, some cores were drilled through the cracks and it was found that the depth did not extend beyond the cover concrete. Also, glass tell-tales did not indicate widening of any crack. Since the evidence gathered at site was inconclusive to suggest that the observed cracks in pier caps Pillar-67 and Pillar-66 were associated with a structural deficiency, it was difficult to make an assessment of the actual cause of distress. In this backdrop, Committee concluded that there is no wilful negligence but a collective judgment error. In light of the evidence on record, issues No.3,

4 and 5 are decided against the Plaintiffs and in favour of the Defendants, holding that there was no 'wilful negligence' on the part of the Defendants.

66. Coming to the compensation aspect, it is an undisputed fact that the accident took place and some workers as well as one engineer died and few workers were injured. Therefore, it cannot be held that Plaintiffs are not entitled to seek compensation. Therefore, the only question is one of quantum and law on computation of compensation in cases of tortious liability is no longer *res integra.* To decide this question, I may first refer to the judgment of the Supreme Court in ***Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121,*** wherein it was held as under:-

> ***"9.*** *The contentions urged by the parties give rise to the following questions:*
>
> *(i) Whether the future prospects can be taken into account for determining the income of the deceased? If so, whether pay revisions that occurred during the pendency of the claim proceedings or appeals therefrom should be taken into account?*
>
> *(ii) Whether the deduction towards personal and living expenses of the deceased should be less than one-fourth (1/4th) as contended by the appellants, or should be one-third (1/3rd) as contended by the respondents?*
>
> *(iii) Whether the High Court erred in taking the multiplier as 13?*
>
> *(iv) What should be the compensation?*
>
> ***The general principles***
>
> ***10.*** *Before considering the questions arising for decision, it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of courts and tribunals on account of some adopting the Nance method [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] enunciated in Nance v. British Columbia Electric Railway Co. Ltd. [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] and some adopting the Davies method*

[Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] enunciated in Davies v. Powell Duffryn Associated Collieries Ltd. [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)]

11. *The difference between the two methods was considered and explained by this Court in Kerala SRTC v. Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] . After exhaustive consideration, this Court preferred the Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] to the Nance method [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] .*

12. *We extract below the principles laid down in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] : (SCC p. 177e)*

> *"In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death."*
>
> *"9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.*
>
> *10. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase."*
>
> *(SCC pp. 182-83, paras 9-10)*
>
> *"13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be*

had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

(SCC p. 183, para 13)

"16. It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years—virtually adopting a multiplier of 45—and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible."

13. *In U.P. SRTC v. Trilok Chandra [(1996) 4 SCC 362] this Court, while reiterating the preference to Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] followed in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , stated thus: (Trilok Chandra case [(1996) 4 SCC 362] , SCC p. 370, para 16)*

"16. In the method adopted by Viscount Simon in Nance [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependant, remarriage, accelerated payment and increased earning by wise and prudent investments, etc., would become necessary. It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life span taken. That is the reason why courts in India as well as England preferred the Davies [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] formula as being simple and more realistic. However, as observed earlier and as pointed out in Susamma Thomas case [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when tribunals/courts began to use a hybrid method of using Nance method [Nance v.

British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] without making deduction for imponderables."

"15. ... Under the formula advocated by Lord Wright in Davies [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] , the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier." (Trilok Chandra case [(1996) 4 SCC 362] , SCC pp. 369-70, para 15)

(emphasis supplied)

14. *The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accidents Claims Tribunal(s). If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system.*

15. *We may refer to the following observations in Trilok Chandra [(1996) 4 SCC 362] : (SCC p. 369, para 15)*

"15. We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused."

16. *Compensation awarded does not become "just compensation" merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say the deceased aged 40 years having annual income of Rs 45,000 leaving his surviving wife and child), one Tribunal awards Rs 10,00,000 another awards Rs 5,00,000, and yet another awards Rs 1,00,000, all believing that the amount is just, it cannot be said that what is awarded in the first case and the last case is just compensation. "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of*

compensation. It is not intended to be a bonanza, largesse or source of profit.

17. *Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , this Court stated: (SCC p. 185, para 16)*

> *"16. ... The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."*

18. *Basically only three facts need to be established by the claimants for assessing compensation in the case of death:*

> *(a) age of the deceased;*
>
> *(b) income of the deceased; and*
>
> *(c) the number of dependants.*

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

> *(i) additions/deductions to be made for arriving at the income;*
>
> *(ii) the deduction to be made towards the personal living expenses of the deceased; and*
>
> *(iii) the multiplier to be applied with reference to the age of the deceased.*

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

19. *To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:*

> *Step 1 (Ascertaining the multiplicand)*
>
> *The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of*

personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

Question (i) — Addition to income for future prospects

20. *Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.*

21. *In Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs 1032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs 2000 as gross income before deducting the personal living expenses.*

22. *The decision in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] was followed in Sarla Dixit v. Balwant Yadav [(1996) 3 SCC 179] where the deceased was getting a gross salary of Rs 1543 per month.*

Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs 3000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs 2200 per month.

23. *In Abati Bezbaruah v. Geological Survey of India [(2003) 3 SCC 148 : 2003 SCC (Cri) 746] , as against the actual salary income of Rs 42,000 per annum (Rs 3500 per month) at the time of the accident, this Court assumed the income as Rs 45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.*

24. *In Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] this Court increased the income by nearly 100%, in Sarla Dixit [(1996) 3 SCC 179] the income was increased only by 50% and in Abati Bezbaruah [(2003) 3 SCC 148 : 2003 SCC (Cri) 746] the income was increased by a mere 7%. 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 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.*

Re Question (ii) — Deduction for personal and living expenses

25. *We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependants. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. The claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one.*

26. *It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part*

of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act, in respect of claims under Section 163-A of the Motor Vehicles Act, 1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline.

27. *In Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants.*

28. *In U.P. SRTC v. Trilok Chandra [(1996) 4 SCC 362] this Court held that if the number of dependants in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units are allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased. This Court gave the following illustration: (Trilok Chandra case [(1996) 4 SCC 362] , SCC p. 370, para 15)*

> *"15. ... X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make 2 + 2 = 4 units and each minor one unit i.e. 3 units in all, totalling 7 units. Thus the share per unit works out to Rs 3500 ÷ 7 = Rs 500 per month. It can thus be assumed that Rs 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs 250. Thus the amount spent on the deceased X works out to Rs 1250 per month leaving a balance of Rs 3500-1250 = Rs 2250 per month. This amount can be taken as the monthly loss to X's dependants."*

29. *In Fakeerappa v. Karnataka Cement Pipe Factory [(2004) 2 SCC 473 : 2004 SCC (Cri) 577] while considering the appropriateness of 50% deduction towards personal and living expenses of the deceased made by*

the High Court, this Court observed: (SCC p. 475, para 7)

> *"7. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction."*

In view of the special features of the case, this Court however restricted the deduction towards personal and living expenses to one-third of the income.

30. *Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362] , the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*

31. *Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*

32. *Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*

Re Question (iii) — Selection of multiplier

33. *In Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] this Court stated the principle relating to multiplier thus: (SCC pp. 185-86, para 17)*

> *"17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs 10,000. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier i.e. the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last, etc. Usually in English courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up."*

34. *The Motor Vehicles Act, 1988 was amended by Act 54 of 1994, inter alia, inserting Section 163-A and the Second Schedule with effect from 14-11-1994. Section 163-A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs 3000 to Rs 40,000. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs 40,000. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where the compensation is not specified with reference to the annual income of the deceased, or is more than Rs 40,000, by applying the formula: (2/3 × AI × M), that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of the MV Act.*

35. *There are however discrepancies/errors in the multiplier scale given in*

the Second Schedule table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the "multiplier" figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 and 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5.

36. *Another noticeable incongruity is, having prescribed the notional minimum income of non-earning persons as Rs 15,000 per annum, the table prescribes the compensation payable even in cases where the annual income ranges between Rs 3000 and Rs 12,000. This leads to an anomalous position in regard to applications under Section 163-A of the MV Act, as the compensation will be higher in cases where the deceased was idle and not having any income, than in cases where the deceased was honestly earning an income ranging between Rs 3000 and Rs 12,000 per annum. Be that as it may.*

37. *The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the MV Act and claims under Section 166 of the MV Act. (See Oriental InsuranceCo. Ltd. v. Meena Variyal [(2007) 5 SCC 428 : (2007) 2 SCC (Cri) 527] .) Section 163-A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In Trilok Chandra [(1996) 4 SCC 362] this Court, after reiterating the principles stated in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335]), even in cases under Section 166 of the MV Act, by borrowing the principle underlying Section 163-A and the Second Schedule.*

38. *This Court observed in Trilok Chandra [(1996) 4 SCC 362] : (SCC p. 371, paras 17-18)*

> *"17. ... Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as*

was held in Susamma Thomas case [(1994) 2 SCC 176 : 1994 SCC (Cri) 335].

18. ... Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier. ... What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."

39. *In New India Assurance Co. Ltd. v. Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] this Court noticed that in respect of claims under Section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in T.N. State Transport Corpn. Ltd. v. S. Rajapriya [(2005) 6 SCC 236 : 2005 SCC (Cri) 1436] and U.P. SRTC v. Krishna Bala [(2006) 6 SCC 249 : (2006) 3 SCC (Cri) 90] .*

40. *The multipliers indicated in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] (for claims under Section 166 of the MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163-A of the MV Act (with appropriate deceleration after 50 years):*

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas[2]	Multiplier scale as adopted by Trilok Chandra[3]	Multiplier scale in Trilok Chandra as clarified in Charlie[4]	Multiplier specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Up to 15 yrs	-	-	-	15	20
15 to 20 yrs	16	18	18	16	19
21 to 25 yrs	15	17	18	17	18
26 to 30 yrs	14	16	17	18	17
31 to 35 yrs	13	15	16	17	16
36 to 40 yrs	12	14	15	16	15
41 to 45 yrs	11	13	14	15	14
46 to 50 yrs	10	12	13	13	12
51 to 55 yrs	9	11	11	11	10
56 to 60 yrs	8	10	09	8	8
61 to 65 yrs	6	08	07	5	6
Above 65 yrs	5	05	05	5	5

41. *Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] [set out in Column (2) of the table above]; some follow the multiplier with reference to Trilok Chandra [(1996) 4 SCC 362] , [set out in Column (3) of the table above]; some follow the*

multiplier with reference to Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above]; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above]. For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , 14 as per Trilok Chandra [(1996) 4 SCC 362] , 15 as per Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] , or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] is applicable.

***42.** We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.*

Question (iv) — Computation of compensation

***43.** In this case as noticed above the salary of the deceased at the time of death was Rs 4004. By applying the principles enunciated by this Court to the evidence, the High Court concluded that the salary would have at least doubled (Rs 8008) by the time of his retirement and consequently, determined the monthly income as an average of Rs 4004 and Rs 8008 that is Rs 6006 per month or Rs 72,072 per annum. We find that the said conclusion is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of the future prospects.*

***44.** Learned counsel for the appellants contended that when actual figures as to what would be the income in future, are available it is not proper to take a nominal hypothetical increase of only 50% for calculating the income. He submitted that though the deceased was receiving Rs 4004 per month at the time of death, as per the certificates issued by the employer*

(produced before the High Court), on the basis of pay revisions and increases, his salary would have been Rs 32,678 in the year 2005 and there is no reason why the said amount should not be considered as the income at the time of retirement. It was contended that the income which is to form the basis for calculation should not therefore be the average of Rs 4004 and Rs 8008, but the average of Rs 4004 and Rs 32,678.

45. *The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of the accident.*

46. *In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-1989 itself and if the appeal had been decided by the High Court in the year 1989-1990, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.*

47. *If the contention urged by the claimants is accepted, it would lead to the following situation: the claimants could only rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation.*

48. *The appellants next contended that having regard to the fact that the family of the deceased consisted of 8 members including himself and as the entire family was dependent on him, the deduction on account of personal and living expenses of the deceased should be neither the standard one-third, nor one-fourth as assessed by the High Court, but one-eighth. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under Section 163-A read with the Second Schedule to the MV Act). The percentage of deduction on account of personal and living expenses can*

certainly vary with reference to the number of dependant members in the family. But as noticed earlier, the personal living expenses of the deceased need not exactly correspond to the number of dependants.

49. *As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependants) is determined as Rs 57,658 per annum. The multiplier will be 15 having regard to the age of the deceased at the time of death (38 years). Therefore the total loss of dependency would be Rs 57,658 × 15 = Rs 8,64,870.*

50. *In addition, the claimants will be entitled to a sum of Rs 5000 under the head of "loss of estate" and Rs 5000 towards funeral expenses. The widow will be entitled to Rs 10,000 as loss of consortium. Thus, the total compensation will be Rs 8,84,870. After deducting Rs 7,19,624 awarded by the High Court, the enhancement would be Rs 1,65,246.*

51. *We allow the appeal in part accordingly. The appellants will be entitled to the said sum of Rs 1,65,246 in addition to what is already awarded, with interest at the rate of 6% per annum from the date of petition till the date of realisation. The increase in compensation awarded by us shall be taken by the widow exclusively. Parties to bear respective costs."*

67. In ***National Insurance Company Limited v. Pranay Sethi and Others, (2017) 16 SCC 680,*** the Supreme Court held as under:-

*"**37.** Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] and Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] . Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paras 30, 31 and 32, Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] lays down : (SCC p. 136)*

> *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] , the general practice is to apply standardised deductions.*

Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (¼th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

38. *In Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , the three-Judge Bench agreed with the multiplier determined in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and eventually held that the advantage of the Table prepared in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] is that uniformity and consistency in selection of multiplier can be achieved. It has observed : (Reshma Kumari case [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , SCC p. 88, para 35)*

"35. ... The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value

of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency."

39. *In Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , the three-Judge Bench, reproduced paras 30, 31 and 32 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and approved the same by stating thus : (Reshma Kumari case [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , SCC pp. 90-91, paras 41-42)*

"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

42. In our view, the standards fixed by this Court in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out."

40. *The conclusions that have been summed up in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] are as follows : (SCC p. 91, para 43)*

"43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] .

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] subject to the observations made by us in para 41 above."

41. *On a perusal of the analysis made in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which has been reconsidered in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by Conclusion 43.6 of Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . We concur with the same as we have no hesitation in approving the method provided therein.*

42. *As far as the multiplier is concerned, the Claims Tribunal and the courts shall be guided by Step 2 that finds place in para 19 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of the said judgment. For the sake of completeness, para 42 is extracted below : (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , SCC p. 140)*

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] and Charlie [New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 : 2005 SCC (Cri)

1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

43. *In Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , the aforesaid has been approved by stating, thus : (SCC pp. 88-89, para 37)*

"37. ... It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] should be followed."

44. *At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less the tax paid. The multiplier has already been fixed in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which has been*

approved in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] with which we concur.

45. *In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided.*

46. *Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , the two-Judge Bench followed the traditional method and granted Rs 5000 for transportation of the body, Rs 10,000 as funeral expenses and Rs 10,000 as regards the loss of consortium. In Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , the Court granted Rs 5000 under the head of loss of estate, Rs 5000 towards funeral expenses and Rs 10,000 towards loss of consortium. In Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , the Court granted Rs 1,00,000 towards loss of consortium and Rs 25,000 towards funeral expenses. It also granted Rs 1,00,000 towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] . On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote : (Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , SCC p. 63, para 17)*

> *"17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection,*

comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

47. *Be it noted, Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] did not deal with the same as the notice was confined to the issue of application of correct multiplier and deduction of the amount.*

48. *This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule to the Act. The said Schedule has been found to be defective as stated by the Court in Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] . Recently, in Puttamma v. K.L. Narayana Reddy [Puttamma v. K.L. Narayana Reddy, (2013) 15 SCC 45 : (2014) 4 SCC (Civ) 384 : (2014) 3 SCC (Cri) 574] it has been reiterated by stating : (SCC p. 80, para 54)*

"54. ... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."

49. *As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also provides for general damages in case of death. It is as follows:*

*"**3.** General damages (in case of death):*

The following general damages shall be payable in addition to compensation outlined above:

(i)	Funeral expenses	Rs 2000
(ii)	Loss of consortium, if beneficiary is the spouse	Rs 5000
(iii)	Loss of estate	Rs 2500
(iv)	Medical expenses — actual expenses incurred before death supported by bills/vouchers but not exceeding	Rs 15,000"

50. *On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs 1,00,000 was granted towards consortium in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . The justification for grant of consortium, as we find from Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , is founded on the observation as we have reproduced hereinbefore.*

xxx *xxx* *xxx*

55. *Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and it has been approved in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability*

and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

56. *The seminal issue is the fixation of future prospects in cases of deceased who are self-employed or on a fixed salary. Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.*

57. *Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased*

who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

xxx xxx xxx

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

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

59.5. *For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which we have reproduced hereinbefore.*

59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of that judgment.*

59.7. *The age of the deceased should be the basis for applying the multiplier.*

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

68. In a recent judgment in ***Maya Singh and Others v. Oriental Insurance Co. Ltd. and Others, 2025 SCC OnLine SC 266,*** the Supreme Court applying the principles laid down in ***Sarla Verma (supra)*** and ***Pranay Sethi (supra)***, held as under:-

> ***"11.*** *As is evident from the record, the accident in question took place on 07.03.2014. The deceased was knocked down by the offending bus bearing Registration No. MP-06/B-1725. He died on the spot. He was 57-58 years of age and was employed as a phone mechanic with Bharat Sanchar Nagar Limited (for short "BSNL"). He was survived by his widow and four children. Two of his sons were held not to be legally entitled to claim compensation as they were not financially dependent on the deceased. The present appellants, namely the widow, a dependent son and a daughter of the deceased, are the rightful claimants for compensation. The income as proved on record was Rs. 39,500/- per month (Rs. 4,74,000/- per annum), which after deduction of income tax was Rs. 4,57,000/- per annum. To the aforesaid facts, there is no dispute. The Tribunal assessed the compensation on account of loss of income taking the annual income of the deceased at Rs. 4,57,000/- by applying a multiplier of 9 and applying a cut of one-third towards personal expenses.*
>
> ***11.1.*** *The High Court applied a split method. It was opined that after the death of the deceased in the accident he would have drawn salary of Rs. 39,500/- for a period of 22 months. Thereafter, an increment was due to him, by adding the same for another 07 months before retirement, he would have drawn salary of Rs. 42,500/- per month. Thereafter, the deceased would have been entitled to pension of Rs. 21,250/-. The compensation was assessed in terms thereof. As far as loss of compensation on account of consortium is concerned, the Tribunal had awarded Rs. 1,00,000/-, which was reduced to Rs. 40,000/-. Additionally, amount of Rs. 15,000/- was granted on account of loss of estate. The compensation granted on account of funeral expenses was reduced from Rs. 25,000/- to Rs. 15,000/-. As against Rs. 28,66,994/- awarded by the Tribunal, the High Court assessed the compensation at Rs. 19,66,833/-.*
>
> ***11.2.*** *An examination of the High Court's decision reveals that substantial reduction in compensation is on account of application of a 'split multiplier' to the income of deceased. In our considered view, the High Court has erred in not considering the principles laid down in the cases of Sarla Verma v. DTC and Sumathi v. National Insurance Company Ltd.*
>
> ***11.3.*** *This Court in Sumathi (supra) addressed a similar situation. The deceased was 54 years of age and was due to retire from government service in four years when the fatal accident occurred. The High Court*

assessed the compensation by taking the total salary of the deceased for the leftover period of four years and fifty per cent of the salary for the post-retirement period. The High Court awarded a total compensation of Rs. 25,25,000/- instead of Rs. 40,76,496/- awarded by the Tribunal. This Court set aside the decision of High Court and held that split multiplier cannot be applied unless specific reasons are recorded. It was opined as under:

> *"9. The High Court has applied split multiplier by referring to the judgment of this Court in the case of Puttamma v. K. L. Narayana Reddy, without recording any specific reason, contrary to the said judgment. The High Court has applied split multiplier only on the ground that the deceased was 54 years of age at the time of the accident and leftover service was only four years. In the case of Puttamma v. K. L. Narayana Reddy, in similar circumstances, where the split multiplier was applied for the purpose of assessing compensation by the High Court, this Court has allowed the appeal by setting aside the judgment of the High Court. Para 66 of the judgment of the case of Puttamma v. K. L. Narayana Reddy is relevant for the purpose of disposal of this appeal. The relevant para 66 reads as under:*
>
> > *"66. In the appeal which was filed by the claimants before the High Court, the High Court instead of deciding the just compensation allowed a meagre enhancement of compensation. In doing so, the High Court introduced the concept of split multiplier and departed from the multiplier system generally used in the light of the decision in Sarla Verma case without disclosing any reason. The High Court has also not considered the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable services for more than 10 years. When the age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in Sarla Verma. Thus, we fail to appreciate as to why the High Court chose to apply split multiplier and applied multiplier of 10. We, thus, find that the judgment of the High Court is perverse and contrary to the evidence on record and is fit to be set aside for not having considered the future prospects of the deceased and also for adopting split multiplier method against the law laid down by this Court. In view of our aforesaid finding, we hold that the judgment of the High Court deserves to be set aside. We, accordingly, set aside the impugned judgment and hold that the claimants are entitled for total compensation of Rs. 23,43,688. They shall also get interest on the enhanced compensation at the rate of 12% per annum from the date of filing of the complaint petition. Respondent 2 Insurance Company is directed to pay the enhanced/additional compensation and interest to the claimants*

within a period of three months by getting prepared a demand draft in their name."

From a reading of the above judgment, it is clear that in normal course, the compensation is to be calculated by applying the multiplier, as per the judgment of this Court in the Case of Sarla Verma. Split multiplier cannot be applied unless specific reasons are recorded. The finding of the High Court that the deceased was having leftover service of only four years, cannot be construed as a special reason, for applying the split multiplier for the purpose of assessing the compensation. In normal course, compensation is to be assessed by applying multiplier as indicated by this Court in the judgment in the case of Sarla Verma. As no other special reason is recorded for applying the split multiplier, judgment of the High Court is fit to be set aside by restoring the award of the Tribunal."

(emphasis supplied)

11.4. *In Sarla Verma's case (supra), this Court has held that while calculating the compensation, the multiplier to be used should start with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years,* ***M-9 for 56 to 60 years****, M-7 for 61 to 65 years and M-5 for 66 to 70 years.*

11.5. *From the above, it is clear that normally Courts and Tribunals have to apply the multiplier as per the judgment of this Court in Sarla Verma (supra). Any deviation from the same warrants special reasons to be recorded. In the case in hand, neither any special reason has been recorded by the High Court while applying the split method nor we find there is one in the facts of the case. In the case in hand, the deceased was a technically qualified person and people are generally healthy at that age and continue working even after retirement.*

12. *Considering the aforesaid factual aspects and position of law, in our view, the compensation on account of loss of income while applying the multiplier of 9 by the Tribunal without applying the split method is the correct calculation on that account. Moreover, the Tribunal as well as the High Court had failed to award future prospects while calculating the compensation. Considering the age of the deceased, the appellant would be entitled to future prospects @ 15%. On account of loss of estate and funeral expenses, the amount of Rs. 15,000/- each awarded by the High Court is as per law. As far as loss of consortium is concerned, there are three claimants, namely, the widow, one son and one daughter. They would be entitled to compensation on account of loss of consortium @ Rs. 40,000/- each. The Tribunal had erred in awarding only a sum of Rs. 1,00,000/- in total."*

69. From a conspectus of the aforesaid judgments, it is clear that to claim compensation in case of death, three factors are required to be proved viz. age of the deceased; income of the deceased; and number of dependents. To have uniformity and consistency, the Supreme Court in ***Sarla Verma (supra)*** laid down the steps to calculate the compensation. As for the multiplier, the Supreme Court held that the multiplier scale in the judgment in ***U.P. State Road Transport Corporation and Others v. Trilok Chandra and Others, (1996) 4 SCC 362*** and as clarified in ***New India Assurance Co. Ltd. v. Charlie and Another, (2005) 10 SCC 720,*** shall be taken. In fact, the table is extracted in paragraph 40 of the judgment. It was also held that the multiplier would start with an operative multiplier of 18 and reduced by one unit for every 5 years as per age groups. The Supreme Court also clarified the manner in which the deductions are to be made towards personal and living expenses taking into account the number of dependents. In ***Pranay Sethi (supra)***, the Supreme Court further held that while determining the income, addition of 50% of actual salary to the income of the deceased would be added towards future prospects, where deceased had a permanent job and was below the age of 40 years. The addition would be 30% if the age was between 40-50 years and 15% if the age was 50-60 years. In case deceased was self-employed or on a fixed salary, an addition of 40% of established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40-50 years and 10% where the deceased was between the age of 50-60 years.

70. In the instant case, it be noted that on behalf of the Plaintiffs, only Plaintiff No.9 gave evidence as PW-3 but his testimony is limited to what he

saw at the site, post the accident, his own injuries and rescue operations in brief. As a consequence no evidence is available with respect to ages, dependents and income of the deceased workers, which was imperative in light of the law for computation of compensation. Therefore, to arrive at the quantum of compensation in case of the deceased, this Court has taken the required parameters from the pleadings and/or other documents on record, only with a view to ensure that no injustice is caused to the Plaintiffs in matter of quantum of compensation, to which they are entitled in law. As per Form-A filed by DMRC, to which there is no rebuttal, the monthly wage of the deceased was Rs.4,000/-. Taking the monthly wage and adding 50% as loss of future prospects, if the requisite multiplier is applied after deducting the personal and living expenses and thereafter adding the non-pecuniary heads such as loss of estate, loss of consortium and funeral expenses, in terms of the judgments aforementioned, the amount of compensation that becomes payable to the dependents of the deceased workers is as given in the table "A" below. It may also be mentioned that the number of dependents have been worked out on the basis of data given by the Defendants in the context of compensation/*ex gratia* payments made as also pleadings and documents in the present suit. Computation of the compensation payable to the deceased as per applicable formula is as follows:-

TABLE-A

Names of Employees (deceased)	Ages	Monthly Wages	Multipliers applied	Total Compensation Payable	Total Compensation Already Paid
Badan Singh	35	4,000	16	8,38,000	8,94,120
Amit Yadav	30	4,000	17	8,86,000	9,15,960

Pappu Yadav	25	4,000	18	9,34,000	9,33,820
Niranjan Yadav	18	4,000	18	9,34,000	9,52,760
Anshuman Pratihar	28	4,000	17	8,86,000	9,23,580
Amar Singh	27	4,000	17	8,86,000	9,07,700

71. Defendants have placed on record the details of compensation paid to the deceased and injured before the Labour Commissioner by Gammon and *ex gratia* by DMRC. Relevant screenshot is scanned and placed below:-

TABLE-B

DETAILS OF PLAINTIFF	COMPENSATION PAID	PAID BY
Plaintiff no.1 - Smt. Vidyawati, w/o Late Sh. Badan Singh (deceased)	a. Rs. 3,94,120 deposited with the Office of Dy. Labour Commissioner, *vide* Cheque (bearing no. 458026 and dated 14.07.2009) in favour of the Commissioner	Def. no.1
	b. Cash of Rs. 50,000 paid to Sh. Roop Singh, s/o Late Sh. Badan Singh on 14.07.2009.	Def. no.2
	c. Rs. 4,50,000 *vide* Cheque (bearing no. 011082 and dated 20.07.2009) in favour of Smt. Vidyawati (*Ex Gratia*)	Def. no.2
Plaintiff no.2 – Sh. Pappu Singh (Injured)	Cash of Rs.10,000 paid to Sh. Pappu Singh, on account of minor injury (*Ex Gratia*)	Def. no.2
Plaintiff no.3 – Sh. Prakash Yadav (Injured)	Cash of Rs. 50,000 paid to Sh. Prakash Yadav himself on 15.07.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.4 – Smt. Shabnam Devi, m/o Late Sh. Amit Yadav (deceased)	a. Rs. 4,15,960 deposited with the Office of Dy. Labour Commissioner, *vide* Cheque (bearing no. 458028 and dated 14.07.2009) in favour of the Commissioner	Def. no.1
	b. Rs. 2,50,000 deposited with Central Bank of India, Branch Gouripur, *vide* Cheque (bearing no. 064981 and dated 19.08.2009) in favour of Smt. Shabnam Devi m/o Sh. Amit Yadav (*Ex Gratia*)	Def. no.2
	c. Rs. 2,50,000 deposited with Central Bank of India, Branch Gouripur, *vide* Cheque (bearing no. 064983 and dated 21.08.2009) in favour of Sh. Ladoo (Laddu) Yadav, F/o Late Sh. Amit Yadav	Def. no.2
	d. Cash of Rs. 50,000 paid to Sh. Ladoo (Laddu) Yadav, F/o Late Sh. Amit Yadav on 17.08.2009 (*Ex Gratia*)	Def. no.2

Plaintiff no.5 – Smt. Neetu Devi, w/o Late Sh. Pappu Yadav (deceased)	a. Rs. 4,33,820 deposited with the Office of Dy. Labour Commissioner, *vide* Cheque (bearing no. 458029 and dated 14.07.2009) in favour of the Commissioner	Def. no.1
	b. Rs. 4,50,000 deposited with Central Bank of India, Branch Gouripur, *vide* Cheque (bearing no. 064982 and dated 21.08.2009) in favour of to Smt. Neetu Devi, w/o Late Sh. Pappu Yadav (*Ex Gratia*)	Def. no.2
	c. Cash of Rs. 50,000 paid to Smt. Neetu Devi, w/o Late Sh. Pappu Yadav on 17.08.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.6 – Smt. Faiko Devi, M/o Late Sh. Niranjan Yadav (deceased)	a. Rs. 4,52,760 deposited with the Office of Dy. Labour Commissioner, *vide* Cheque (bearing no. 458030 and dated 14.07.2009) in favour of the Commissioner,	Def. no.1
	b. Rs. 4,50,000 deposited with the SBI in a Fixed Deposit Account (*Ex Gratia*)	Def. no.2
	c. Cash of Rs. 50,000 paid to Sh. Bambam Yadav, elder b/o Late Sh. Niranjan Yadav on 14.07.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.7 – Sh. Dilip Kuma (Injured)	Cash of Rs. 10,000 paid to Sh. Dilip Kumar himself on 15.07.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.8 – Sh. Amarnath Chaudhary (Injured)	Cash of Rs. 50,000 paid to Smt. Pinki Kumari, w/o Sh. Amarnath Chaudhary on 15.07.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.9 – Sh. Mahadeo (or Mahadev)	Rs. 50,000/- paid to Mahadev in cash on 15.07.2009	Def. no.2
Plaintiff no.10 – Smt. Sunita, w/o Late Sh. Amar Singh (deceased)	a. Rs. 4,07,700 deposited with the Office of Dy. Labour Commissioner, *vide* Cheque (bearing no. 459263 and dated 27.07.2009) in favour of the Commissioner	Def. no.1
	b. Rs. 4,50,000 deposited with State Bank of India, Branch Porsa Mahagaon, *vide* Cheque (bearing no. 011255 and dated 05.08.2009) in favour of Smt. Sunita Devi, w/o Late Sh. Amar Singh (*Ex Gratia*)	Def. no.2
	c. Cash of Rs. 50,000 paid to Smt. Sunita Devi, w/o Late Sh. Amar Singh on 24.07.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.11 – Sh. Chhavi Raj (Injured)	Cash of Rs. 50,000 paid to Sh. Chhavi Raj himself on 14.07.2009 (*Ex Gratia*)	Def. no.2
Plaintiff no.12 – Sh. Shankar Prasad Prathihar, F/o Late Sh. Anshuman Pratihar (deceased)	a. Rs. 4,23,580 deposited with the Office of Dy. Labour Commissioner, *vide* Cheque (bearing no. 458027 and dated 14.07.2009) in favour of the Commissioner	Def. no.1
	b. Rs. 4,50,000 deposited with United Bank of India, Branch Galia, *vide* Cheque (bearing no. 011192 and dated 29.07.2009) in favour of Sh. Shankar Prasad Prathihar, F/o Late Sh. Anshuman Pratihar (*Ex Gratia*)	Def. no.2
	c. Cash of Rs. 50,000 paid to Sh. Gautam Prathihar, cousin brother of Late Sh. Anshuman Pratihar on 14.07.2009 (*Ex Gratia*)	Def. no.2

72. From a comparison of the two tables 'A' and 'B' above, it is evident that Defendants have already paid the compensation to which the dependents of the deceased were entitled as per the judgments in ***Sarla Verma (supra), Pranay Sethi (supra)*** and ***Maya Singh (supra)***. It was only to streamline and bring uniformity that the Supreme Court laid down the parameters and methodology to compute compensation as different Courts and Tribunals were using varied and different yardsticks. No evidence has been led by the Plaintiffs warranting enhancement of the compensation to Rs. 50 lakhs and nor are they able to establish that the compensation paid is contrary to the judgements.

73. Insofar as the injured Plaintiffs are concerned, *albeit* sadly, Plaintiffs have neither pleaded nor led any evidence on the nature of injuries suffered, nature, duration and quality of treatment received, if any, from the hospitals, extent of percentage of disabilities suffered, expenditures incurred in treatments, loss of earning capacity, if any, etc. No medical documents have been filed in support of the injuries or the treatments undertaken. Plaintiffs have made a general and fanciful claim of Rs.50 lacs for compensation for those grievously injured and Rs.25 lacs for those who suffered minor injuries. *Sans* any evidence on these parameters, this Court is unable to award any compensation beyond the payments received by them, as mentioned above. Insofar Plaintiff No.9 is concerned, he has filed his evidence affidavit and stated that he suffered injury in his right eye and an iron rod was transplanted in his left thigh. However, no document has been placed on record to show the extent of disability and expenses incurred on the treatment. A sum of Rs.50,000/- has been paid to Plaintiff No.9 on 15.07.2009. There is no gainsaying that with the iron rod implanted in his

thigh, which fact is uncontroverted, Plaintiff No.9's earning capacity would have been impacted since he was working as a labourer. Therefore, on a conservative estimate, it is held that Plaintiff No.9 would be entitled to an additional sum of Rs. 1 lakh as compensation for the grievous injury suffered.

74. Insofar as exemplary damages are concerned, basis the evidence on record, this Court is unable to render a finding of wilful negligence/ recklessness/malice on the part of the Defendants. In ***Common Cause (supra)***, the Supreme Court held that the primary object of award of damages is to compensate the Plaintiff for the harm done to him while the secondary object is to punish the Defendant for his conduct in inflicting the harm. Exemplary/punitive/retributory damages are awarded where Defendant's conduct is found to be sufficiently outrageous to merit punishment, for example, where conduct discloses malice, cruelty, insolence or the like. It was further held that in an action of tort, where Plaintiff is found entitled to damages, the matter should not be stretched too far to punish the Defendant by awarding the exemplary damages except where the conduct, specially, those of the Government and its officers, is found to be oppressive, obnoxious and arbitrary and sometimes coupled with malice. The present is not a case where evidence points to any conduct of the Defendants which can be termed as cruel, insolent or actuated by malice and hence, no case is made out for grant of exemplary damages and this issue is decided against the Plaintiffs. Having said that, there is no doubt that the accident occurred and deaths have taken place. It is equally true that IIT Roorkee Report has rendered a finding of error of judgment. In these special facts and circumstances, Court awards nominal damages of Rs.2 lakhs each

in cases of death, which shall be payable by both the Defendants, in equal proportion. Money shall be deposited by the Defendants in this Court in the name of the Registrar General, within six (06) weeks from today. After due verification of the Plaintiffs/dependants of the deceased workers and upon completion of necessary formalities, money shall be released by the Registry, for which purpose the matter will be listed before the concerned Registrar on 02.04.2026.

75. Suit is decreed in the aforesaid terms.

76. Registry is directed to draw up the decree suit.

77. Suit is disposed of along with pending applications.

JYOTI SINGH, J

FEBRUARY 05, 2026/*S.Sharma*