2010 PLRonline 0100
SUPREME COURT OF INDIA

Before:- Justice G.S. Singhvi and Justice Asok Kumar Ganguly , JJ.

Arun Kumar Agrawal and another – Appellants
Versus
National Insurance Company and others – Respondents

Civil Appeal No. 5843 of 2010 (Arising out of SLP(C) No. 19655 of 2004).

22.7.2010.

Motor Vehicles Act, 1988, Sections 166 and 163A – Death of a housewife in Motor accidents – Assessment of compensation – Her services cannot compared with that of a house keeper or servant – Held :-

- **Courts in India acknowledge that a wife's contribution to the household is invaluable and cannot be measured in monetary terms.**

- **The services provided by a wife, filled with love and care for her family, including her husband and children, are unique and incomparable to services rendered by others.**

- **Unlike someone working on a strict schedule, a wife/mother is constantly available to her family, day and night, tending to their needs, cooking, cleaning, and providing guidance to her children.**

- **While household tasks can be outsourced to housekeepers or maidservants, they can never replace the selfless service of a wife/mother.**

- **It is challenging to assign a specific monetary value to the services of a wife/mother within the family.**

- **However, for compensation purposes, an estimate must be made, considering the loss of personal care and attention that the deceased provided to her children as a mother and her husband as a wife.**

- **Dependents are entitled to adequate compensation for the loss of the deceased's gratuitous services.**

- **Compensation cannot be reduced if a close relative, such as a grandmother, offers to provide some of the services the deceased was previously giving to the family.**

- **Comparing the compensation for dependents of a deceased wife/mother, who lacks a regular income, with that of a housekeeper, servant, or employee who has fixed working hours is highly unfair and inappropriate.**

- **The invaluable services provided by a wife/mother to her husband and children cannot be equated with the services of an employee, and it is impossible to produce evidence or data to estimate the value of these services in monetary terms.**

- **The loss of personal care and attention experienced by the husband and children when a housewife/mother passes away cannot be quantified in monetary value.**

- **Approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker. [Para 23, 24, 32]**

Motor Vehicles Act, 1988, Sections 163A and 166 – Death – Housewife and mother – Importance of the housewife's role in the family, as she performed essential tasks such as cooking, laundry, and providing guidance to the children – While the law acknowledges the entitlement of dependents to compensation for the loss of these services, it does not provide a clear method for assessing the value of these services – Parliament should reconsider and amend the provisions of the Motor Vehicles Act and related laws to properly assess the value of homemakers and householders' work, especially when the victim is a woman and a homemaker – On facts , compensation of Rs. 6 lakhs was awarded based on the criteria outlined in clause (6) of the Second Schedule, as referred to in Section 163A. [Para 23, 24, 32, 59 to 62]

Held,

32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000/- per annum and in case of a spouse, ⅓rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier. [Para 32]

Motor Vehicles Act, 1988, Sections 166 and 163A – Death of housewife – Assessed at Rs. 5000 p.m. by applying clause 6 of second schedule – Compensation of Rs. 6 lakhs awarded [Para 35]

Motor Vehicles Act, 1988, Section 163A – Housewife – Section 163A of the Motor Vehicles Act, 1988, outlines a provision for compensation based on a structured formula – Clause 6 of this schedule pertains to the notional income of individuals who had no income before the accident. Clause 6 is divided into two categories: (a) non-earning persons and (b) spouses – Regarding spouses, the clause assumes that in the case of both fatal and non-fatal accidents, the income of the injured spouse is equivalent to ⅓rd of the income of the earning and surviving spouse – This assumption implies that a non-earning spouse, typically the homemaker, cannot have an income exceeding ⅓rd of the earning spouse's income – However, this categorization does not adequately recognize the true value of the services provided by the homemaker – Valuing the income of a homemaker as one-third of the earning spouse's income lacks a clear and rational basis. [Para 38]

Census Rules, 1990, Rule 5(c) – Census Act, 1948, Sections 4 and 18 – Constitution of India, Article 15 – Discrimination on ground of sex – There is a concerning bias in the Census data. In the 2001 Census, individuals performing household duties such as cooking, cleaning, childcare, water collection, and firewood gathering were classified as non-workers – They were essentially equated with beggars, prostitutes, and prisoners, who, according to the Census, were considered economically unproductive – Shockingly, this categorization led to approximately 367 million women in India being labeled as non-workers and placed in the same category as beggars, prostitutes, and prisoners – It's important to note that this categorization is carried out under the authority of an Act of Parliament – – Census operation does not call for consideration in this case but reference to the same has been made to show the strong bias shown against women and their work. We hope and trust that in the on-going Census operation this will be corrected. [Para 39 and 47]

Motor Vehicles Act, 1988, Sections 163A and 166 – Section 163-A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166 – Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier [Para 32]

Cases Referred :-

1.Amar Singh Thukral v. Sandeep Chhatwal, 112 (2004) DLT 478.
2.Rajam v. M. Manikya Reddy, 1989 ACJ 542 (Andhra Pradesh HC).
3.Berry v. Humm and Co., (1915) 1 K.B. 627.
4.Captan Singh v. Oriental Insurance Co. Ltd., 112 (2004) DLT 417.
5.Chandra Singh v. Gurmeet Singh, (2003) 7 AD (Delhi) 222.
6.Deepal Girishbhai Soni v. United India Insurance Co. Ltd., (2004) 5 SCC 385.
7.General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.), (1994) 2 SCC 176.
8.Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234.
9.Krishna Gupta v. Madan Lal, 96 (2002) DLT 829.
10.Lata Wadha v. State of Bihar, (2001) 8 SCC 197.
11.Mehmet v. Perry, (1977) 2 All England Reporter 52.
12.Minu B. Mehta v. Balkrishna Ramchandra Nayan, (1977) 2 SCC 441.

13.Municipal Corporation of Greater Bombay v. Laxman Iyer, (2003) 8 SCC 731.
14.M.S. Grewal v. Deep Chand Sood, (2001) 8 SCC 151.
15.National Insurance Company Ltd. v. Mahadevan, Minor Buvanadevi, Minor Venkatesh and Parameswaran, 2009(3) AICJ 249 : (2009) ACJ 1373.
16.National Insurance Co. Ltd. v. Minor Deepika rep. by her guardian and next friend, Ranganathan, (2009) 6 MLJ 1005.
17.Ningamma v. United Insurance Company Limited, 2009(4) R.A.J. 164 : 2009(2) AICJ 128 : (2009) 13 SCC 710.
18.Oriental Insurance Co. Ltd. v. Meena Variyal, 2007(2) R.A.J. 307 : (2007) 5 SCC 428.
19.Raj Rani v. Oriental Insurance Company Limited, (2009) 13 SCC 654.
20.Regan v. Williamson, (1976) 1 W.L.R. 305.
21.Sarla Verma v. Delhi Transport Corporation, 2009(3) R.A.J. 373 : 2009(2) AICJ 2 : (2009) 6 SCC 121.
22.U.P.S.R.T.C. v. Trilok Chandra, (1996) 4 SCC 362.

For the Appellants :- Sanjay Singh, Sharve Singh, Ugra Shankar Prasad, Advocates. For the Respondents :- Ms. Hetu Arora, Mr. Pramod Dayal, Nikun Dayal, Arun Kumar Beriwal, Vishnu Mehra (For B.K. Satija), Advocates.

JUDGMENT

G.S. Singhvi, J. – Leave granted.

2. What should be the criteria for determination of the compensation payable to the dependents of a woman who dies in a road accident and who does not have regular source of income is the question which arises for determination in this appeal filed against the judgment of the Division Bench of Allahabad High Court which declined to enhance the compensation awarded to the appellants by Motor Accident Claims Tribunal, Shahjahanpur (for short, 'the Tribunal').

3. Smt. Renu Agrawal (wife of appellant No. 1 – Arun Kumar Agrawal and mother of appellant No. 2 – Suwarna Agrawal) died in a road accident when the car driven by appellant No. 1 was hit by truck bearing No. UGK-489 in village Pachkora, District Hardoi, U.P. The appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for award of compensation of Rs. 19,20,000/- by asserting that the accident was caused due to rash and negligent driving of the truck which was owned by respondent No. 2, Mohd. Farooq and was insured with respondent No. 1. They pleaded that the deceased was 39 years of age at the time of accident and due to her death, life of appellant No. 1 had become miserable inasmuch as being a Government servant he was unable to look after his minor child. They further pleaded that the deceased used to look after domestic affairs of the family and both the appellants have been deprived of the care, love and affection of the deceased and the comfort of her company.

4. The owner of the truck (respondent No. 2), its driver (respondent No. 4) and the insurance company (respondent No. 1) contested the claim. All of them denied that the accident was caused due to rash and negligent driving of the truck by respondent No. 4. According to them, appellant No. 1 was responsible for the accident. They disputed the dependency of the appellants and the quantum specified in the claim petition. Respondent No. 1 further pleaded that it was not liable to pay compensation because driving licence of respondent No. 4 was not valid; that the owner had not complied with Section 64VB of the Insurance Act and that the owner and the insurer of Tata Sumo UP-65/4559, which was also involved in the accident were not made parties.

5. After considering the pleadings and evidence of the parties, the Tribunal held that the

accident was caused due to rash and negligent driving of the truck by respondent No. 4 and being legal heirs of the deceased, the appellants are entitled to compensation. While dealing with the issue relating to the quantum of compensation, the Tribunal extensively referred to the statement of appellant No. 1, who stated that the deceased was earning Rs. 50,000/- by engaging herself in paintings and handicrafts. The Tribunal held that the deceased was deeply involved in the family affairs and after her death, the entire family was broken and as a result of that, working capacity of appellant No. 1 was decreased. The Tribunal noted that at the time of accident monthly income of appellant No. 1 was Rs. 15,416/- and held that in view of clause 6 of Second Schedule of the Act, the income of the deceased could be assessed at Rs. 5,000/- per month (Rs. 60,000/- per annum) and after making deduction of Rs. 20,000/- towards personal expenses of the deceased and applying the multiplier of 15, the total loss of dependency comes to Rs. 6 lacs. However, instead of awarding that amount as compensation, the Tribunal reduced the same to Rs. 2,50,000/- by making the following observations :

> "The claimants are entitled to this amount of compensation but keeping in mind that the deceased was actually not an earning member and this is only based on notional income. The amount of compensation is too much and as such a lesser multiplier could be adopted in the present case. In the circumstances of this case, the claimants are entitled to Rs. 2,50,000/- as compensation from the insurance company. This issue is accordingly decided with the above observation."

6. The High Court dismissed the appeal preferred by the appellants by making the following observations :

> "At the time of accident claimant No. 1 Arun Kumar Agrawal was getting monthly salary of Rs. 15,416/- and at time of filing the appeal Rs. 24,042/- per month. Claimant Arun Kumar Agarwal and his son aged about seven years are the only legal representatives of the deceased. Neither of the claimants were dependents upon the deceased. The services rendered by Renu Agrawal, the deceased as house wife may be estimated at Rs. 1250.00 per month and thus the annual contribution by rendering services comes to Rs. 15,000/- and applying the multiplier of 15 it comes to Rs. 2,25,000/- and adding the amount of Rs. 3000.00 as funeral expenses, Rs. 7,000.00 due to loss of love and affection to the son and Rs. 15,000.00 due to loss of comfort consortium, the compensation comes to Rs. 2,50,000.00. Thus, considering all the facts and circumstances, the compensation awarded is just and fair."

7. Shri Sanjay Singh, learned counsel for the appellant relied upon the judgment of this Court in ***Lata Wadha and others v. State of Bihar and others 2001(4) RCR (Civil) 673 : (2001) 8 SCC 197*** and argued that the Tribunal and the High Court committed serious error by not awarding just and fair compensation to the appellants ignoring that the family was not only deprived of the money which the deceased used to earn from paintings and handicrafts but also of her services as housewife/mother apart from the care, love, affection and comfort of her company. Learned counsel submitted that the award of the Tribunal is liable to be modified because it did not assign any reason for reducing the amount of compensation payable to the appellants in terms of the loss of dependency i.e. Rs. 6 lacs. Learned counsel then argued that both the Tribunal and the High Court erred in refusing to recognise the immense importance of the invaluable services rendered by a housewife/mother to the family throughout her life. Learned counsel finally submitted that even if a housewife/mother does not earn a single penny in material terms, the criteria laid down by the legislature in clause 6 of the Second Schedule appended to the Act should be applied for awarding compensation in petitions filed under Section 166 of the Act.

8. Learned counsel appearing for the respondents supported the award of the Tribunal and

the judgment of the High Court and argued that criteria laid down in Section 163A of the Act cannot be invoked for awarding higher compensation to the appellants because they had filed petition under Section 166 of the Act. Learned counsel then submitted that no tangible evidence was produced before the Tribunal to show that the deceased used to earn Rs. 50,000/- per annum from paintings and handicrafts and argued that the said amount was rightly not taken into consideration for the purpose of determination of the compensation payable to the appellants.

9. We have considered the respective submissions. At the outset, we may notice some of the precedents in which guiding principles have been laid down for determination of the compensation payable to the victim(s) of the accident or their legal representatives.

10. In ***General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others (1994) 2 SCC 176***, this Court considered the legitimacy of multiplier method evolved and applied by the British Courts and approved the same. The relevant paragraphs of that judgment are extracted below :

> "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.
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> 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 year's purchase.*
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> 13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing 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.
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> 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. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. 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. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."

(emphasis supplied)

11. In ***U.P.S.R.T.C. v. Trilok Chandra 1996(2) R.R.R. 718 : (1996) 4 SCC 362***, a three-Judge Bench referred to the principles evolved by British Courts for award of damages and reiterated the multiplier method spelt out in ***General Manager Kerala State Road Transport Corporation v. Susamma Thomas*** (supra). The Court then took note of the stark inconsistencies in the approach adopted by the motor accident claims tribunals and courts in awarding compensation, referred to the amendment made in the Act in 1994, pointed out the defects in the Second Schedule and observed :

"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. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies, 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.* Let us illustrate: 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. 350087= 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. The annual dependency comes to Rs. 2250×12=Rs. 27,000. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to Rs. 27,000×15=Rs. 4,05,000. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs. 3000 but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs. 10,000. Thus the total comes to Rs. 4,05,000+10,000= Rs. 4,15,000.

17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163A and 163B in Chapter XI entitled "Insurance of Motor Vehicles against Third Party Risks". Section 165A 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.

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3000. The total should be 3000×15=45,000 but the same is worked out at Rs. 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000; the total should have been Rs. 1,44,000 but is shown to be Rs. 1,71,000. To put it briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependant 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. But these mistakes are limited to actual calculations only and not in respect of other items. 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. We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies case."

(emphasis supplied)

12. In ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 : 2009(3) R.A.J. 373 : 2009(2) AICJ 2 : (2009) 6 SCC 121***, a two-Judge Bench made threadbare analysis of various issues arising before the tribunals and the courts in cases involving claim for award of compensation under the Act, reiterated the principles laid down in ***General Manager Kerala State Road Transport Corporation v. Susamma Thomas*** (supra), referred to the subsequent judgment in

U.P.S.R.T.C. v. Trilok Chandra (supra) and then observed :

> "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.*
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> 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, this Court stated: (SCC p.185, para 16)
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> "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."
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> 18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death :
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> (a) age of the deceased;
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> (b) income of the deceased; and
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> (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;
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> (ii) the deduction to be made towards the personal living expenses of the deceased; and
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> (iii) the multiplier to be applied with reference to the age of the deceased.
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> 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."

(emphasis supplied)

In paragraphs 20 to 24, the Court considered the issue of addition to income for future prospects and observed :

> "24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah 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.”

The Court then considered the nature and extent of deduction for personal and living expenses and laid down the following principles:

“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, 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 ⅓rd) 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 ⅕th) 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.”

13. At this stage, it will be useful to notice Section 163A which was inserted by Amendment Act No. 54 of 1994. That section and clause (6) of the Second Schedule read as under :-

“163A. *Special provisions as to payment of compensation on structured formula basis.*– (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

Clause 6 of the Second Schedule

6. **Notional income for compensation to those who had no income prior to accident** :- Fatal and disability in non-fatal accidents :

(a) Non-earning persons	–	Rs. 15,000/- p.a.
(b) Spouse	–	Rs. ⅓rd of income of the Earning/surviving spouse

In case of other injuries only "general damage" as applicable."

14. Section 163A contains a special provision for payment of compensation on the basis of a structured formula as indicated in the Second Schedule, which contains a table prescribing the compensation to be awarded with reference to the age and income of the deceased. The note appended to column (1) of the Second Schedule makes it clear that from the total amount of compensation, ⅓rd is to be deducted in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Clause (6) of the Second Schedule lays down that in cases of fatal and disability in non fatal accidents, income of non-earning person should be taken as Rs. 15,000/- per annum and that of spouse shall be taken as ⅓rd of the income of the earning/surviving spouse.

15. In ***Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004(2) RCR (Civil) 466 : (2004) 5 SCC 385***, a three-Judge Bench interpreted various provisions of the Act including Section 163A and held :-

"46. Section 163A which has an overriding effect provides for special provisions as to payment of compensation on structured-formula basis. Sub-section (1) of Section 163A contains non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub-section (2) of Section 163A is in pari materia with sub-section (3) of Section 140 of the Act.
47. Section 163A does not contain any provision identical to Sub-section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said section or Section 163A.
48. By reason of Section 163A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra- indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regards age and income of the deceased or the victim, as the case may be. Unlike

Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163A of the Act.

51. The scheme envisaged under Section 163A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set-off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society."

16. In ***Oriental Insurance Co. Ltd. v. Meena Variyal 2007(2) RCR (Civil) 698 : 2007(2) R.A.J. 307 : (2007) 5 SCC 428***, a two-Judge Bench referred to an apparent inconsistency in the judgments of three-Judge Bench in ***Minu B. Mehta v. Balkrishna Ramchandra Nayan (1977) 2 SCC 441*** and two-Judge Bench in ***Gujarat SRTC v. Ramanbhai Prabhatbhai (1987) 3 SCC 234*** and observed :-

"We think that the law laid down in ***Minu B. Mehta v. Balkrishna Ramchandra Nayan*** was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

17. In Sarla Verma's case also the Court noticed Section 163A and observed :

"The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163A of the MV Act and claims under Section 166 of the MV Act. (See ***Oriental Insurance Co. Ltd. v. Meena Variyal)*** Section 163A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. *In Trilok Chandra this Court, after reiterating the principles stated in Susamma Thomas, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in Susamma Thomas), even in cases under Section 166 of the MV Act, by borrowing the principle underlying Section 163A and the Second Schedule."*

18. In ***Raj Rani and others v. Oriental Insurance Company Limited and others (2009) 13 SCC 654***, this Court disapproved the practice adopted by the tribunals to deduct lumpsum payments from the compensation awarded in the motor accident claim's cases and observed that even though the multiplier specified in the Second Schedule appended to the Act is not applicable in strict sense in a case under Section 166, whenever

the Court has to apply the appropriate multiplier several factors including the income of the deceased, his family background will have to be taken into consideration (paragraph 15). The same view was reiterated in ***Ningamma and another v. United Insurance Company Limited 2009(3) RCR (Civil) 435 : 2009(4) R.A.J. 164 : 2009(2) AICJ 281 : (2009) 13 SCC 710*** (paragraph 32).

19. We may now deal with the question formulated in the opening paragraph of this judgment. In Kemp and Kemp on Quantum of Damages, (Special Edition – 1986), the authors have identified various heads under which the husband can claim compensation on the death of his wife. These include loss of the wife's contribution to the household from her earnings, the additional expenses incurred or likely to be incurred by having the household run by a house- keeper or servant, instead of the wife, the expenses incurred in buying clothes for the children instead of having them made by the wife, and similarly having his own clothes mended or stitched elsewhere than by his wife, and the loss of that element of security provided to the husband where his employment was insecure or his health was bad and where the wife could go out and work for a living.

20. In England the courts used to award damages solely on the basis of pecuniary loss to family due to the demise of the wife. A departure from this rule came to be made in ***Berry v. Humm and Co. (1915) 1 K.B. 627*** where the plaintiff claimed damages for the death of his wife caused due to the negligence of the defendant's servants. After taking cognizance of some precedents, the learned Judge observed :

> "I can see no reason in principle why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contributions of food or clothing, and why I should be bound to exclude the monetary loss incurred by replacing services rendered gratuitously by a relative, if there was a reasonable prospect of their being rendered freely in the future but for the death."

21. In ***Regan v. Williamson (1976) 1 W.L.R. 305***, the Court considered the issue relating to quantum of compensation payable to the dependents of the woman who was killed in a road accident. The facts of that case were that on the date of accident, the plaintiff was aged 43 years and his children were aged 14 years, 11 years, 8 years and 3 years respectively. The deceased wife/mother was aged 37 years. The cost of a housekeeper to carry out services previously rendered by his wife was 22.5 pounds per week, the saving to him in not having to clothe and feed his wife was 10 pound per week, leaving a net loss of 12.50 pounds per week or 600 pounds a year. However, the Court took into account the value of other services previously rendered by the wife for which no substitute was available and accordingly increased the dependency to 20 pounds a week. The Court then applied a multiplier of 11 in reaching a total fatal accidents award of 12,298 pounds. In his judgment, Watkins, J. noted as under :

> "The weekend care of the plaintiff and the boys remains a problem which has not been satisfactorily solved. The plaintiff's relatives help him to a certain extent, especially on Saturday afternoons. But I formed the clear impression that the plaintiff is often, at weekends, sorely tired in trying to be an effective substitute for the deceased. The problem could, to some extent, be cured by engaging another woman, possibly to do duty at the weekend, but finding such person is no simple matter. I think the plaintiff has not made extensive inquiries in this regard. Possibly the expense involved in getting more help is a factor which has deterred him. Whatever be the reason, the plain fact is that the deceased's services at the weekend have not been replaced. They are lost to the plaintiff and to the boys..."
>
> He then proceeded to observe :
>
> "I have been referred to a number of cases in which judges have felt compelled to

> look upon the task of assessing damages in cases involving the death of a wife and mother with strict disregard to those features of the life of a woman beyond her so-called services, that is to say, to keep house, to cook the food, to buy the clothes, to wash them and so forth. In more than one case, an attempt had been made to calculate the actual number of hours it would take a woman to perform such services and to compensate dependants upon that basis at so much an hour and so relegate the wife or mother, so it seems to me, to the position of a housekeeper.
>
> While I think that the law inhibits me from, much as I should like to, going all the way along the path to which Lord Edmund-Davies pointed, I am, with due respect to the other judges to whom I have been referred, of the view that the word 'services' had been too narrowly construed. *It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance save for those hours when she is, if that is the fact, at work. During some of those hours she may well give the children instruction on essential matters to do with their upbringing an, possibly, with such things as their homework.* This sort of attention seems to be as much of a service, and probably more value to them than the other kinds of service conventionally so regarded."

(emphasis supplied)

22. In ***Mehmet v. Perry (1977) 2 All England Reporter 52***, the pecuniary value of a wife's services were assessed and granted under the following heads :-

> (a) Loss to the family of the wife's housekeeping services.
>
> (b) Loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her.
>
> (c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

25. In ***Lata Wadhwa v. State of Bihar*** (supra), this Court considered the various issues

raised in the writ petitions filed by the petitioners including the one relating to payment of compensation to the victims of fire accident which occurred on 3.3.1989 resulting in the death of 60 persons and injuries to 113. By an interim order dated 15.12.1993, this Court requested former Chief Justice of India, Shri Justice Y.V. Chandrachud to look into various issues including the amount of compensation payable to the victims. Although, the petitioners filed objection to the report submitted by Shri Justice Y.V. Chandrachud, the Court overruled the same and accepted the report. On the issue of payment of compensation to housewife, the Court observed :

> *"So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000 per annum in cases of some and Rs. 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3000 per month and Rs. 36,000 per annum.* This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs. 36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000 instead of Rs. 25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs. 10,000 per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs. 20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs. 50,000 towards the conventional figure."

(emphasis supplied)

26. The judgment of Lata Wadhwa's case was referred to with approval in ***M.S. Grewal and another v. Deep Chand Sood and others 2002(1) RCR (Civil) 214 : (2001) 8 SCC 151*** for confirming the award of compensation of Rs. 5 lacs in a case involving death of school children by drowning due to negligence of teachers of the school. In ***Municipal Corporation of Greater Bombay v. Laxman Iyer and another 2003(4) RCR (Civil) 764 : (2003) 8 SCC 731***, a two-Judge Bench while deciding the issue of award of compensation under Sections 110A and 110B of the Motor Vehicles Act, 1939, referred to the judgments in Lata Wadhwa's case and M.S. Grewal's case.

27. In ***A. Rajam v. M. Manikya Reddy 1989 ACJ 542 (Andhra Pradesh HC)***, M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word 'services' in cases relating to award of compensation to the dependents of a deceased wife/mother. Some of the observations made in that judgment are extracted below :

> "The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if

there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.

While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

28. In ***Oriental Insurance Co. Ltd. v. Shamsher Singh***, Jammu and Kashmir High Court considered the question relating to award of compensation to the family of the deceased housewife, who was aged 24 years at the time of accident, referred to Kemp and Kemp on Quantum of Damages, Volume 1 and enhanced the compensation awarded by the Tribunal.

29. In ***National Insurance Company Ltd. v. Mahadevan, Minor Buvanadevi, Minor Venkatesh and Parameswaran 2009(3) AICJ 249 : (2009) ACJ 1373***, the learned Single Judge referred to the Second Schedule of the Act and observed that quantifying the pecuniary loss at the same rate or amount even after 13 years after the amendment, ignoring the escalation in the cost of living and the inflation, may not be justified.

30. In ***Chandra Singh and others v. Gurmeet Singh and others (2003) 7 AD (Delhi) 222***, ***Krishna Gupta and others v. Madan Lal and others 2003(1) RCR (Civil) 737 : 96 (2002) DLT 829***, ***Captan Singh v. Oriental Insurance Co. Ltd. and others 112 (2004) DLT 417*** and ***Amar Singh Thukral v. Sandeep Chhatwal 112 (2004) DLT 478***, the Single and Division Benches of Delhi High Court declined to apply the judgment of this Court in Lata Wadhwa's case for the purpose of award of compensation under the Act. In ***Krishna Gupta v. Madan Lal*** (supra) the Division Bench of the High Court observed as under :-

"The decision of the Apex Court in Lata Wadhwa (supra), in our considered opinion, cannot be said to have any application in the instant case. Motor Vehicles Act, 1939 was the complete Code by itself. It not only provides for the right of a victim and/or his legal heirs to obtain compensation in case of bodily injury or death arising out of use of motor vehicle, but the forum therefore has been provided, as also the mode and manner in which the compensation to be awarded therefor. In such a situation, it would be inappropriate to rely upon a decision of the Apex Court, which had been rendered in an absolutely different fact situation and in relation whereto there did not exist any statutory compensation. Lata Wadhwa (supra) was decided in a matter where a fire occurred during a celebration. The liability of the Tata Iron & Steel Co. Ltd. was not disputed. Compensation was awarded having regard to the peculiar feature obtaining in that case which has got nothing to do with the statutory compensation payable under the provisions of the Motor Vehicles Act."

31. In ***Amar Singh Thukral v. Sandeep Chhatwal*** (supra), the learned Single Judge of Delhi High Court adopted the yardstick of minimum rates of wages for the purpose of award of compensation in the case of death of a housewife and then proceeded to observe 'since there is no scientific method of assessing the contribution of a housewife to her household, in cases such as the present, resort should be had to the wages of a skilled worker as per the minimum rates of wages in Delhi. Although, this may sound uncharitable, if not demeaning to a housewife, there is hardly any option available in the absence of statutory

guidelines'.

32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000/- per annum and in case of a spouse, ⅓rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in ***General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others*** (supra), ***U.P.S.R.T.C. v. Trilok Chandra*** (supra), ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another*** (supra) and also take guidance from the judgment in Lata Wadhwa's case. The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker.

33. Reverting to the facts of this case, we find that while in his deposition, appellant No. 1 had categorically stated that the deceased was earning Rs. 50,000/- per annum by paintings and handicrafts, the respondents did not lead any evidence to controvert the same. Notwithstanding this, the Tribunal and the High Court altogether ignored the income of the deceased. The Tribunal did advert to the Second Schedule of the Act and observed that the income of the deceased could be assessed at Rs. 5,000/- per month (Rs. 60,000/- per annum) because the income of her spouse was Rs. 15,416/- per month and then held that after making deduction, the total loss of dependency could be Rs. 6 lacs. However without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was actually non-earning member and the amount of compensation would be too much. The High Court went a step further and dismissed the appeal by erroneously presuming that neither of the claimants was dependent upon the deceased and the services rendered by her could be estimated as Rs. 1250/- per month.

34. In our view, the reasons assigned by the Tribunal for reducing the amount of compensation are wholly untenable and the approach adopted by the High Court in dealing with the issue of payment of compensation to the appellants was ex facie erroneous and unjustified.

35. In the result, the appeal is allowed. The impugned judgment as also the award of the Tribunal are set aside and it is held that the appellants are entitled to compensation of Rs. 6 lacs. Respondent No. 1 is directed to pay the said amount of compensation along with interest at the rate of 6% per annum from the date of filing application under Section 166 of the Act till the date of payment. The needful shall be done within the period of 3 months from the date of receipt/production of copy of this order. The appellant shall get cost of Rs. 50,000/-.

Asok Kumar Ganguly, J. –

36. While agreeing with the judgment delivered by my learned brother Singhvi, J., I wish to add my perception of the problem which has been raised in this case.

37. Despite the clear constitutional mandate to eschew discrimination on grounds of sex in Article 15(1) of the Constitution, in its implementation there is a distinct gender bias against women and various social welfare legislations and also in judicial pronouncements.

38. In the Motor Vehicles Act, 1988 (hereinafter, 'the said Act'), Section 163A provides for special provision for payment of compensation on structured formula basis. The said Section has been quoted in the earlier part of the judgment by brother Singhvi, J. Therefore, I refrain from quoting the same. The Second Schedule which is referred to in the said Section has several clauses. Clause 6 of the said Schedule provides for notional income of those who had no income prior to accident. Clause 6 has been divided into two classes of persons, (a) non-earning persons, and (b) spouse. Insofar as the spouse is concerned, the income of the injured in fatal and non-fatal accident has been categorized as ⅓rd of the income of the earning and surviving spouse. It is, therefore, assumed if the spouse who does not earn, which is normally the woman in the house and the homemaker, such a person cannot have an income more than ⅓rd of the income of the person who is earning. This categorisation has been made without properly appreciating the value of the services rendered by the homemaker. To value the income of the home-maker as one-third of the income of the earning spouse is not based on any apparently rational basis.

39. This bias is shockingly prevalent in the work of Census. In the Census of 2001 it appears that those who are doing household duties like cooking, cleaning of utensils, looking after children, fetching water, collecting firewood have been categorized as non-workers and equated with beggars, prostitutes and prisoners who, according to Census, are not engaged in economically productive work. As a result of such categorisation about 36 crores (367 million) women in India have been classified in the Census of India, 2001 as non-workers and placed in the category of beggars, prostitutes and prisoners. This entire exercise of Census operation is done under an Act of Parliament.

40. Under Section 4 of the Census Act, 1948, the Central Government may appoint a Census Commissioner to supervise the taking of census throughout the area where census is intended to be taken.

41. The Central Government has made Census Rules, 1990 under Section 18 of the Census Act, 1948. Under Rule 5(c), (d) and (e) of the Rules, the functions of the Commissioner are listed, which include devising the census schedules or questionnaires, compiling and providing guidance in taking and computing results and publishing the statistics.

42. The Census Commissioner released data on classification of population by workers and non-workers based on provisional results of the Census of India 2001 on 30th January, 2002. Thus, the categorization, compilation and computation of the data was done under the supervision and guidance of the Census Commissioner. This is totally a statutory exercise by public authorities. Therefore, this approach of equating women, who are homemakers, with beggars, prostitutes and prisoners as economically non-productive workers by statutory authorities betrays a totally insensitive and callous approach towards the dignity of labour so far as women are concerned and is also clearly indicative of a strong gender bias against women.

43. It is thus clear that in independent India also the process of categorizing is dominated by concepts which were prevalent in colonial India and no attempt has been made to restructure those categories with a gender sensitivity which is the hallmark in our Constitution.

44. Work is very vital to the system of gender reconstruction in societies and in this context masculine and feminine work is clearly demarcated. The question which obviously arises is whether Census definition of work reflects the underlying process of gender discrimination.

45. Women are generally engaged in home making, bringing up children and also in production of goods and services which are not sold in the market but are consumed at the household level. Thus, the work of women mostly goes unrecognized and they are never valued.

46. Therefore, in the categorisation by the Census what is ignored is the well known fact that women make significant contribution at various levels including agricultural production by sowing, harvesting, transplanting and also tending cattles and by cooking and delivering the food to those persons who are on the field during the agriculture season.

47. Though, Census operation does not call for consideration in this case but reference to the same has been made to show the strong bias shown against women and their work. We hope and trust that in the on-going Census operation this will be corrected.

48. The same gender bias has been reflected in the judgment of the High Court whereby the High Court has accepted the tribunal's reasoning of assessing the income of the victim at Rs. 1,250/- per month. Even if we go by the formula under clause 6 of the Second Schedule, income of the victim comes to Rs. 5,000/- per month.

49. In a recent judgment, the Division Bench of Madras High Court in a case of compensation under the said Act has discussed this aspect of the matter. [See ***National Insurance Co. Ltd. v. Minor Deepika rep. by her guardian and next friend, Ranganathan and others reported in (2009) 6 MLJ 1005].*** The learned Judge has referred to the general recommendation No. 17 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The said general recommendation deals with the measurement and quantification of the unremunerated domestic activities of women and their recognition in the Gross National Product. The relevant recommendations are :-

> "(a) Encourage and support research and experimental studies to measure and value the unremunerated domestic activities of women; for example, by conducting time-use surveys as part of their national household survey programmes and by collecting statistics disaggregated by gender on time spent on activities both in the household and on the labour market;
> (b) Take steps, in accordance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and the Nairobi Forward-looking Strategies for the Advancement of Women, to quantify and include the unremunerated domestic activities of women in the gross national product;
> (c) Include in their reports submitted under Article 18 of the Convention information on the research and experimental studies undertaken to measure and value unremunerated domestic activities, as well as on the progress made in the incorporation of the unremunerated domestic activities of women in national accounts.

50. India is a signatory to the said Convention and ratified the CEDAW Convention on 9th July, 1993. But even then no law has been made for proper evaluation of the household work by women as homemakers.

51. The Madras High Court in Minor Deepika (supra) has observed very pertinently :

> "9. The UNICEF in 2000, noted that "unpaid care work is the foundation of human experience". The care work is that which is done by a woman as a mother and

definitely in India, the woman herself will be the last person to give this role an economic value, given the social concept of the role of a mother. But when we are evaluating the loss suffered by the child because her mother died in an accident, we think we must give a monetary value to the work of a caregiver, for afterall, the home is the basic unit on which our civilised society rests..."

52. The Madras High Court in its very illuminating judgment in Minor Deepika (supra) has further referred to various methods by which the assessment of work of a homemaker can be made and the relevant portion from para 10 of the said judgment is extracted below :-

"...that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which evaluates her wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is, the partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker's salary is valued at half her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the Replacement Method."

53. Various aspects of the nature of homemaker's job have been described in para 11 which are very relevant and are extracted below :-

"11. The role of a housewife includes managing budgets, co- ordinating activities, balancing accounts, helping children with education, managing help at home, nursing care etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife = husband's income – wife's income + value of husband's household services, which means the wife's value will increase inversely proportionate to the extent of participation by the husband in the household duties. The Australian Family Property Law provides that while distributing properties in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent."

54. In paragraph 13, the Division Bench of the High Court has observed and, in my view very rightly, that time has come to scientifically assess the value of the unpaid homemaker both in accident claims and in matters of division of matrimonial properties.

55. It may be of some interest to point out that in the Constitution of Cambodia, Article 36 provides as under :-

"Article 36 –
Khmer citizens of either sex shall have the right to choose any employment according to their ability and to the needs of the society.
Khmer citizen of either sex shall receive equal pay for equal work.
The work by housewives in the home shall have the same value as what they can receive when working outside the home.
xxxx xxxx xxxxx"

56. It must be noted that as a result of First World Conference on Women held in Nairobi in 1985, the Statistical Officers of United Nations International Research and Training Institute for the Advancement of Women (INSTRAW), took a major role in promoting the revision of national accounts and other information on women's work.

57. The purpose of maintaining such satellite accounts is to assess the unpaid production of goods and services by homemakers. In 1934, the American economist Margaret Reid

suggested a different approach while arguing that if a third person could be paid to do the unpaid activities carried out by homemakers such activities should be counted as part of production.

58. Admittedly, it has to be recognised that the services produced in the home by the women for other members of the household are an important and valuable form of production. It is possible to put monetary value to these services as for instance, the monetary value of cooking for family members could be assessed in terms of what it would cost to hire a cook or to purchase ready cooked food or by assessing how much money could be earned if the food cooked for the family were to be sold in the locality.

59. Jayati Ghosh (Uncovering Women's Work) has referred to National Sample Surveys and according to her, the survey showed "57% of rural women and 19% of urban women were engaged in the free collection of fuel wood for household consumption. Activities related to food processing, such as husking and grinding grain, were engaged in by around 15% of women. Other unpaid activities such as maintaining kitchen gardens and looking after livestock and poultry also occupied a majority of women – 60% in rural areas and 24% in urban areas. These are all economic activities which in developed societies are typically recognised as such because they are increasingly delegated by women and performed through paid contracts."

60. Alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

61. Household work performed by women throughout India is more than US $ 612.8 billion per year (Evangelical Social Action Forum and Health Bridge, page 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accident and quantifying the amount in the name of fixing 'just compensation'.

62. In this context the Australian Family Property Law has adopted a very gender sensitive approach. It provides that while distributing properties in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent".

63. For the reasons aforesaid, while agreeing with the views of brother Singhvi, J., I would humbly add, that time has come for the Parliament to have a rethinking for properly assessing the value of homemakers and householders work and suitably amending the provisions of Motor Vehicles Act and other related laws for giving compensation when the victim is a woman and a homemaker. Amendments in matrimonial laws may also be made in order to give effect to the mandate of Article 15(1) in the Constitution.