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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on 1st April, 2022
Date of decision: 26th April, 2022

+ **W.P.(C) 6670/1998**

TARUN PREET SINGH Petitioner
Through: Mr. Sachin Jain and Ms. Isha
Aggarwal, Advocates.
(M:9818544445)

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Shoumendu Mukherji, Sr. Panel
Counsel, for R-1. (9910733947)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. The present writ petition has been filed by the Petitioner-Shri Tarun Preet Singh-who is one of the victims in the unfortunate Connaught Place shootout (*hereinafter referred as "Incident"*), which took place on 31st March 1997.
2. The Petitioner and his two friends, Shri Pradeep Goyal and Shri Jagjit Singh, were travelling in a car and had stopped at Barakhamba Road, near Connaught Place (*hereinafter referred as "CP"*) when a shootout involving the Delhi Police, took place. When the three friends were taken to Dr. Ram Manohar Lohia Hospital (*hereinafter referred as "RML"*), the two friends of the Petitioner were declared brought dead. The Petitioner was injured. An FIR being FIR No.453/97 under Sections 302/34 IPC, was registered on the very next day and the Chargesheet No.7/97, dated 2nd April, 1997, was also filed. The Petitioner was discharged from RML on 15th April, 1997. The present

writ petition was filed in December, 1998, seeking compensation of Rs.1 crore.

3. In this writ petition, vide order dated 10th December, 1999, an *ad-hoc* compensation of Rs.1 lakh was awarded to the Petitioner. The said order reads as under:

“This petition has been filed by Shri Tarun Preet Singh who suffered serious injuries during an encounter by the police party at the Red Light Signal, Barakhamba Road Crossing. It is pleaded that Shri Tarun Preet Singh suffered serious injuries as a result of indiscriminate firing by the Police Personnel without any provocation. The petitioner was not involved in any criminal activities and is still suffering serious disabilities. The petitioner has claimed compensation of Rs.1 crore. Notice in the petition was issued as far back as on December 18, 1998 and the respondents have not filed any affidavits so far. The respondents shall now file reply affidavit within four weeks with advance copy to learned counsel for petitioner who may file rejoinder, if any, within two weeks thereafter. In the meanwhile respondent No.2 shall give an ad hoc compensation in the sum of Rs. 1 lac to the petitioner within one week from today which shall be subject to the respective contentions of the parties.”

4. The trial pursuant to Chargesheet No.7/97 concluded on 16th October, 2007, and 10 police officials were convicted. They were sentenced to life imprisonment on 24th October, 2007. This conviction was upheld by the High Court on 18th September, 2009 and by the Supreme Court, vide judgment dated 2nd May, 2011 in ***Satyavir Singh Rathi Assistant Commissioner of Police and Others v. State through CBI, (2011) 6 SCC 1.***

5. The families of the two other deceased had also filed writ petitions seeking compensation, being ***W.P.(C) 4756/1997*** titled ***Neema Goyal v. Union of India & Anr.*** and ***W.P.(C) 5405/1997*** titled ***Jaspal Kaur v. Union***

of India & Anr. In these cases, a ld. Single Judge of this Court had, vide a detailed common judgment dated 4th July, 2011, granted compensation to each of the deceased's families, to the tune of Rs.15 lakhs in the following terms:

“33. The writ petitions are disposed of with the following directions:

(i) The Respondents will within a period of six weeks from today deposit in this Court, by a cheque or draft in the name of the Registrar General, a sum of Rs.15 lakhs being the compensation amount payable to the Petitioner Neema Goyal and her son Naman Goyal. Of the said amount a sum of Rs.7,50,000 will be paid to Neema Goyal by the Registrar General on proper identification, within a period of one week thereafter. The balance amount of Rs.7,50,000 will be placed in a fixed deposit with a nationalised bank in the name of Naman Goyal. After he attains majority, Naman Goyal can withdraw the amount in the fixed deposit together with the interest accrued thereon.

(ii) The Respondents will within a period of six weeks from today deposit in this Court, by a cheque or draft in the name of the Registrar General, a sum of Rs. 15 lakhs being the compensation amount payable to the Petitioner Jaspal Kaur and her two children. The Registrar General will within a week thereafter pay Rs. 5,00,000/- each to Jaspal Kaur and her two children on proper identification.

(iii) The Secretary MHA will ensure that the directions contained in para 30 of this judgment are implemented and file a compliance report in this Court within a period of twelve weeks. A certified copy of this judgment will be delivered to the Secretary MHA for compliance within five days.”

6. In the present petition, the injured Petitioner seeks compensation. On

19th December, 2019, the Petitioner was present in Court and the following was recorded:-

“The Petitioner is present in Court. He submits that he is working in a cloth shop. He also submits that he has shrapnel in the head and that he has slight disability in the right hand.”

7. The submissions have thereafter been heard by the Court from time to time.

Submissions

8. On behalf of the Petitioner, it is submitted that the Petitioner was seriously injured in the shoot-out Incident. Ld. Counsel for the Petitioner makes the following submissions in support of seeking compensation for the Petitioner:

- (i) It is undisputed that the Petitioner was present in the car, at which there was indiscriminating firing, leading to two of his friends having passed away and the Petitioner himself being seriously injured.
- (ii) In so far as the police persons who were involved in the said shoot out are concerned, they have been convicted and the conviction has been upheld till the Supreme Court, as held in ***Satyavir Singh Rathi (supra)***.
- (iii) Further, compensation has already been awarded to the two other friends of the Petitioner, who passed away in the Incident, in ***W.P.(C) 4756/1997*** and ***W.P.(C) 5405/1997***, to the tune of Rs.15,00,000/- for each of the deceased.
- (iv) While Rs.15,00,000/- was awarded to the other two victims in the same case, in fact higher compensation, than is granted in the case

of death ought to be granted to the Petitioner. To this end, he relies upon *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka and Others*, (2009) 6 SCC 1, where the Supreme Court upheld the contention that injury could lead to prolonged mental stress, as also physical stress to the sufferer. The manner in which compensation was awarded in the said case shows that the Court has to take a liberal view in such cases and in fact higher compensation, than is granted in the case of death should be granted.

- (v) Further reliance is placed on the judgments in *New India Insurance Co. Ltd. v. Priyanshu & Ors.*, 2018 ACJ 2724 and *ICICI Lombard General Insurance Company Limited v. Ajay Kumar Mohanty & Anr.*, (2018) 3 SCC 686, to argue that in the case of a person who has suffered an injury, the trauma which is undergone, may be even more pitiable than the person who suffered death, as the injury can have a debilitating effect on the mental and physical condition of the victim.
- (vi) In the facts of this case, greater mental trauma and harassment has been endured by the Petitioner as the Petitioner has been subjected to enormous harassment by the police personnel, as he was one of the witnesses (PW11), who had deposed in the criminal cases filed against the police officials, which lead to their conviction. During the entire process of trial, the Petitioner had to repeatedly attend Court proceedings and appear as a prosecution witness.
- (vii) Finally, he submits that the Petitioner, who is about 43 years of age, is now married and has two children, a daughter aged 21 years

and a son aged 18 years. He does not have any permanent employment. The Petitioner also still has shrapnel in his body from the shooting, including in the chest area.

9. On behalf of Respondent No.1-Union of India, while the occurrence of the incident is not disputed and the police personnel have already been convicted in the criminal matters arising out of this incident, the quantum of compensation, if any, is disputed. The following submissions are advanced by Id. Counsel for Respondent No.1:

- (i) Compensation to be granted can only be considered in a suit where evidence can be led and disputed facts be proved in accordance with law.
- (ii) The compensation ought to be awarded bearing in mind that the Petitioner was injured and that in *W.P.(C) 4756/1997* and *W.P.(C) 5405/1997*, the Id. Single Judge has awarded Rs.15 lakhs each to the victims, who had passed away in the incident.
- (iii) He has also submitted brief written submissions in support of the contention that the Delhi Victims Compensation Scheme, 2018, may be relied upon by the Court in this case, which awards compensation to victims of crimes, pursuant to Section 357A of the Criminal Procedure Code, 1973. In the said scheme the maximum compensation for grievous injuries that may be awarded is around Rs.2,00,000/- and the same may be taken into consideration by this Court.

Analysis and Findings

10. The prayer in the present writ petition is almost on identical terms as the prayers in the writ petitions of the other two victims, praying for monetary

compensation of Rs.1 crore. The said prayers read as under:

“a) grant a monetary compensation to the tune of at least Rs.1 crores to the Petitioner for misdeeds of the law enforcing instrumentality of the state which resulted in the violation of the fundamental right to life and liberty as guaranteed under Article 21 of the constitution;

b) pass such other or further orders as this Hon'ble Court may deem fit and proper In the facts and circumstances of the case;”

11. The Petitioner had gone to Patparganj to meet his friends and had thereafter, joined his friends to visit CP, in the car, which was finally involved in the Incident. The cause of the Incident is beyond the remit of this petition. The conviction of the police officials has achieved finality. The injury caused to the Petitioner, was an act of the police officials, who were acting in their official capacity.

12. Prior to the legal discussion on the issue of quantum of compensation, it is relevant to examine the facts in the present case and the impact of the Incident on the life of the Petitioner.

13. In so far as the physical injury is concerned, it is confirmed that the Petitioner has been grievously injured and continues to carry shrapnel in his body. Subsequently, it is claimed that he has not been able to take regular employment in view of the injuries suffered. The discharge summary issued by the Dr. Ram Manohar Lohia Hospital on 15th April, 1997 reads as under:

“Case Summary

Pt. a case of firearm injury Came to SoS -12 on 31.3.97. Patient was conscious. Vitals maintained. He was taken up for exploration under GA and 1 bullet extracted from the Right pectoral region. There were

no Haemo preums thorax. Post operating. There was some restriction in right shoulder movement for which he was advised physiotherapy. Now he has recovered well, can be discharged.”

14. Thus, from the discharge summary, it is clear that he does not suffer from any major physical disability. He has suffered some disability in the movement of his hand.

15. In so far as the mental trauma and suffering of the Petitioner since the Incident, as is evident from the pleadings and submissions made, the Petitioner was one of the prosecution witnesses-PW11, which resulted in conviction of the police officials. The fact that the Petitioner deposed in the trial has also been recorded by the Supreme Court in its judgment confirming the criminal conviction in *Satyavir Singh Rathi (supra)*. The relevant extracts are as under:

“It has come in the evidence of PW-Tarunpreet that the car A.C. was on when the firing took place and the windows had been drawn up. We can also take notice that in this background, the windows and windshield would be of tinted glass. Likewise, we are also of the opinion that had the shots been fired through the driver's window or the windshield some powder residues would have been left around the bullet holes as the shots would have been fired from almost a touching distance.

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11. Tarunpreet Singh PW was also categoric that no shot had been fired from inside the car. The story therefore that Jagjit Singh had fired at the police party when accosted is, therefore, on the face of it, unacceptable. In this overall scenario even if it is assumed that the driver's window had been found broken as contended by the defence, it would still have no effect on the prosecution story.

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23. *It has been found as a matter of fact that when Inspector Anil Kumar had followed the Car to the Dena Bank, Jagjit Singh had been left behind in the car alone for quite some time but Inspector Anil Kumar and his two associates had made absolutely no attempt to apprehend him at that stage or to counter check his identity as the Inspector had Mohd. Yaseen's photograph with him. Even more significantly the Inspector made no attempt to identify Pradeep Goyal or Tarunpreet Singh whatsoever, although admittedly he was in close wireless contact with ACP Rathi. This is the pre-incident conduct which is relevant."*

16. Thus, the Petitioner has spent the prime of his life for almost 25 years as a victim of this Incident. The facts are undisputed, i.e., that the injury caused to him was not justifiable in any manner. As on today, he is about 43 years of age and has two children. At the time when the incident took place, he was approximately 20 years old and was unemployed.

17. Coming to the submission of the counsels regarding compensation awarded to the other victims, it is clear that the families of the two victims, who passed away, have been compensated by a payment of Rs.15 lakhs each as compensation. On behalf of the Petitioner, it has been argued that the mental trauma for the Petitioner is much higher than that of the deceased persons. Under such circumstances, the question before this Court is whether the compensation should be the same as that awarded to the families of deceased, or lesser or more.

18. The law governing compensation for such victims is now well-settled in India, dating back to the seminal judgements in *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746, and *Rudul Sah v. State of Bihar* (1983) 4 SCC 141. In *Nilabati (supra)*, a 22-year old boy died due to police action. In the

said judgment, the defence of sovereign immunity was unequivocally rejected by the Court. The Supreme Court has held that penalizing the wrong doer and fixing liability for public wrong on the state is justified, when the state has failed to protect the fundamental rights of the citizens.

19. The judgment in *DK Basu v. State of West Bengal, 1997 1 SCC 41* has held that award of compensation to victims is an indefeasible right, as a public law remedy, distinct from remedies that the victims may avail of in tort action, civil law, or criminal law. Civil action could be prolonged and hence by exercising writ jurisdiction, compensation can be awarded to such victims. In the case of the other two victims, the Id. Single Judge of this Court has held, vide judgment dated 4th July, 2011, as under:

“16. Monetary compensation for violation of fundamental rights by the State has been consistently awarded by the Supreme Court to the victims and their relatives. The decisions include Rudul Sah v. State of Bihar (1983) 4 SCC 141, Bhim Singh v. State of J&K (1985) 4 SCC 677, Peoples' Union for Democratic Rights v. Police Commissioner, Delhi (1989) 4 SCC 730, Mrs. Sudha Rasheed v. Union of India, 1995 (1) SCALE 77, Inder Singh v. State of Punjab (1995) 3 SCC 702, Malkiat Singh v. State of UP (1998) 9 SCC 351, Ajab Singh v. State of Uttar Pradesh (2000) 3 SCC 521 and Munshi Singh Gautam v. State of MP (2005) 9 SCC 631. This Court too has in a large number of cases concerning violations of fundamental rights by the police awarded compensation. These include Geeta v. Lt. Governor 75 (1998) DLT 822, Phoolwati v. National Capital Territory of Delhi 84 (2000) DLT 177, Nasiruddin v. State, 2001 CriLJ 4925, State v. Rameez [Order date 6th April 2009 in Crl. M.C. No. 12/2006], Sunita v. State of National Capital Territory of Delhi 151 (2008) DLT 192 and Tasleema v. State (NCT of Delhi) 161 (2009) DLT

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17. *In the instant case, the violation of the constitutional right to life of the victims of the shoot out at Connaught Place by the personnel of the Delhi Police stands clearly established. The criminal culpability of the police personnel has been proved beyond reasonable doubt. It is imperative for this Court approached under Article 226 of the Constitution to provide compensation as a public law remedy for the constitutional tort committed by officers of the State. To recall the observations of the Supreme Court in **D K Basu**: (SCC, p. 439)*

“The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the inalienable right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.””

20. This position was most recently upheld by the Supreme Court in **Vikas Yadav v. State of UP, (2016) 9 SCC 541**. The award of compensation thus being the settled legal position, the only question that remains is the quantum of compensation. On the quantum of compensation, the Court in the cases of the other two victims of the Incident in **W.P.(C) 4756/1997** and **W.P.(C) 5405/1997**, followed the settled principles in **Lata Wadhwa v. State of Bihar**

(2001) 8 SCC 197, by applying the principles of award of compensation, as provided for in the Motor Vehicles Act, 1988. The Court concluded that a sum of Rs.15 lakhs would be adequate compensation in the case of the deceased. The relevant portion of the said judgment reads as under:

“20. In determining compensation in such cases, the formula devised by this Court in Kamla Devi v. Govt. of NCT of Delhi 114 (2004) DLT 57 has been consistently followed in the later cases: Ram Kishore v. MCD 2007 VII AD 441, Ashok Sharma v. Union of India 2009 ACJ 1063, Ram Singh v. Union of India 2010 V AD (Delhi) 209, Swarn Singh v. Union of India [W.P. (C) 4242 of 2006 decided on 17th March 2010] and Yogita v. GNCTD 178 (2011) DLT 554. The “standard compensation for non-pecuniary losses” and „compensation for pecuniary loss of dependency” is to be calculated separately and added up to arrive at the total amount of compensation payable. The age, income and the number of dependents of the deceased are considered as relevant indicators. In Lata Wadhwa v. State of Bihar (2001) 8 SCC 197 the Supreme Court held the standard compensation to be Rs. 50,000/- in 1989. Thereafter, inter alia, in the above mentioned cases, the standard compensation was computed by adjusting the amount based on the Consumer Price Index for Industrial Workers (“CPI-IW”), published by the Labour Bureau, Government of India as under:

Standard Compensation for Non-pecuniary Losses =
1989 Standard Compensation X Average Consumer
Price Index for Industrial Workers (CPI (IW)) when
the accident occurred ÷ Average CPI (IW) for 1989
(1982 being the base year)

21. The average CPI-IW for March 1997, when the accident occurred, is 351 and the CPI-IW for 1989 is 171. Therefore, the standard compensation for non-pecuniary losses that each of the Petitioners is liable to be paid is $50,000 \times 351 \div 171 = 1,02,630/-$.

22. To calculate the compensation for pecuniary loss of dependency, the multiplier method (multiplier value given in the Second Schedule of the Motor Vehicles Act, 1988 X Yearly income of the deceased less the amount spent on himself or herself) is used. This is consistent with the procedure adopted in G.M., Kerala SRTC v. Susamma Thomas AIR 1994 SC 1631, Mrs. Sudha Rasheed v. Union of India 1995 (1) SCALE 77, U.P. State Road Transport Corporation v. Trilok Chandra (1996) 4 SCC 362, Smt. Kamla Devi v. Govt. of NCT of Delhi, Ram Kishore v. MCD, Ashok Sharma v. Union of India, Ram Singh v. Union of India, Swarn Singh v. Union of India and Yogita v. Govt. of NCT of Delhi. **The method of calculating the multiplicand was explained in Kamla Devi v. Govt. of NCT of Delhi as under:**

“This (the multiplicand) is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member.”

23. The income tax return of Pradeep Goyal at the time of his death shows his annual income to be Rs. 95,280/- . His family included his wife and a minor son, Naman Goyal who was slightly above 2 years at that time. The value of each unit thus works out to Rs. 19,056/- (95280/5). Therefore, the multiplicand would be 57,168. (Gross annual income - the value of two units). Pradeep Goyal was around 34 years of age at the time of his death. Multiplying Rs. 57,168 by 17 as per the Second Schedule to the MVA 1988, a figure of Rs. 9,71,856/- is obtained, which constitutes the pecuniary compensation payable by the Respondents. The total compensation payable works out to Rs. 10,74,486/- (i.e. standard compensation for non-pecuniary losses Rs. 1,02,630

plus compensation for pecuniary loss of dependency Rs. 9,71,856). After accounting for interest and costs of litigation, the total compensation payable by the Respondents to Neema Goyal and her minor son is determined as Rs.15,00,000/-.

Quantum of compensation in the case of Jaspal Kaur

24. As regards Jagjit Singh, his family at the time of his death included Jaspal Kaur the Petitioner in WP (C) 5405 of 1997 and their two children, whose names are however not disclosed in the petition. The respective ages of the two children at that time of their father's death were twelve and nine years. They are adults as of date. As regards the compensation for pecuniary loss, Jaspal Kaur in an affidavit dated 21st March 2011 claims that at the time of his death, Jagjit Singh was 33 years old and was engaged in the business of selling agricultural crops grown on his farmland measuring about 60 acres in the grain mandi of M/s Saju Gula Ram Kurukshetra, Haryana. He is said to have earned income by sale and purchase of plots and built-up houses and the business of moneylending. It is further claimed that after his death loans to the extent of Rs. 50 lakhs given by him could not be recovered. It is stated that Jagjit Singh had collaborated with Pradeep Goyal in setting up the LPG bottling plant. If the said venture had commenced Jagjit Singh's income would have been even more substantial. Jaspal Kaur states that she has been looking after her parents-in-law who are not keeping well. For over 15 years the family has been living under immense financial insecurity since Jagjit Singh was the sole bread earner of the family.

25. There is not a single document placed on record to support the above claim. However, considering that it was a family of four including two growing children, with a reasonably decent standard of living, and considering that the age of Jagjit Singh is around the same age as Pradeep Goyal who died in the same

accident, the total compensation payable by the Respondents to Jaspal Kaur and her two children i.e. standard compensation plus compensation for pecuniary loss, together with interest and litigation costs is determined as Rs. 15,00,000/-.”

21. It is well-settled that the factors that are relevant for deciding the quantum of compensation are unique to the facts and circumstances of each case. Some relevant factors which have been considered by this Court can be culled out from various decisions as discussed hereinafter.

22. In the case of invasion of fundamental rights, in *Smt. Kamla Devi v. GNCTD & Anr.*, (2004) 114 DLT 57, a ld. Single Judge of this Court held that the right to compensation is an indefeasible right and the quantum of compensation is to be calculated. The same has been repeatedly followed by subsequent decisions. The relevant extracts read as under:

“The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.

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17...The whole idea behind the quantification of the conventional sum being that its real value should not get eroded through time due to inflation.

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19. Thus, the structured formula given in the Second Schedule to the Motor Vehicles Act, 1988 cannot be relied upon as a ready reckoner but, this does not mean that it is to be debunked all together. For instance, it

may be used for arriving at the appropriate multiplier...

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21. The principles which emerge can be summarized as follows:-

1. Whenever an innocent citizen is killed as a result of a crime, particularly when it is an act of terror or communal violence or a case of custodial death, the State would have failed in its public duty to ensure the guarantee enshrined in Article 21 of the Constitution.

2. The modern trend and the international norm is to focus on the victims of crime (and their families) by, inter alia, ensuring that they are promptly compensated by the State in adequate measure under a well-laid out Scheme.

3. In India, there is no such criminal injury compensation scheme in place and the private law remedies of damages and compensation are grossly inadequate. Legislation on this aspect is not forthcoming.

4. In such a situation the High Court, in exercise of its powers under article 226 of the Constitution can and ought to direct the State to compensate the crime victim and/or his family.

5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:-

(a) 'standard compensation' or the so-called 'conventional amount' (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and

(b) Compensation for pecuniary loss of dependency.

6. The 'standard compensation' or the 'conventional

amount has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.

7. Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken there from. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the claimants by way of damages in

a civil suit or compensation under the Criminal Procedure Code.”

23. In **G.M., Kerala SRTC v. Susamma Thomas, AIR 1994 SC 1631**, the Supreme Court recognized various factors that may be taken into account in such a calculation. The same are as below:

“7. 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. 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. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the over-all picture that matters" and the court must try to assess as best as it can the loss suffered.”

24. In **Sunita v. State of National Capital Territory of Delhi, 151 (2008) DLT 192**, a Division Bench of this Court held as under:

“11. It is true that assessment of damages has never been an exact science. It is essentially practical as observed by Upjohn L.J. In Charter House Credit v. Tolly (1963) 2 QB 683. There can be no exact rule for measuring the damage. It cannot be arrived at by precise mathematical calculation, but amount, recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favor it is awarded. Broadly speaking in the case of death, the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc., and loss to the estate. The objective is to mitigate the hardship that has been caused to the legal representatives due to the sudden demise of the deceased. The Supreme Court has laid down broad principles in the matter of fixation of compensation under Motor Vehicles Act and these principles will have to be kept in mind while fixing compensation in the case of custodial death.”

25. In ***Ashok Sharma v. Union of India, 2009 ACJ 1063***, where six children’s families were awarded compensation for drowning, loss of earnings was considered as a factor for awarding compensation. In ***Ram Kishore v. MCD [WP(C.) 4328 of 2001, decided on 18th July, 2007]***, when the petitioners were vegetable sellers/tailors and no precise figure of earnings could be provided, minimum wages was taken as a basis for determining expected income.

26. In **Corpus Juris Secundum (25 C.J.S. DAMAGES §§17-18)**, it is observed that compensatory damages are not confined to direct pecuniary losses and in some jurisdictions, elements are taken into consideration which are usually regarded as elements of punitive or exemplary damages, but generally, compensatory damages are not graded by the intent of the wrongful

act. Moreover, at 25 C.J.S. DAMAGES §38, the factor of employment is elucidated as under:

“The fact that the plaintiff was not employed at the time of the injury was not earning anything at such time will not preclude a recovery,¹ particularly where it is shown that after the injury he has endeavoured to secure employment.²

...and it has been held that, generally speaking, the incurring by a plaintiff of a permanent injury as the direct result of defendant’s negligence is sufficient to recover for the loss of future earnings.

...A distinction is made between loss of earnings and impairment of earning capacity, in that the former relates to the loss of wages which might have been earned had plaintiff had not injured, while the latter relates to the diminution of earning capacity.”

27. Similarly, the Law Commission in **Report No.277- Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (August 2018)**, has observed that the following may be considered as factors for award of compensation:

“The factors to be taken into consideration while determining the amount of compensation can be broadly categorised as “financial” and “other factors” including inter alia seriousness of the offence, severity of the punishment, the length of incarceration, loss or damage to health, psychological and emotional harm; status of the victim in the society, harm to reputation, loss of opportunities (of education, livelihood), loss of income/earnings, loss or damage to property.”

28. Thus, there are various factors that are to be taken into consideration while considering the compensation to be granted in such cases, which briefly,

¹ Ala. – Southern Ry. Co. v. Smith, 105 So.2d 705, 268 Ala. 235.

² Tex. – Missouri, K. & T.R. Co. v. Flood, 79 S.W. 1106, 35 Tex.Civ.App. 197.

include:

- age of the injured person;
- educational status;
- extent of disability, if any;
- number of dependants;
- whether the injured was deprived from his normal living, both in terms of personal life and professionally; and
- whether his earning capacity has been curtailed in any manner;
- extent of mitigation by the injured.

29. In the present case, the Incident took place in 1997 and in that very year, the present writ petition was filed seeking compensation. It has remained pending over the years. The order sheet shows that repeatedly the matter has been adjourned to await the outcome of the criminal trial at the request of counsels for parties, leading to a situation wherein the claim for compensation is being considered today i.e., 25 years after the incident. The time that has lapsed obviously ought to go in favour of the Petitioner. He has lost his entire period of youth, being embroiled in proceedings relating to the incident. The mental trauma for such a person cannot simply be gauged. The trauma is not limited to the individual but also to his near and dear ones, who have rendered physical, mental and emotional support to the Petitioner, which may include his parent, spouse and now, his children. When the Petitioner appeared before the Court on 19th December, 2019, it was clear that he is suffering from some disability in the right arm. While the disability can be characterized as being not a major disability, the fact that he has not been able to lead a normal life for the last 25 years cannot be ignored. For a young boy of 20 years of age,

suffering of any kind of disability due to no fault of his cannot be justified or trivialized.

30. In this light, this Court also considers the judgments cited by the counsels. The judgment in *Nizam's Institute (supra)*, which was a case of medical negligence and compensation in respect thereof, holds that injuries can result in enormous mental trauma to the victim. In the said case, the Court was dealing with a victim, who was severely handicapped due to an incorrect medical procedure. The Court there observed as under:

“39. We must emphasize that the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be wary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of the thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualized. Life it is said is akin to a ride on a roller coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the two (as in this very case) is a minute or a yard. At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-a-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial

and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity. We can also visualize the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself.”

31. The present case is, distinguishable from the case of *Nizam’s Institute (Supra)* to the extent that it is not a case of severe disability. However, the judgment does provide that the situation of an injured person may be worse than that of a deceased person. In so far as the decision in *ICICI Lombard (supra)* is concerned, the same highlights that compensation can be awarded both on account of permanent disability as well as loss of future earnings and suffering on account of loss of enjoyment of life.

32. In this case, the Petitioner continues to live with shrapnel in his body, which by itself can be traumatizing as the side effects of the same may be unknown even as of today. Any compensation awarded ought to take care of not merely his present condition but any future complications that may arise. He has two children for whom he needs to cater in terms of education and marriage. The fact that other two friends passed away but the Petitioner was merely injured cannot result in different standards being applied, inasmuch as even in the case of Petitioner, who is alive, he has lost the prime of his life. He is working in a cloth shop, has two children and a family to take care of. The time that has gone by also cannot be compensated for him.

33. Injury caused due to the state action and that too one, where the police

officials were convicted of criminal offences and not some inaction or negligence, needs to be considered at higher standard as compared to those of ordinary cases of negligence and inaction. Thus, applying the standard laid down in various judgements of the Supreme Court and High Court including the *Nilabati Behera (supra)*, *DK Basu (supra)* and the ratio of *Neema Goyal (supra)* as discussed above, this Court is of the opinion that the compensation ought to have been paid to the Petitioner way back in 1997 itself, as by the time the writ petition was filed, the injuries to the Petitioner were well established.

34. Accordingly, keeping in mind inflation rates, a sum of Rs.15 lakhs is awarded as compensation, which shall be paid along with simple interest @ 8% per annum, from the date of incident till the date of payment. In addition, a sum of Rs. 2 lakhs shall also be awarded as litigation costs to the Petitioner. From the total sum payable, a sum of Rs.1 lakh, if already paid in terms of order dated 10th December, 1999, shall be adjusted. The said compensation along with interest shall be paid by Respondent No.1 to the Petitioner, within a period of eight weeks from today, failing which, on the entire amount, interest @ 7.5% per annum shall be liable to be paid by the Respondent No.1.

35. It is made clear that the present order is being passed in peculiar facts and circumstances of the present case as the Incident in which the Petitioner was involved itself, was not an ordinary incident.

36. The present writ petition, along with all pending applications, is allowed and disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

APRIL 26, 2022/dk/ms