

Satya Prakash Vs. State

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Judge : J.R. Midha

Appellant : Satya Prakash

Respondent : State

Judgement :

dev satya Digitally signed by dev satya DN: c=IN, o=delhi high court, ou=delhi high court, postalCode=110003, st=delhi, cn=dev satya Date:

2013. 11.01 12:54:35 +05'30' \$~17-18, 20-28, 30-85 & 125 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.REV.P.No.338/2009 Date of decision :

11. h October, 2013 % SATYA PRAKASH Petitioner versus STATE Respondent WITH Crl.Rev.P.Nos.289/2011, 457/2013, 286/2007, 585/2007, 692/2007, 740/2007, 744/2007, 67/2008, 613/2008, 646/2008, 678/2008, 20/2009, 83/2009, 348/2009, 373/2009, 412/2009, 440/2009, 442/2009, 355/2010, 432/2010, 695/2010, 14/2011, 281/2011, 395/2011, 430/2011, 513/2011, 35/2012, 63/2012, 69/2012, 96/2012, 108/2012, 121/2012, 137/2012, 185/2012, 200/2012, 236/2012, 313/2012, 387/2012, 424/2012, 463/2012, 492/2012, 556/2012, 590/2012, 608/2012, 651/2012, 669/2012, 684/2012, 279/2013, 407/2013, 414/2013, 454/2013, 470/2013 & 119/2012 Present :

554. 2007, 581/2008, 321/2009, 257/2010, 339/2011, 67/2012, 155/2012, 402/2012, 606/2012, 368/2013, Mr. Dayan Krishnan, ASC for State. Mr. Surinder S.Rathi, AD&SJ/OSD, DSLSA. Mr. J.P. Sengh, Sr. Adv. and Mr. Manoj Taneja as amici curiae. Mr. Vikram Chauhan, Adv. for petitioner in Crl.Rev.P.No.289/2011. Mr. Aditya Singla, Adv. for Mr. Sidharth Luthra, Additional Solicitor General of India in Crl.Rev.P.No.289/2011. Dr. Vijendra Mahndiyan and Ms. Pallavi Awasthi, Advs. for petitioner in Crl.Rev.P.No.457/2013. Mr. Bhim Sharma, Adv. for petitioner in Crl.Rev.P.No.744/2007. Mr. Sourabh Ahuja, Adv. for Mr. Pradeep Dahiya, Adv. for petitioner in Crl.Rev.P.No.67/2008. Mr. Manoj Sharma and Mr. Kapil Kaushaik, Advs. for petitioner in Crl.Rev.P.No.20/2009. Mr. Jayant K. Sud and Mr. Ujas Kumar, Advs. for petitioner in Crl.Rev.P.No.338/2009. Mr. Hitesh Kumar Saini, Adv. for petitioner in Item Crl.Rev.P.No.348/2009. Mr. Kamlesh Kumar and Mr. Sunil Kumar, Advs. for petitioner in Crl.Rev.P.No.412/2009. Ms. Seema Sharma and Ms. Preeti Saikia, Advs. for petitioner in Crl.R.P.257/2010. Mr. A.K. Singh, Adv. for petitioner in Crl.Rev.P.No.281/2011. Ms. Tripat Kaur, Adv. for petitioner in Crl.Rev.P.No.63/2012. Ms. Sunita Kapil and Mr. Varun Jamwal, Advs. for petitioner in Crl.Rev.P.No.121/2012. Mr. Anirudh Singh, Adv. for Mr. Anupam Lal, Adv. for petitioner in Crl.Rev.P.No.185/2012. Mr. Aditya Gaur, Adv. for petitioner in Crl.Rev.P.No.200/2012. Mr. Jitender Saini, Adv. for petitioner in Crl.Rev.P.No.236/2012. Mr. Nishit Kush, Mr. Shyam S. Sharma, Ms. Shahbhavi Sinha, Advs. for petitioner in Crl.Rev.P.No.313/2012. Mr. Durgesh K. Dwivedi, Adv. for petitioner in Crl.Rev.P.No.492/2012. Mr. Subodh K. Pathak, Adv. for petitioner in Crl.Rev.P.No.556/2012. Mr. Vinod Kumar, Adv. for appellant in Crl.Rev.P.No.684/2012. Mr. Arvind Singh and Mr. Vipin Raghav, Advs. for petitioner in Crl.Rev.P.No.368/2013. Mr. Nitesh Mehra, Adv. for petitioner in Crl.Rev.P.No.414/2013. Mr. K.K. Bharat, Adv. for petitioner in Crl.Rev.P.No.454/2013. Ms. Manjusha Wadhwa, Adv. for Oriental Insurance Co. Ltd. Ms. Suman Bagga, Adv. for Bharti Axa General Insurance Co. Ltd., Future Generali Insurance Co. Ltd., ICICI Lombard General Insurance Co. Ltd., Cholamandalam General Insurance Co. Ltd. and Royal Sundaram Alliance Insurance Co. Ltd. Ms. Shantha Devi Raman, nominated counsel for IFFCO Tokio and Future Generali Insurance Co. Ltd. in Crl.Rev.P.No.289/2011. CORAM :HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

(ORAL) Introduction 1. Road accidents are a human tragedy, which involve a high degree of human suffering. The ramification of road accidents can be colossal and their negative impact is felt not only on individuals, their health and family welfare, but also on the economy of the country. They impose a huge socio-economic cost in terms of untimely deaths, injuries and loss of potential income. The World Health Organisation Global Status Report on Road Accidents, 2013 (in short WHO Report of 2013) estimates GDP loss due to road traffic accidents in our country to be 3 per cent which is higher than emerging and emerged economies like Russia (1.9), Mexico (1.7), Malaysia (1.6), Brazil (1.2), Turkey (1.1), Korea (1.1), New Zealand (0.02), United Kingdom (1.2), and United States (2.3).

2. Our country has the dubious distinction of having the highest number of road accidents. According to the latest report of Road Transport Ministry, 4,90,383 road accidents were reported in 2012 resulting in 1,38,258 deaths i.e. an average of one road accident every minute resulting in one death every 3.8 minutes which is highest in the world. According to the WHO Report of 2013, India counts for about 10 per cent of road crash fatalities, meaning thereby that more people die in road accidents in India than in any other country. The WHO Report of 2013 estimates road traffic death rate per 100,000 in India to be 18.9 as compared to 16.8 in the 2009 report. This rate is much higher than that of middle income countries such as Indonesia (17.7), Nepal (16), Burma (15), Sri Lanka (13.7), Bhutan (13.2) and Bangladesh (11.6). Approximately half of the victims of road accidents in India are vulnerable road users (pedestrians, cyclists, motorcyclists and passengers in buses & trucks). The WHO Report further suggests that pedestrians account for 8.7 per cent of road deaths in India. According to the data released by National Crime Records Bureau, deaths by motor accidents account for 35.2 per cent of the total deaths in accidents in year 2012.

3. Human life is precious. The road users have a fundamental right to life and liberty which includes the right to safety and immediate payment of compensation in the event of unavoidable accidents. It is the duty of the State to ensure safety on roads and to ensure due process of law for expeditious payment of compensation

in the event of injury or death of the road users arising out of the use of motor vehicles on the roads.

4. In *Rattan Singh v. State of Punjab*, (1979) 4 SCC719 Krishna Iyer J., made the following observation with respect to the chaotic conditions prevailing on Indian roads: 1...More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country. xxx xxx xxx 2...Parking of heavy vehicles on the wrong side, hurrying past traffic signals on the sly, neglecting to keep to the left of the road, driving vehicles criss-cross, riding scooters without helmets and with whole families on pillions, thoughtless cycling and pedestrian jay walking with lawless ease, suffocating jam-packing of stage carriages and hell-driving of mini-buses, overloading of trucks with perilous projections and, above all, policemen, if any, proving by helpless presence that law is dead in this milieu charged with melee - such is the daily, hourly scene of summons by Death to innocent persons who take to the roads, believing in the bona fides of the traffic laws... (Emphasis supplied) 5. The precious lives of innocent persons are snatched away by the reckless acts of the drivers in motor accidents, and the victims or the kith and kin of the deceased persons are forced to face the brink of darkness of life. The harrowing tales of the hapless victims in the motor accidents speak volumes of heart-rending sufferings and pessimism in their lives. Serious injuries often cause life-long disability for the victims which fundamentally affect quality of their life and that of their families.

6. The problem is more acute for the poor victims of road accidents as the death of the sole bread earner of the family leaving behind old and infirm parents, a helpless wife and minor children leads them to starvation. Similarly, permanent disability or an incurable injury to the sole bread earner leads the entire family of poor persons to an equally anomalous situation. The poor person injured in the accident does not have the funds for treatment and his sufferings are multiplied for want of treatment.

7. Injuries, fatalities and disabilities caused by motor accidents are also a major public health issue. An advance and effective postaccident care can reduce mortality after accidents. Unfortunately, the victims in most road accidents are left

unattended, even though hospitals may be nearby or they are provided medical assistance with delay. One of the major reasons may be that the by-passers and other people present on the site of any accident avoid getting involved in long and tedious legal affairs.

8. Majority of road crashes involve human error. Careless driving puts the lives of others at risk. The driver not in full control of the vehicle becomes, all too often, a lethal weapon. Freedom and responsibility go hand in hand. Therefore, those who fail to demonstrate responsibility forfeit their right to freedom. A rash, negligent, irresponsible or illegal driver has no business to be on the road. A greater level of scrutiny and accountability is required when life is lost or serious injury inflicted.

9. In *Dharamvir Singh v. The State* (NCT of Delhi), ILR (2008) II Delhi 469, this Court held that the road victims are the worst sufferers and in case a road victim dies in an accident, the plight of his family members is worse. The relevant portion of this judgment is reproduced hereunder:²¹ Too lenient a sentence passed by the courts leads to miscarriage of justice. In the capital city of India, number of vehicles have increased manifold since the time when Indian Penal Code was enacted. Along with it, the number of road accidents have also increased by leaps and bounds. However, there has been no corresponding improvement in the enforcement of traffic laws. The same punishment and fine continues which was prescribed more than 150 years ago. Now the time has come when the Legislature should have a relook at the offences committed by heavy vehicles in causing the road accidents and stringent punishment should be provided under the various Acts.

22. The worst sufferer in the present scenario are the road victims. Firstly, the Ambulance Service for road victims or for any kind of patients, is horrible. It is next to impossible to get any ambulance for any type of patient at given. These ambulance services in the Government Hospitals and Dispensaries are available for all other purposes, except for the patients. It is not that there is any dearth of Ambulances with the Government Hospitals or Dispensaries.

23. In case a road victim dies in an accident the plight of his family members is worse. The culprit/accused is bailed out then and there and he happily goes back

to his family, have his meals and have sound sleep whereas, the family members of the deceased undergo trauma and torture at the hands of police and hospital authorities and they run from pillar to post for getting the postmortem done. It takes hours and sometimes days to conduct postmortem of a dead person. In the hour of grief, little solace can be provided to the family of the deceased by the concerned authorities by ensuring that at least postmortem is conducted, as early as possible and the Ambulance Service is provided to the victim or injured, free of cost. It is hoped that the respective Governments would take necessary steps in this regard. Since the courts below have already taken a lenient. (Emphasis supplied) Victimology 10. Victims are unfortunately the forgotten people in the criminal justice delivery system. The criminal justice system tends to think more of the rights of the offender than that of relief to the victims. The anxiety shown to highlight the rights of the offender is not shown in enforcing law relating to compensation which too has a social purpose to serve.

11. The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored, nor can its loss be measured by the length of a prison sentence. No term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish but then monetary compensation will at least provide some solace.

12. In *Rattan Singh v. State of Punjab*, (1979) 4 SCC719 Krishna Iyer J., held that it is a weakness of our jurisprudence that the victims of the crime do not attract the attention of law. The relevant portion of the judgment is reproduced hereunder:6. The victimisation of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the legislature. We can only draw attention to this matter. Hopefully, the welfare State will bestow better thought and action to traffic justice in the light of the observations we have made. (Emphasis supplied) 13. In *Maru Ram v. Union of India*, (1981) 1 SCC107 Krishna Iyer J., held that while social responsibility of the criminal to restore the loss or

heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.

14. In *Dayal Singh v. State of Uttaranchal*, (2012) 8 SCC263 the Supreme Court held that the criminal trial is meant for doing justice to all - the accused, the society and the victim. Then alone can law and order can be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that the guilty man does not escape.

15. In *State of Gujarat v. Honble High Court of Gujarat*, (1998) 7 SCC392 the Supreme Court observed that the State should make a law for setting apart a portion of wages earned by prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in another feasible mode. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The Court further held that an honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. The relevant portion of this judgment is reproduced hereunder:⁴⁶. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

47. Restorative and reparative theories have developed from the aforesaid thinking. In the *Oxford Handbook of Criminology*, Andrew Ashworth, Professor of

Oxford University Centre for Criminological Research has contributed the following instructive passage: Restorative and Reparative Theories.-These are not theories of punishment, rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centred (see e.g., Wright 1991), although in some versions they encompass the notion of reparation to the community for the effects of crime. They envisage less resort to custody, with onerous community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counselling for offenders to reintegrate them into the community. Such theories therefore tend to act on a behavioural premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the State. Legal systems based on a restorative rationale are rare, but the increasing tendency to insert victimorientated measures such as compensation orders into sentencing systems structured to impose punishment provides a fine example of Garland's observation that institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups. 48. Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence. But in practice, the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long-term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims. xxx xxx xxx 99. In our efforts to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would

look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a forgotten man in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. xxx xxx xxx 101. Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the return of stolen property (restitution), these being types of reparation which might be described as practical or material. The term can also be used to describe more intangible outcomes, as where an offender makes an apology to a victim and provides some reassurance that the offence will not be repeated, thus repairing the psychological harm suffered by the victim as a result of the crime.

102. In England, a recent enactment has been made called the Prisoners' Earnings Act, 1996. It empowers the prison administration to make deduction from the earnings of the prisoner of an amount not exceeding the prescribed limit. This deduction does not include certain statutory deductions like income tax and payments required to be made by an order of a court. The amount so deducted shall be applied for: (a) the making of payments (directly or indirectly) to such voluntary organizations concerned with victim support or crime prevention or both as may be prescribed; 103. The question then arises for consideration is if Article 300-A bars payment of any compensation to the victim or his family out of the earnings of the prisoner. To bar any such objection to the validity of deduction, rules can be framed under the Prisons Act or otherwise. When a body is set up to consider the amount of equitable wages for the prisoners, a prison fund can be created in which a certain amount from the wages of the prisoners be credited and out of that an amount be paid to the victim or for the upkeep of his family, as the rules may provide for the purpose. Creation of a fund, to my mind, is necessary as any amount of compensation deducted from the wages of the prisoner and paid directly to the victim or his family may not be acceptable considering the psyche of the people in our country. (Emphasis supplied) 16. Justice remains incomplete

without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. In order to give complete mental satisfaction to the victim, it is extremely essential to provide some solace to him in the form of compensation so that it can work as a support for the victim to start his life afresh. Sections 357 and 357A Cr.P.C.-. Compensation to the victim(s) of the offence 17. Section 357 Cr.P.C. empowers the Court to award compensation to the victim(s) of the offence in respect of the loss/injury suffered. The object of the section is to meet the ends of justice in a better way. This section was enacted to reassure the victim that he is not forgotten in the criminal justice system. The amount of compensation to be awarded under Section 357 Cr.P.C. depends upon the nature of crime, extent of loss/damage suffered and the capacity of the accused to pay for which the Court has to conduct a summary inquiry. However, if the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court can invoke Section 357A to recommend the case to the State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2011. Section 357 Cr.P.C. is mandatory and it is the duty of all Courts to consider it in every criminal case. The Court is required to give reasons to show such consideration.

18. The law contained in Section 357(3) Cr.P.C., has, by and large, been mostly neglected/ignored. Hence the Apex Court in Hari Singh v. Sukhbir Singh, (1988) 4 SCC551 had to issue a mild reprimand while exhorting the Courts for liberal use of this provision to meet the ends of justice as a measure of responding appropriately to the crime, and reconciling the victim with the offender. The relevant portion of the said judgment is reproduced hereunder:- 10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to

reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way. (Emphasis supplied) 19. In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC528 the Supreme Court explained the scope and purpose of grant of compensation as under:³⁸ The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but subsection (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge. (Emphasis supplied) 20. In *Manish Jalan v. State of Karnataka*, (2008) 8 SCC225 the Supreme Court observed that the Courts have not made use of the provisions regarding award of compensation to the victims as often as they ought to be. The relevant portion of the said judgment is reproduced hereunder:¹² Though a comprehensive provision enabling the court to direct payment of compensation has been in existence all through but the experience has shown that the provision has rarely attracted the attention of the courts. Time and again the courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very heartening. 21. In *K.A. Abbas H.S.A. v. Sabu Joseph*, (2010) 6 SCC230 the Supreme Court again noted that Section 357 Cr.P.C. is an important provision but the Courts have seldom invoked it, perhaps due to the ignorance of the object of it. The relevant portion of the said judgment is reproduced hereunder:¹⁸ In this case, we are not concerned with sub-section (1). We are concerned only with sub-

section (3). It is an important provision but the courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. It may be noted that this power of the courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all the courts to exercise this power liberally so as to meet the ends of justice in a better way. (Emphasis supplied) 22. In *Roy Fernandes v. State of Goa*, (2012) 3 SCC221 the Supreme Court again observed that the Criminal Courts do not appear to have taken significant note of Section 357 Cr.P.C. or exercised the power vested in them thereunder. The relevant portion of the said judgment is reproduced hereunder:41. The provision of payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, the criminal Courts have not, it appears, taken significant note of the said provision or exercised the power vested in them thereunder. ... 23. In *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC770 the Supreme Court again noted with despair that Section 357 Cr.P.C. has been consistently neglected / ignored by the Courts despite series of pronouncements to that effect. The Supreme Court cited with approval *Sarwan Singh* (supra), *Maru Ram* (supra), *Hari Singh* (supra), *Balraj* (1994) 4 SCC29 *Baldev Singh v. State of Punjab*, (1995) 6 SCC593 and *Dilip S. Dahanukar* (supra). The Supreme Court held that Section 357 Cr.P.C. is mandatory and has to be applied in every criminal case and the Courts are required to record reasons for such application. The relevant portions of the judgment are reproduced hereunder:28. The only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973. This aspect arises very often and has been a subjectmatter of several pronouncements of this

Court. The same may require some elaboration to place in bold relief certain aspects that need to be addressed by the courts but have despite the decisions of this Court remained obscure and neglected by the courts at different levels in this country. xxx xxx xxx 48. The question then is whether the plenitude of the power vested in the courts under Sections 357 and 357A, notwithstanding, the courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the courts. In other words, whether courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?. xxx xxx xxx 54. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on the courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision. xxx xxx xxx 61. Section 357 Cr PC confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the court must disclose that it has applied its mind to this question in every criminal case. xxx xxx xxx 66. To sum up: while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a

conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr PC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

67. Coming then to the case at hand, we regret to say that the trial court and the High Court appear to have remained oblivious to the provisions of Section 357 Cr PC. The judgments under appeal betray ignorance of the courts below about the statutory provisions and the duty cast upon the courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future. (Emphasis supplied) 24. In para 68 of the said judgment, the Supreme Court directed the copy of this judgment be forwarded to the Registrars of all the High Courts for circulation among Judges handling criminal trials and hearing appeals. Pursuant to the said direction, the Registrar General of this Court has, vide letter No.3551-356/DHC/Gaz/GX/SCJudgment/2013 dated 8th July, 2013, forwarded the copy of the judgment to all the District & Sessions Judges for being circulated amongst all judicial officers.

25. In *Ashwani Gupta v. Government of India*, 2005 (117) DLT112 this Court held that mere punishment of the offender cannot give much solace to the family of the victim. Since the Civil action for damages is a long drawn/cumbersome judicial process, the compensation of Section 357 Cr.P.C. would be useful and effective remedy. The relevant portion is reproduced hereunder:45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. 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 indefeasible right to life of the citizen is, therefore, useful and at time 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. (Emphasis supplied) Quantum of compensation 26. Section 357(1)(b) Cr.P.C. empowers the Court to award compensation out of the fine to the victim for any loss or injury caused by the offence when the compensation is, in the opinion of the Court, recoverable by such person in Civil Court. Section 357(1)(c) Cr.P.C. empowers the Court to award compensation out of the fine in death cases where the persons are entitled to recover the same under Fatal Accidents Act, 1855. Section 357(3) Cr.P.C. empowers the Court to award compensation to any person who has suffered loss or injury by reason of the act of the accused. Section 357(5) Cr.P.C. provides that at the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section. The effect of these provisions is that the Court has to compute the compensation which the victims are entitled to claim against the accused under Civil Law. The victims of the road accidents are entitled to compensation under the Motor Vehicles Act, 1988 and therefore, the Court has to take recourse to the principles for computation of compensation under the Motor Vehicles Act, 1988. The Court is also competent to award interest on the compensation.

27. In cases resulting in death, the multiplier method has been accepted as a sound method for determining the compensation to the family of the deceased in law of torts. Reference may be made to *Gobald Motor Service Ltd. v. Veluswami*, 1962 (1) SCR929 *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole*, AIR 1969 SC128 *Ishwar Devi Malik. v. Union of India*, ILR (1968) 1 Delhi 59, *Lachman Singh v. Gurmit Kaur*, I (1984) ACC489(SB), *Lachman Singh v. Gurmit Kaur*, AIR1979P&H50 *Bir Singh v. Hashi Rashi Banerjee*, AIR1956 Cal.

555. Reference may also be made to *Lata Wadhwa v. State of Bihar*, (2001) 8 SCC1997 *Municipal Corporation of Delhi v. Association of Victims of Uphaar*

Tragedy, AIR 2012 SC100 Jaipur Golden Gas Victims Association v. Union of India, 164 (2009) DLT346 Nagrik Sangarsh Samiti v. Union of India, MANU/DE/0965/2010; Ram Kishore v. MCD, 2007 (97) DRJ445 and Ashok Sharma v. Union of India, 2009 ACJ1063 The multiplier method is statutorily recognized for computation of compensation in death cases under Section 163A of the Motor Vehicles Act, 1988.

28. The multiplier method is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident. The dependency of the dependants is determined by taking the annual earning of the deceased at the time of the accident. Thereafter, effect is given to the future prospects of the deceased. After the income of the deceased is established, the deduction is made towards the personal expenses of the deceased which he would have spent on himself. If the deceased was unmarried, normally 50% of the income is deducted towards his personal expenses. If the deceased was married and leaves behind two to three dependents, 1/3rd deduction is made; if the deceased has left behind four to six family members, deduction of 1/4 th of his income is made and where the number of dependent family members exceeds six, the deduction of 1/5th of the income is made. The remaining amount of income after deduction of personal expenses is taken to be the loss of dependency to the family members which is multiplied by 12 to determine the annual loss of dependency. The annual loss of dependency of the dependants of the deceased is multiplied by the multiplier according to the age of the deceased or victim(s) whichever is higher. A table of multipliers is given in Schedule-II of the Motor Vehicle Act, 1988 but there was some error in the said table which has been corrected by the Supreme Court in Sarla Verma v. DTC, 2009 ACJ1298 29. Before awarding any compensation under Section 357(3) Cr.P.C., the Court shall consider whether any compensation has been received by the victim or his family by an award of the Motor Accident Claims Tribunal. If the victim(s) / his family have not received any compensation by an award of the Motor Accident Claims Tribunal, the Court shall, in exercise of its jurisdiction under Section 357(3) Cr.P.C., compute the compensation to which the victim(s) / his family by applying the well settled principles under the Motor Vehicles Act, 1988. However, if the victim / his family have received adequate compensation by an award of the Motor Accident Claims Tribunal, the

compensation under Section 357(3) Cr.P.C. shall be restricted to a reasonable conventional compensation in the facts and circumstances of each case. For example, in a case where the deceased aged 36 years working as a telephone operator earning Rs.7,500/- per month dies in a road accident leaving behind his widow and two children; first step would be to add 50% of the income as future prospects and total income for computation of compensation would be taken as Rs.11,250/-. Next step is to deduct 1/3rd towards the personal expenses which the deceased would have spent on himself and the loss of dependency of his family would be Rs.7,500/- per month. The annual loss of dependency of Rs.90,000/- is multiplied by the multiplier of 15 to compute the total loss of dependency as Rs.13,50,000/-. Rs.50,000/- is added towards loss of love and affection, loss of consortium, loss of estate and funeral expenses. The total loss would be Rs.14,00,000/- (Rs.7,500/- plus 50% minus 1/3rd $\times 12 \times 15$ + Rs.50,000/-). After computation of compensation, the Court has to consider the following: Where victims have received the compensation from MACT (i) If the family of the deceased have received Rs.14,00,000/- through the Motor Accident Claims Tribunal, the Court may award a further compensation in the range of Rs.1,00,000/- under Section 357 Cr.P.C. The object of awarding this compensation is that the pecuniary loss calculated on the basis of the multiplier does not take care of all the losses suffered by the family of the deceased. Apart from the pecuniary loss, caused due to the death, which is computable according to the multiplier method, the family also suffers loss on account of the services rendered by the deceased to his family, such as the deceased may be personally guiding the children in their education for which they now have to keep a tutor; the deceased may be dropping the children to the school every morning for which an alternative arrangement has to be made. The personal care and attention which the deceased was providing also has some value. The Courts in England earlier used to award damages solely on the basis of multiplier method but the trend has changed and damages are awarded under other heads as well and this law is developing in our country as well. The Supreme Court in *Arun Kumar Aggarwal v. National Insurance Co. Ltd.*, (2010) 9 SCC218 has recognized this principle. The relevant portion of the said judgment is reproduced hereunder: 22. We may now deal with the question formulated in the opening paragraph of this judgment. In

Kemp and Kemp on Quantum of Damages, (Special Edn., 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 housekeeper 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.

23. 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 & Co.* [(1915) 1 KB627] 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: (KB p.

631) 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. 24. In *Regan v. Williamson* [(1976) 1 WLR305: (1976) 2 All ER241] the Court considered the issue relating to quantum of compensation payable to the dependants 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: (WLR pp. 307 H-308 A) 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 a person is no simple matter. I think the plaintiff has not made extensive enquiries 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: (WLR p. 309 A-D) 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 has 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 has 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 and, possibly, with such things as their homework. This sort of attention seems to be as much of a service, and probably more valuable to them, than the other kinds of service conventionally so regarded. 25. In *Mehmet v. Perry* [(1977) 2 All ER529(DC)], 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.

26. 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 the 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 the 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.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the 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. (Emphasis supplied) Where victims have not received compensation from MACT (ii) If the family of the deceased have not received any compensation from the Motor Accident Claims Tribunal and the accused has the capacity to pay Rs.14 lakh then the Court shall award Rs.14,00,000/- as compensation under Section 357 Cr.P.C. While

determining the paying capacity, the Court would also take into consideration the present occupation and income of the accused. For example, the accused has the present capacity to pay only Rs.5 lakhs but he is earning Rs.20,000/per month. In such a case, the Court may direct him to pay lump sum compensation of Rs.5,00,000/- and Rs.10,000/per month in future. When the compensation is paid through his earnings, he will be automatically reformed. If the accused does not have the capacity to pay any compensation or the accused has the capacity to pay lesser compensation say Rs.5 lakh, the Court shall recommend the case for payment of further compensation from the victim compensation fund under Section 357A Cr.P.C. Protection of the compensation 30. Most of the victim(s) of the road accidents are from the lower strata of the society and are sole bread earners having large family. The legal representatives of the deceased have no knowledge of investment and saving. There is a danger of the money being wasted or the victim(s) being cheated. It is therefore in the interest of justice for the Court to formulate an appropriate scheme for protection of the compensation amount. It is noted that when the cheques deposited with the Court are released to the victim(s), at times, there is a delay in seeking release resulting in loss of interest to the victim(s). At times, the cheques reach the hands of some relative or other person who attempts to open a joint account to take share in the compensation. This can be avoided by directing the accused to directly deposit the cheque with the bank with a direction to the bank to open an individual account only in the name of the victim(s). At times, the original fixed deposit receipts and cheque books are taken from the victim(s) and misused. To avoid the misuse of the original fixed deposit receipts and the cheque books, it would be in the interest of the victim(s) that the original fixed deposit receipts remain the safe custody of the concerned bank and the victim(s) be permitted to withdraw by means of a Withdrawal Form instead of a cheque book. This Court is of the view that the following scheme would sufficiently protect the victim(s) of the offence:(i) The accused be directed to deposit the compensation amount with the bank convenient to the victim(s) by means of a cheque / draft drawn in the name of the bank with the name of the victim (s) added thereon. (ii) The concerned bank shall open an individual savings bank account in the name of the victim(s). The bank be directed to keep the said amount in fixed deposit in its name till the victim(s)

approach the bank for opening the account meaning thereby that the compensation shall start earning interest from the date of deposit. (iii) The concerned bank shall transfer 10% of the compensation amount in the savings bank account of the victim(s). (iv) With respect to the remaining 90% amount, the concerned bank shall keep the same in fixed deposit in a phased manner in the facts and circumstances of each case. For example, if a sum of Rs.5,50,000/- has been awarded to the victim(s), Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years. If the victim(s) are school/college going children, the maturity period of the fixed deposit receipts be kept preferably in the month of March every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children. (v) The shares of the minor children be kept in fixed deposit till they attain the age of majority. (vi) The interest on all the fixed deposits be paid monthly to the victim(s). (vii) The monthly interest be credited automatically in the saving account of the victim(s). (viii) Original fixed deposit receipts be retained by the Bank in safe custody. However, the original passbook of the FDR be given to the victim(s) along with the photocopy of the FDR. (ix) The maturity amount be automatically credited in the Saving Bank Account of the beneficiary as and when the fixed deposit gets matured. This will save the botheration of the victim(s) to approach the bank again and again for discharge of the FDR. (x) No cheque book be issued to the victim(s) without permission of the Court. (xi) Photo identity card be issued to the victim (s) and the withdrawal be permitted only after due verification of the identity card of the victim(s) by the Bank. (xii) No loan, advance or withdrawal be allowed on the fixed deposit without permission of the Court. Reference may be made to the judgments of the Supreme Court in *Jai Prakash v. National Insurance Company*, (2010) 2 SCC607 and of this Court in *Oriental Insurance Co. Ltd. v. Ram Kishan*, MANU/DE/1236/2010, *Shobha Gulhar v. Ram Pal*, MANU/DE/1061/2010 and IV (2010) ACC28 *New India Assurance Co. Ltd. v. Ganga Devi*, MAC APP. No.135/2008 decided on 20th November, 2010, *Oriental insurance Co. Ltd. v. Man Singh*, MAC APP. No.130/2009 decided on 10th November, 2009 and *Union of India v. Nanisiri*, MANU/DE/1236/2010 where the

similar directions have been passed with respect to the protection of the award amount of the victim(s) of the road accidents.

31. In the recent case of Abrar Ahmed v. State, Crl. M.C. No.4055/2013 decided on 27th September, 2013, this Court computed the compensation to the family of the deceased on multiplier method as Rs.8,64,000/-. The paying capacity of the accused was Rs.5 lacs which was not sufficient to rehabilitate the family of the deceased and therefore, this Court recommended the case to Delhi State Legal Services Authority for award of additional compensation under Section 357A Cr.P.C. The relevant portion of the said order is reproduced hereunder: 2. On 21st June, 2013, Mohd. Irshad (deceased) was working under the petitioner at D-7, Batla House, Gali No.2, P.S. Jamia Nagar, New Delhi where the construction work was going on. The deceased Mohd. Irshad suffered an electric shock from an electric wire hanging on the 4th floor of the building which resulted in his death. FIR No.316/2013 was registered against the petitioner on the ground that the accident occurred due to his negligence.

3. The deceased Mohd. Irshad is survived by his widow Kamrun Khatun aged about 24 years, minor son Shahajahan aged about 6 months and parents, Mohd. Sirajaudyin (father) and Shanaz Khatun (mother). Ms. Kamrun Khatun (widow) and Mohd. Sirajaudyin (father) are present in Court and they submit that the deceased was earning Rs.6,000/- per month and upon adequate compensation being paid to them, they are no objection to the quashing of the FIR.

4. The deceased was aged 25 years at the time of the accident and was earning Rs.6,000/- per month. Deducting 1/3rd towards his personal expenses and applying the multiplier of 18 in terms of the judgment of the Supreme Court in Sarla Verma vs. DTC, 2009 6 SCC121 the legal representatives of the deceased would be entitled to compensation of Rs.8,64,000/- from the petitioner.

5. The petitioner present in Court submits that as per his paying capacity, he is unable to pay more than Rs.5 lacs to the legal representatives of the deceased. He submits that he has already made payment of Rs.80,000/to respondents no.2 and 3 immediately on the date of the death and Rs.20,000/- has been paid before this Court on 26th September, 2013. The petitioner further submits that he has

brought following demand drafts for Rs.4 lacs to be handed over to respondents no.2 and 3: (i) (ii) (iii) DD No.929311 dated 10.9.2013 for Rs.1,25,000/- drawn on Indian Bank in favour of respondent No.3 (widow) DD No.073045 dated 27.9.2013 for Rs.1,75,000/- drawn on Indian Bank in favour of respondent no.3(widow) DD No.929312 dated 10.9.2013 for Rs.1,00,000/- drawn on Indian Bank in favour of respondent no.2 (father) 6. Respondent nos.2 and 3 are permanent resident of Kalasan, P.S. Chausa, District Madhepura, Bihar and they undertake to deposit the aforesaid drafts in joint savings account no.33103977258 with State Bank of India, Chausa District Madhepura, Bihar.

7. Upon deposit of the aforesaid three demand drafts in joint savings account no.33103977258, State Bank of India, Chausa District Madhepura, Bihar is directed to release a sum of Rs.30,000/- to respondent nos.2 and 3 by transferring the same in their savings account. The State Bank of India shall keep the balance amount of Rs.3,70,000/- in 10 fixed deposits as per details given hereinbelow: (i) (ii) (iii) (iv) CrI.Rev.P.No.338/2009 Fixed deposit of Rs.30,000/- in the name of respondent no.2 for a period of one year. Fixed deposit of Rs.30,000/- in the name of respondent no.3 for a period of two years. Fixed deposit of Rs.30,000/- in the name of Shanaz Khatun for a period of three years. Fixed deposit of Rs.30,000/- in the name of respondent no.2 for a period of four (v) (vi) (vii) (viii) (ix) (x) Fixed deposit of Rs.30,000/- in the name of respondent no.3 for a period of five years. Fixed deposit of Rs.30,000/- in the name of Shanaz Khatun for a period of six years. Fixed deposit of Rs.30,000/- in the name of respondent no.2 for a period of seven years. Fixed deposit of Rs.30,000/- in the name of respondent no.3 for a period of eight years. Fixed deposit of Rs.30,000/- in the name of Shanaz Khatun for a period of nine years. Fixed deposit of Rs.1,00,000/- in the name of Shahajahan, minor son of the deceased till he attains the age of majority.

8. Mr. Hariharan, learned senior counsel present in Court submits that interest on Fixed Deposit Receipt for one year is more than Fixed Deposit Receipt on a larger period and therefore, the beneficiaries would get a higher interest if the FDR is made for one year and renewable for the term mentioned by this Court. The State Bank of India shall ensure that the FDR are prepared in such a manner that the beneficiaries get the highest rates of interest.

9. The interest on all the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the savings account No.33103977258 of respondent nos. 2 and 3.

10. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the savings account of the beneficiaries.

11. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

12. The learned counsel for the petitioner has handed over the original demand drafts to the Court Master. The Registrar (Criminal) shall make an endorsement on the back of the demand drafts to State Bank of India, Chausa District Madhepura, Bihar for disbursement in terms of this judgment. The demand drafts along with copy of this judgment be released by the Registrar (Criminal) to respondent nos.2 and 3 on 30th September, 2013.

13. Learned APP for the State submits that since the amount being paid by the petitioner to respondent no.2 is not adequate for their rehabilitation and the petitioner do not have the paying capacity to pay more amount, the case of respondent nos. 2 and 3 be recommended to Delhi Legal Services Authority for payment of further compensation from the Victims Compensation Scheme under Section 357A Cr.PC. The petitioner as well as respondents no.2 and 3 have no objection to this.

14. Since the compensation of Rs.5 lacs paid by the petitioner to the legal representatives of the deceased, Mohd. Irshad is not adequate for their rehabilitation, this case is recommended to Delhi Legal Services Authority for payment of further compensation from the Victims Compensation Scheme under Section 357A Cr.PC. (Emphasis supplied) In pursuance to the above order, the Delhi Legal Services Authority vide order dated 3rd October, 2013 awarded additional compensation of Rs.3,10,000/- to the family of the deceased. The

relevant portion of the said order is reproduced hereunder: Factual background as borne out of the order Honble High Court is that Late Mohd. Irshad died of electrocution on 21.06.2013 while working as a construction worker in Batla House Area of Jamia Nagar, New Delhi. This lead to registration of FIR No.316/2013 at P.S. Jamia Nagar u/s 304A IPC. However, it appears that during the pendency of investigation, above family of deceased Irshad settled the matter out of Court with accused Abrar Ahmad, the builder with whom deceased was working. On account of this settlement, parties approached Honble High Court for quashing of the FIR. Under the settlement, the accused was initially willing to pay only a small amount but on the intervention of Honble High Court he agreed to pay Rs.5 lacs, the details of which are mentioned in the order of the Honble High Court. While disposing of the petition filed by the accused, Honble High Court made following observations: Ld. APP for the State submits that since the amount being paid by the petitioner to respondent no.2. is not adequate for their rehabilitation and the petitioner do not have the paying capacity to pay more amount, the case of respondent nos.2 and 3 be recommended to Delhi Legal Services Authority for payment of further compensation from the Victims Compensation Scheme under Section 357A Cr.P.C. The petitioner as well as respondents no.2 and 3 have no objection to this. Since the compensation of Rs.5 lacs paid by the petitioner to the legal representatives of the deceased, Mohd. Irshad is not adequate for their rehabilitation, this case is recommended to Delhi Legal Services Authority for payment of further compensation from the Victims Compensation Scheme under Section 357A Cr.P.C. During the hearing, before this Authority, it is submitted by the parents of the deceased and widow that they are illiterate and have not received any formal education. It is also submitted by the father of the deceased that he is agricultural labourer and his wife assists him and that apart from deceased they have 04 sons and 02 daughters and all of them are minor. It is stated that they have no regular source of income and better part of their family was dependent upon on earning of late Irshad. Widow of the deceased is also said to be unemployed without any source of income and was wholly dependent upon the deceased for survival. They belongs to Village Chausa, District Madepura, Bihar. While hearing the quashing petitioner, Honble High Court has applied the multiplier method of calculation of compensation in terms of Honble Supreme

Court judgment in Sarla Verma vs. DTC, 2009 6 SCC121 As required u/s 357A(3) Cr.P.C., Honble High Court has observed that the compensation awarded u/s 357 Cr.P.C. i.e. Rs.5 lacs is not adequate for the rehabilitation of the parents, widow and child of the deceased. As such, the matter has been sent to this Authority for grant of further additional compensation from the Delhi Victim Compensation Fund maintained under Delhi Victim Compensation Scheme, 2011. Considering the totality of circumstances and the utterly poor condition of the family, they are awarded additional compensation from the Victim Compensation Fund of Rs.3.10 lacs. The same shall be divided as follows:

1. Mohd. Sirajaudyin (father) : Rs.70,000/-

2. Smt. Bibi Shahanaj Khatun (mother) : Rs.70,000/-

3. Ms. Kamrun Khatun (Wife) : Rs.70,000/-

4. Minor child Shahjahan (Son) : Rs.1,00,000/- As mentioned in para no.7 of the order of Honble High Court, above compensation to Srl. Nos.1 to 3 shall be deposited by way of FDRs for a period of three years with State Bank of India, Chausa District Madhepura, Bihar with separate individual saving account. Compensation awarded to minor child Shahjahan i.e. Rs.1,00,000/- will be deposited in FDR in the name of the child till he attains majority with his mother being his guardian. Manager, State Bank of India, Chausa District Madhepura, Bihar is directed to credit monthly interest accrued on these FDRs to the separate saving accounts of beneficiaries.

32. In another case of Dev Raj @ Deepak v. State, CrI. M.C. No.4301/2013 decided on 10th October, 2013, this Court computed the compensation payable to the family of the deceased as Rs.10,20,000/- on the basis of multiplier method which was beyond the paying capacity of the accused. The accused led the capacity to pay Rs.5 lacs which was not sufficient to rehabilitate the family of the deceased and therefore, this Court recommended the case to Delhi State Legal Services Authority for payment of the additional compensation to the family of the deceased under Section 357A Cr.P.C. The relevant portion of the said order is reproduced hereunder: 2. On 1st June, 2010, Sultan (deceased) was working as a

mason under the petitioner (contractor) for construction of house No.392, Kohat Enclave. At about 9.00 am on the said date, Sultan fell down from the staircase between the second and third floor and suffered fatal injuries. He was taken to Bhim Rao Ambedkar Hospital where he was declared brought dead. FIR No.203/2010 was registered under Sections 288/304A IPC on the ground that the negligence of the petitioner not providing the grill on the stairs despite reminders resulted in the death. The deceased Sultan is survived by his widow Kulsan, mother and six minor children between age of 4 to 15 years. Ms. Kulsan (widow) is present in Court and she submits that the deceased was earning Rs.200 to Rs.250 per day and upon adequate compensation being paid, she has no objection to the quashing of the FIR.

3. Learned counsel for the petitioner submits that vide compromise deed dated 4th June, 2010, copy whereof has been placed on record as Annexure B, the petitioner has made payment of Rs.2 lacs to respondent no.2 in terms of the agreement between them.

4. Learned APP for the State submits that the age of the petitioner at the time of the accident was 30 years and the amount of compensation of Rs.2 lacs is not adequate. It is submitted that taking the income of the deceased as Rs.200 per day, the monthly income of the deceased Rs.6,000/- per month. Deducting Rs.1,000/- towards personal expenses and applying the multiplier of 17, the family of the deceased is entitled to Rs.10,20,000/-.

5. Learned counsel for the petitioner submits that the petitioner is a petty contractor and he has paid Rs.2 lacs according to his paying capacity. It is submitted that the petitioner can pay a further sum of Rs.50,000/- in the matter. The petitioner submits that he will deposit Rs.50,000/- within a period of four weeks. Vide order dated 9th October, 2013, notice was issued to Mr. Shyam Sunder Bhutani (owner of the building) and Mr. Shankar Lal Arora (the main contractor) who are today present in Court along with Mr. Sanjeev Sindhvani, learned senior counsel. On the suggestion of the Court, Mr. Shyam Sunder Sharma have agreed to pay a sum of Rs.2,50,000/- to the family of the deceased victim on behalf of the petitioner.

6. Taking into account the payment of Rs.2 lacs already made by the petitioner to respondent no.2, Rs.50,000/- agreed to be paid by the petitioner within a period of four weeks and Rs.2,50,000/- to be contributed by the owner of the building, the family of the deceased would get Rs.5 lacs.

7. Learned APP for the State submits that since the said amount of Rs.5 lacs is not adequate for the rehabilitation of the family of the deceased and the petitioner does not have the paying capacity to pay more amount, the case of respondent nos. 2 and 3 be recommended to Delhi Legal Services Authority for payment of further compensation from the Victims Compensation Scheme under Section 357A Cr.PC. Learned APP refers to the similar case of Abrar Ahmad v. State, Crl. M.C.4055/2013, decided on 27th September, 2013 in which compensation of Rs.5 lacs was awarded in the similar case and the case was recommended to Delhi Legal Services Authority and vide order dated 3rd October, 2013, further compensation of Rs.3,10,000/- has been awarded to the family of the victim. The petitioner has no objection to this.

8. This Court is satisfied that since the compensation of Rs.5 lacs is not adequate for rehabilitation of the family of the deceased and since the accused does not have the paying capacity of more than Rs.5 lacs, this case is recommended to Delhi Legal Services Authority for payment of further compensation from the Victims Compensation Scheme under Section 357A Cr.PC. (Emphasis supplied)

33. In yet another recent case of Praveen Kumar v. State & Anr., Crl. M.C. No.4098/2013 decided on 8th October, 2013, the victim suffered grievous injuries upon suffering a fall from the 4 th floor of the building. The Court computed the compensation of Rs.10 lacs to be fair and reasonable under Section 357 Cr.P.C. out of which the accused had the capacity to pay Rs.6,52,000/- and the remaining amount of Rs.3,48,000/- was agreed to be refunded by Sant Parmanand Hospital where the victim was admitted for surgery/ treatment and the accused had paid Rs.3,48,000/- to the hospital. The relevant portion of the said order is reproduced hereunder: 1. Respondent No.3, Ms. Lovely, is present in Court along with her paternal uncle Dharmender (respondent No.2). Respondent No.3 aged 19 years was working as a labourer under the petitioner on fourth floor of Government Quarters Timar Pur. On 19th March, 2013 at about 4.00 P.M. when she fell down

from the roof and suffered fracture D12 to L1 with paraplegia and fracture bilateral calcaneum. She was immediately admitted by the respondent No.2 at Delhi Institute of Trauma and Orthopaedics, Sant Parmanand Hospital, 18 Sham Nath Marg, Civil Lines, Delhi-54 where she underwent a surgery for spine fixation from D11 to L2. She also suffered a fracture in position lateral - right calcaneum which was opened, a locking plate was fixed and cast applied on the left ankle. She was discharged on 30 th March, 2013. Respondent No.3 was again admitted from 18th April, 2013 to 20th April, 2013 and from 29th April, 2013 to 3rd May, 2013.

2. The present condition of the respondent No.3 is that she is unable to walk or stand up without support of an attendant. The respondent No.3 is unmarried and is staying with her parents. Her father is a mason earning approximately Rs.250/- per day. Respondent No.3 is staying in a jhuggi in Gulabi Bagh.

3. Mr. Yatendra Kumar Chaudhary, Administrative Officer of Sant Parmanand Hospital is present in Court along with his counsel Mr. Karan Jain in terms of the order dated 27th September, 2013 and he has produced the entire original medical record of respondent No.3. It is submitted that the Sant Parmanand Hospital has charged Rs.3,48,000/- from the petitioner for the treatment of respondent No.3. It is further submitted that it was not pointed out to the Hospital at the time of treatment that respondent No.3 is a poor labourer. It is further submitted that considering the medical condition of respondent No.3 and further that she belongs to the lowest strata of the society and her parents have no means for her treatment, on the suggestion of this Court, the Hospital as a goodwill gesture and on humanitarian ground have taken a decision to contribute the amount of Rs.3,48,000/- to respondent No.3 for her sustenance.

4. Learned counsel for the petitioner submits that the petitioners are ready and willing to make payment of Rs.6,52,000/- to respondent No.3 as compensation so that the total corpus of respondent No.3 becomes Rs.10,00,000/- and the interest on the said amount should be sufficient for her sustenance.

5. The petitioner is directed to deposit Rs.6,52,000/with UCO Bank by means of a cheque drawn in the name of UCO Bank A/c Ms.Lovely within a period of four weeks. The cheque be personally delivered to the AGM of UCO Bank, Delhi High

Court Branch. Sant Parmanand Hospital shall also deliver a cheque for Rs.3,48,000/- to the AGM of UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Ms. Lovely within a period of four weeks. Upon aforesaid cheques being deposited, UCO Bank shall keep the said amount in fixed deposit for a period of 10 years renewable for further terms of 10 years. Interim compensation 34. In *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC490 the Supreme Court held that the Court has the right to award interim compensation and the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offence. The relevant portion of the judgment is reproduced hereunder:18. This decision recognises the right of the victim to compensation by providing that it shall be awarded by the court on conviction of the offender subject to the finalisation of the Scheme by the Central Government. If the court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should also be provided in the Scheme. On the basis of principles set out in the aforesaid decision in *Delhi Domestic Working Women's Forum* [(1995) 1 SCC14:

1995. SCC (Cri) 7]. , the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life.

19. Apart from the above, this Court has the inherent jurisdiction to pass any order it considers fit and proper in the interest of justice or to do complete justice between the parties. (Emphasis supplied) Need for a sentencing policy in road accident cases 35. Sections 235, 248, 325, 360 and 361 Cr.P.C. deal with the power of the Court relating to sentencing. However, Cr.P.C. does not provide any guidelines for sentencing and gives an absolute discretion to the Judge to award any sentence within given parameters.

36. The Committee on Reforms of the Criminal Justice System, 2003 established by the Government of India to recommend changes in the Criminal Justice System in India, had observed that the Judges were granted wide discretion in awarding

the sentence within the statutory limits. The Committee was also of the opinion that as there was no guidance in selecting the most appropriate sentence in the given factual situation thereof, there was no uniformity in awarding of sentence as the discretion was exercised according to the judgment of every Judge. Thus, the Committee emphasised the need for having sentencing guidelines to minimise uncertainty in awarding sentences. It recommended the appointment of a statutory committee to lay down the sentencing guidelines.

37. In USA, several States have introduced guidelines which indicate sentencing ranges according to the type and seriousness of offence and criminal history/antecedents of the offender. There is a permanent Sentencing Commission to monitor sentencing practice and an appellate review is provided to determine the propriety of departure from the guidelines. In United Kingdom, Criminal Justice Act, 2003 provides the necessary guidelines on sentencing. In India, the Government has not yet evolved a sentencing policy and there is no legislation that provides guidelines in sentencing. The only guidelines available to Trial Courts are through judgments of the High Court and Supreme Court.

38. In *B.G. Goswami v. Delhi Admn.*, (1974) 3 SCC85 the Supreme Court held that the main purpose of the sentence is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. The Supreme Court held as under:¹⁰ In considering the special reasons the judicial discretion of the court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole.

Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal. 39. In *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC287 the Supreme Court stressed the therapeutic role of punishment and discussed the basis and purpose of punishment. The Court further held that Courts should personalize the sentence proceedings from a reformatory angle and suggested appropriateness of fine under Section 357 Cr.P.C. to reimburse victims of the white collar crimes. The relevant portion of this judgment is reproduced hereunder: 14. The Kerala High Court, in *Shiva Prasad* [1969 Ker LT862] had also something useful to say in this regard: Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the Court to help it for a correct judgment in the proper personalised, punitive treatment suited to the offender and the crime.... Likewise, Shri Justice Dua (as he then was) of the Punjab High Court had indicated the guidelines on the application of the rehabilitative theory in *Lekhraj v. State* [AIR1960 Pun 482]. where the learned Judge had pointed out the relevance of the offender's circumstances and social milieu, apart from the daring and reprehensible nature of the offence. The Law Commission of India (in its 47th Report) has summed up the components of a proper sentence: A proper sentence is a composite of many factors, including the nature of the offence, the circumstances - extenuating or aggravating - of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, for such a deterrent in respect to the

particular type of offence involved. (Para 7.44) xxx xxx xxx 17. It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. Even so, the Judge must exercise this discretionary power, drawing his inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the personality of the crime-doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to be incorporated. Therefore innovation, in all conscience, is in the field of judicial discretion.

18. Unfortunately, the Indian Penal Code still lingers in the somewhat compartmentalised system of punishment viz. imprisonment, simple or rigorous, fine and, of course, capital sentence. There is a wide range of choice and flexible treatment which must be available with the Judge if he is to fulfil his trust with curing the criminal in a hospital setting. Maybe in an appropriate case actual hospital treatment may have to be prescribed as part of the sentence. In another case, liberal parole may have to be suggested and, yet in a third category, engaging in certain types of occupation or even going through meditational drills or other courses may be part of the sentencing prescription. The perspective having changed, the legal strategies and judicial resources, in their variety, also have to change. Rule of thumb sentences of rigorous imprisonment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing Judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. We do not wish to be exhaustive. Indeed, we cannot be.

19. Sentencing justice is a facet of social justice, even as redemption of a crime-doer is an aspect of restoration of a whole personality. Till the new Code recognised statutorily that punishment required considerations beyond the nature of the crime and circumstances surrounding the crime and provided a second stage for bringing in such additional materials, the Indian Courts had, by and large, assigned an obsolescent backseat to the sophisticated judgment on sentencing. Now this judicial skill has to come of age. xxx xxx xxx 24. We also think that the appellant has slipped into crime for want of moral fibre. If competent jail visitors could organise for him processes which will instil into him a sense of ethics it may help him become a better man. Self-expression and self realisation have a

curative effect. Therefore, any sports and games, artistic activity and/or meditational course, may also reform. We strongly recommend that the appellant be given such opportunities by the jail authorities as will stimulate his creativity and sensitivity. In this connection we may even refer to proven advantages of kindling creative intelligence and normalising inner imbalance, reportedly accomplished by Transcendental Meditation (TM) propagated by Maharshi Mahesh Yogi in many countries in the West. Research projects conducted in various countries bring out that people practising such or like courses change their social behaviour and, reduce their crime-proneness. We do not prescribe anything definite but indicate what the prison doctors may hopefully consider. While it is beyond us to say whether the present facilities inside the Central Prison, Hyderabad, make it feasible for the appellant to enjoy these benefits and thereby improve his inner being, we strongly feel that the humanitarian winds must blow into the prison barricades. More than this is expected in this decade, when jail reforms, from abolition of convict's costume and conscript labour to restoration of basic companionship and atmosphere of self-respect and fraternal touch, are on the urgent agenda of the nation. Our prisons should be correctional houses, not cruel iron aching the soul. (Emphasis supplied) 40. In *Soman v. State of Kerala*, 2012 (12) SCALE719 the Supreme Court laid down principles and guidelines for determination of sentence. The relevant portion of the judgment is reproduced hereunder: 12. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In *State of Punjab v. Prem Sagar*, (2008) 7 SCC550 this Court acknowledged as much and observed as under - 2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines. 13. Nonetheless, if one goes through the

decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc. (See: Ramashraya Chakravarti v. State of Madhya Pradesh, (1976) 1 SCC281 Dhananjoy Chatterjee alias Dhana v. State of W.B., (1994) 2 SCC220 State of Madhya Pradesh v. Ghanshyam Singh, (2003) 8 SCC13 State of Karnataka v. Puttaraja, (2004) 1 SCC475 Union of India v. Kuldeep Singh, (2004) 2 SCC590 Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC359 Siddarama v. State of Karnataka, (2006) 10 SCC673 State of Madhya Pradesh v. Babulal, (2008) 1 SCC234 Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC498 14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness?. In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

15. In Sentencing and Criminal Justice, 5th Edition, Cambridge University Press, 2010, Andrew Ashworth cites the four main stages in the process of assessing the seriousness of an offence, as identified in a previous work by Andrew Von Hirsch and Nils Jareborg. (See Pages 108 -

112) 1. Determining the interest that is violated (i.e. physical integrity, material support, freedom from humiliation or privacy/autonomy) 2. Quantification of the effect on the victim's living standard.

3. Culpability of the offender.

4. Remoteness of the actual harm. xxx xxx xxx 18. Ashworth also examines the impact of unintended consequences on sentencing. He notes that there is a

tendency to take those into account in manslaughter and for causing death by bad driving. The extent to which unintended consequences may be taken into account would depend, for instance, on the extent to which the offender was put on notice of the risk of death. Thus, where it is known that driving dangerously or under the influence of alcohol creates risk for the safety of others, there would be a greater emphasis on resulting death while determining the sentence. (See Pages 153 - 154). xxx CrI.Rev.P.No.338/2009 xxx 20. Germane to the issue under consideration is a decision of the Supreme Court of Appeal of South Africa in *S Nyathi and The State*, [2005]. ZASCA134(23 May 2005) and we may usefully refer to it. The case relates to the death of six people resulting from the road accident in which a sedan driven by the appellant in that case collided with a minibus taxi. The impact caused the minibus to overturn, killing six of its occupants. Some other passengers were injured. The appellant was convicted of culpable homicide. The court found that the collision between the two vehicles had taken place on a blind rise where a double barrier line prohibited overtaking by vehicles coming from either direction. It was the admitted position at the trial that forward visibility was restricted. The court observed that overtaking on a barrier line, and specially on a double barrier line, where a motorist should realise that his inability to observe approaching traffic is compounded by the inability of the traffic in the opposite direction to see him is probably the most inexcusably dangerous thing a road user can do. Coming to the question of sentence, the Court observed: [13]. Road accidents with calamitous consequences are frequently caused by inadvertence, often momentary. [*Dube v. S* [2002]. JOL (Judgments on Line) 9645 (T), a case mentioned by the regional magistrate, is an example. The appellant was the driver of a bus involved in an accident on a mountain pass which killed twenty eight passengers. On appeal a suspended sentence of two years' imprisonment was substituted for one of six years' imprisonment imposed by the trial court on the footing that the appellant's negligence had been slight.]. Overtaking on a double barrier line is not inadvertence. It is a conscious decision to execute a manoeuvre that involves taking a fearfully high risk. Referring then to some earlier decisions of the Court in paragraph 14 of the judgment it observed as under:[14]. In *S v. Nxumalo* 1982 (3) SA856(SCA) the court approved a passage from *R v. Barnardo* 1960 (3) SA552(A) (at 557D-E) where the court held that although no greater

moral blameworthiness arises from the fact that a negligent act caused death, the punishment should acknowledge the sanctity of human life. It affirmed the dicta of Miller J who twenty years earlier in *S v. Ngcobo* 1962 (2) SA333(N) at 336H-337B had set out the approach to road death cases. At 861H Corbett JA said: It seems to me that in determining an appropriate sentence in such cases the basic criterion to which the Court must have regard is the degree of culpability or blameworthiness exhibited by the accused in committing the negligent act. Relevant to such culpability or blameworthiness would be the extent of the accused's deviation from the norm of reasonable conduct in the circumstances and the foreseeability of the consequences of the accused's negligence. At the same time the actual consequences of the accused's negligence cannot be disregarded. If they have been serious and particularly if the accused's negligence has resulted in serious injury to others or loss of life, such consequences will almost inevitably constitute an aggravating factor, warranting a more severe sentence than might otherwise have been imposed. 21. Punishment should acknowledge the sanctity of human life...

22. From the above, one may conclude that:

1. Courts ought to base sentencing decisions on various different rationales - most prominent amongst which would be proportionality and deterrence.
2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.
3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.
4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.
5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable... (Emphasis supplied) 41. In *State of Uttar Pradesh v. Sanjay Kumar*, (2012) 8 SCC537 the Supreme Court reiterated general principles of sentencing reflecting the objective and need of a sentencing policy

and the duty of Courts while sentencing. The relevant portion of this judgment is reproduced hereunder:21. Sentencing policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to prescribe punishment. By introducing more uniformity and consistency into the sentencing process, the objective of the policy, is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgments of this Court, prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus, the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

22. Ultimately, it becomes the duty of the courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, etc. The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise.

23. The survival of an orderly society demands the extinction of the life of a person who is proved to be a menace to social order and security. Thus, the courts for the purpose of deciding just and appropriate sentence to be awarded for an offence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed, in a dispassionate manner. In the absence of any foolproof formula which may provide a basis for reasonable

criteria to correctly assess various circumstances germane for the consideration of the gravity of the crime, discretionary judgment, in relation to the facts of each case, is the only way in which such judgment may be equitably distinguished. The Court has primarily dissected the principles into two different compartments-one being the aggravating circumstances and, the other being the mitigating circumstance. To balance the two is the primary duty of the court. The principle of proportionality between the crime and the punishment is the principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. In other words, the doctrine of proportionality has valuable application to the sentencing policy under the Indian criminal jurisprudence. While determining the quantum of punishment the court always records sufficient reasons. (Vide *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC471:

1991. SCC (Cri) 724 : AIR 1991 SC1463 , *Ravji v. State of Rajasthan* [(1996) 2 SCC175:

1996. SCC (Cri) 225 : AIR 1996 SC787 , *State of M.P. v. Ghanshyam Singh* [(2003) 8 SCC13:

2003. SCC (Cri) 1935]. , *Dhananjay Chatterjee v. State of W.B.* [(2004) 9 SCC751:

2004. SCC (Cri) 1484 : AIR 2004 SC3454 , *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [(2012) 4 SCC37: (2012) 2 SCC (Cri) 30]. and *Brajendrasingh v. State of M.P.* [(2012) 4 SCC289: (2012) 2 SCC (Cri) 409 : AIR 2012 SC1552) 42. In *Guru Basavaraj v. State Of Karnataka*, (2012) 8 SCC734 the Supreme Court has expressed its concern on the need for adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. It observed: 30. From the aforesaid authorities, it is luminous that this Court has expressed its concern on imposition of adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. That apart, the concern has been to impose adequate sentence for the offence punishable under Section 304-A IPC. It is worthy to note that in certain circumstances, the mitigating factors have been taken into consideration but the said aspect is dependent on the facts of each case. As the trend of authorities would show, the proficiency in

professional driving is emphasised upon and deviation therefrom that results in rash and negligent driving and causes accident has been condemned. In a motor accident, when a number of people sustain injuries and a death occurs, it creates a stir in the society; sense of fear prevails all around. The negligence of one shatters the tranquility of the collective. When such an accident occurs, it has the effect potentiality of making victims in many a layer and creating a concavity in the social fabric. The agony and anguish of the affected persons, both direct and vicarious, can have nightmarish effect. It has its impact on the society and the impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or, for that matter, adventurous drivers who have, in a way, no concern for others. Be it noted, grant of compensation under the provisions of the Motor Vehicles Act, 1988 is in a different sphere altogether. Grant of compensation under Section 357(3) Cr PC with a direction that the same should be paid to the person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence. xxx xxx 32. We may note with profit that an appropriate punishment works as an eye-opener for the persons who are not careful while driving vehicles on the road and exhibit a careless attitude possibly harbouring the notion that they would be shown indulgence or lives of others are like flies to the wanton boys. They totally forget that the lives of many are in their hands, and the sublimity of safety of a human being is given an indecent burial by their rash and negligent act. 43. In *Subhash Yadav v. State of M.P.*, 2007 (2) JabLJ207 the Madhya Pradesh High Court held as under:10. In the name of free and speed delivery of justice, the agony and anguish of the victim cannot be kept at bay. It cannot be conceived that in the adjudicatory system of criminal trial, the victim is to be forgotten or kept in the oblivion. A crime in essence mostly always is against the collective and the cry of the collective cannot be marginalized. Not for nothing it had been said when the cry of the collective is curbed or marred, one sees cracks in the City Halls. The justness of justice has to be jealously guarded by the protectors of law. She cannot be allowed to suffer the ignominy at any cost. Beacon light of justice has to illuminate the society. The laser beam has to remove the concavities, for law is the safest helmet - to borrow the phrase from Sir Edward Coke. 44. In *United*

Kingdom, the judgment of the Court of Appeal in R. v. Cooksley, [2004]. 1 Cr App(S) 1 gave a list of various aggravating and mitigating factors in road accident cases. The sentencing guidelines were framed in U.K. on the basis of this judgment. The relevant aggravating and mitigating factors given in the said judgment are reproduced hereunder:"Aggravating Factors Highly culpable standard of driving at time of offence (a) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol, ranging from a couple of drinks to a 'motorised pub crawl' (b) greatly excessive speed; racing; competitive driving against another vehicle; 'showing off' (c) disregard of warnings from fellow passengers (d) a prolonged, persistent and deliberate course of very bad driving (e) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking) (f) driving while the driver's attention is avoidably distracted, for eg. by reading or by use of a mobile phone (especially if hand-held) (g) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills (h) driving when knowingly deprived of adequate sleep or rest (i) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns Driving habitually below acceptable standard (j) other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle (k) previous convictions for motoring offences, particularly offences which involve bad driving or the consumption of excessive alcohol before driving Outcome of offence (l) more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable) (m) serious injury to one or more victims, in addition to the death(s) Irresponsible behaviour at time of offence (n) behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape (o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension (p) offence committed while the offender was on bail."

Mitigating Factors "(a) a good driving record; (b) the absence of previous convictions; (c) a timely plea of guilty; (d) genuine shock or remorse (which may be greater if the victim is either a close relation or a friend); (e) the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence), and (f) the fact that the offender has also been seriously injured as a result of the accident caused by the dangerous driving. 45. The Sentencing Guidelines Council has issued guidelines for sentencing in road accident matters in U.K. under the Criminal Justice Act, 2003. The offences are graded into three levels of seriousness and different sentences are prescribed for each level. The relevant portion of the guidelines relating to offences resulting in death by dangerous driving are reproduced hereunder: D. Offence guidelines Causing death by dangerous driving Factors to take into consideration 1. The following guideline applies to a first-time offender aged 18 or over convicted after trial (see page 8 above), who has not been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).

2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness as well as those set out in the adjacent table as being particularly relevant to this type of offending behaviour.

3. Levels of seriousness The 3 levels are distinguished by factors related predominantly to the standard of driving; the general description of the degree of risk is complemented by examples of the type of bad driving arising. The presence of aggravating factors or combinations of a small number of determinants of seriousness will increase the starting point within the range. Where there is a larger group of determinants of seriousness and/or aggravating factors, this may justify moving the starting point to the next level. Level 1 - The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by: A prolonged, persistent and deliberate course of very bad driving AND/OR Consumption of substantial amounts of alcohol or drugs leading to gross impairment AND/OR A group of determinants of seriousness which in isolation or

smaller number would place the offence in level 2 Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range. Level 2 - This is driving that created a substantial risk of danger and is likely to be characterised by: Greatly excessive speed, racing or competitive driving against another driver OR Gross avoidable distraction such as reading or composing text messages over a period of time OR Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition OR A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3 Level 3 - This is driving that created a significant risk of danger and is likely to be characterised by: Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions OR Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded OR A brief but obvious danger arising from a seriously dangerous manoeuvre OR Driving whilst avoidably distracted OR Failing to have proper regard to vulnerable road users The starting point and range overlap with Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

4. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on good driving record, giving assistance at the scene and remorse. Causing death by dangerous driving Road Traffic Act 1988 (section

1) THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003 Maximum penalty:

14. years imprisonment minimum disqualification of 2 years with compulsory extended re-test Nature of offence Starting point Level 1 8 years custody 7-14 years custody The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others Level 2 Driving

that created a substantial risk of danger Level 3 Driving that created a significant risk of danger Sentencing range 5 years custody 4-7 years custody 3 years custody 2-5 years custody [Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]. Additional aggravating factors Additional mitigating factors 1.Previous convictions for 1. Alcohol or drugs motoring offences, consumed particularly offences that unwittingly involve bad driving or the consumption of excessive 2.Offender was seriously alcohol or drugs before injured in the collision driving 3.The victim was a close 2. More than one person friend or relative killed as a result of the 4.Actions of the victim or a offence third party contributed 3.Serious injury to one or significantly to the more victims, in addition to likelihood of a collision the death(s) occurring and/or death resulting 4. Disregard of warnings 5. Other offences committed 5.The offenders lack of driving experience at the same time, such as contributed to the driving other than in commission of the accordance with the terms offence of a valid licence; driving while disqualified; driving 6. The driving was in without insurance; taking a response to a proven and vehicle without consent; genuine emergency driving a stolen vehicle falling short of a defence 6. The offenders irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape 7. Driving off in an attempt to avoid detection or apprehension 46. A uniform sentencing policy has many benefits, namely, to reduce judicial disparity in sentencing; promote more uniform and consistent sentencing; project the amount of correctional resources needed; prioritize and allocate correctional resources; increase punishments for certain categories of offenders and offenses; decrease punishment for certain categories of offenders and offenses; establish truth in sentencing; make the sentencing process more open and understandable; encourage the use of particular sanctions for particular categories of offenders; encourage increased use of non incarceration; reduce prison crowding; provide a rational basis for sentencing and increase judicial accountability. Existence of a well laid sentencing policy also proves instrumental in improving road safety and reducing road traffic offences/ casualties. A sentencing policy also helps to change the attitudes, skills and behaviour of convicted offenders; remove convicted

offenders from the road for their period of disqualification or imprisonment; and influence the attitudes and behaviour of other drivers and riders who hear / read about the sentences imposed for particular offences. Sections 3 and 4 of the Probation of Offenders Act, 1958 not applicable to cases under Section 304A IPC⁴⁷ In *Dalbir Singh v. State of Haryana*, (2000) 5 SCC82 the Supreme Court held that considering the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. The Supreme Court held as under:¹When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic. xxx xxx xxx 11. Courts must bear in mind that when any plea is made based on Section 4 of the PO Act for application to a convicted person under Section 304-A IPC, that road accidents have proliferated to an alarming extent and the toll is galloping day by day in India, and that no solution is in sight nor suggested by any quarter to bring them down. When this Court lamented two decades ago that more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country, the saturation of accidents toll was not even half of what it is today. So V.R. Krishna Iyer, J., has suggested in the said decision [*Rattan Singh v. State of Punjab*, (1979) 4 SCC719:

1980. SCC (Cri) 17]. thus: (SCC p. 720, para

3) Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under Section 304-A IPC and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. xxx xxx xxx 13. Bearing in mind the

galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles. (Emphasis supplied) 48. In *State of Punjab v. Balwinder Singh*, (2012) 2 SCC182 the Supreme Court again reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958 and endorsed the view expressed in *Dalbir Singh* (supra). The relevant portion of the said judgment is reproduced hereunder:13. It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in *Dalbir Singh* [(2000) 5 SCC82:

2004. SCC (Cri) 1208]..

14. While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the court.

15. For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt. (Emphasis supplied) Offences under Motor Vehicles Act, 1988 49. The Motor Vehicles Act, 1988 provides number of offences in case of road accidents such as driving dangerously (Section 184), drunken driving/under influence of drugs (Section 185), driving without licence (Sections 3 & 181), driving by minor (Sections 4 & 181), using mobile phone while driving (Section 184), driving without insurance (Sections 146 & 196), over speeding (Sections 112 & 183(1), without fitness (Sections 56 & 192), without permit (Sections 66(1) & 192 A), violation of speed limit (Section 112 & 177), jumping red light (Section 119 & 177), mandatory signs (Section 119 & 177), improper obstructive parking (Section 122 & 177), obstructive driving (Section 126 & 177), violation of No overtaking (Section 177 & RRR6), One way(Section 177 & RRR17(1)), carrying high/long load (Section 177 & RRR29), without light after sunset(Section 177 & CMVR105, and not using seat belt (Section 177 & CMVR1383)). It is noted that in road accident matters, the police normally invoke Sections 279/337/338 IPC in injury cases and Sections 279/304A IPC in death cases and the offenders are not prosecuted for the offences under the Motor Vehicles Act. The Delhi Police has now assured that henceforth the offences under the Motor Vehicles Act, 1988 shall be invoked wherever applicable along with the offences under the Indian Penal Code. Revision petitions pending before this Court 50. This Court is dealing with 63 road accident cases relating to the death in which the accused have been convicted under Sections 279/304A IPC. The accused challenged the order of conviction in appeal before the Sessions

Court and have approached this Court in revision against the order of the Sessions Court.

51. It is painful and shocking to note that in most of the cases, the learned Metropolitan Magistrate as well as the learned Sessions Court in appeal have neither awarded any compensation to the injured/legal heirs of the deceased of the road accident under Section 357 Cr.P.C. nor they have recommended the grant of compensation under Section 357A Cr.P.C. The Courts have not even considered the said provisions and appear to be totally ignorant of the mandatory benevolent provisions of law. It is also noted that the Courts have not taken into consideration all the relevant aggravating and mitigating factors for awarding appropriate sentence to the accused persons. In 63 cases relating to death, the Trial Courts have awarded sentence ranging from 3 months to 2 years. The appellate Courts have upheld the sentence in 53 cases and have reduced the sentence in 9 cases. In most cases, the police has restricted the prosecution of the offenders to Section 279/304A IPC and the accused have not been prosecuted for the offences under the Motor Vehicles Act, 1988. This Court therefore considered it necessary to examine the law relating to sentencing and compensation under Sections 357/357A Cr.P.C. and lay down the guidelines for sentencing and compensation in road accident cases before hearing the revision petitions on merits.

52. Mr. Dayan Krishnan, learned Additional Standing Counsel for Delhi Police, Mr. Surinder S. Rathi, learned AD&SJ/OSD, Delhi State Legal Services Authority and the learned Amici Curiae, Mr. J.P. Sengh, Senior Advocate and Mr. Manoj Taneja, Advocate have given valuable suggestions relating to aggravating factors and mitigating circumstances in road accident cases.

53. This Court has gone through the research paper titled Need of Sentencing Policy in Road Accident Trials in India presented by Mr. Surinder S. Rathi, learned AD&SJ/OSD, Delhi State Legal Services Authority. The paper covers the development of law on sentencing policy and guidelines in U.K. and U.S.A. during the last five decades with special focus on accident matters highlighting the relevant aggravating and mitigating factors. Important cases on need for

sentencing in India have also been compiled. The relevant aggravating factors and mitigating circumstances mentioned in the research paper have been taken into consideration.

54. This Court has also gone through the sentencing policies in road accidents in other countries to evolve guidelines for sentencing in road accidents. The Law Researchers, Mr. Rituj Chopra and Mr. Siddhant Srivastava, and Law Interns have done extensive research on the subject and have compiled the law on sentencing in U.K., U.S.A., New Zealand and Canada, Law Commission Reports, UN Resolutions, European Parliament Directives, various books, articles and reports, which have been considered by this Court. The details of the material considered are as under:- Legislations - UN General Assembly Resolution 60/147 of 16 December 2005, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Official journal of the European Union; UN General Assembly Resolution 40/34 of 29 November 1985, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Victims Rights Act, 2002; Road Traffic Act, 1988; Victim of Offences Act, 1987; Criminal Justice Act, 1988 and Victims of Crimes Act, 1984. Cases - Regina v Matthew Rice, [2009]. EWCA Crim 1967 and R v Hodder, 2012 CanLII24230(NL PC). Books - Sharma , Mahendra K., Minimum Sentencing for Offences in India- Law and Policy, Deep & Deep Publications, 1996; Principled Sentencing- Readings on Theory and Policy, Andrew von Hirsch & Andrew Ashworth, Eds., 2nd Edn., Hart Publishing, 1998, Trends and Issues in Victimology, Natti Ronel, K. Jaishankar and Moshe Bensimon, Eds., Cambridge Scholars Publishing, 2008 and Sentencing, Judicial Discretion and Training, Colin Munro & Martin Wasik, Eds., Sweet & Maxwell London, 1992. Articles - Menon, N. R. Madhava, Victims Rights and Criminal Justice Reforms, The Hindu, March 27, 2006; Whitehead, Tom, Victims of Crime failed by Justice System, says MPs report, The Telegraph, August 6, 2009; Townsend, Mark, Crime victims are being let down by the justice system, The Observer, September 11, 2011; BBC News, Criminal Justice fails

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55. On consideration of the entire material mentioned above, this Court has shortlisted the list of the circumstances of the offence, circumstances of the accused, circumstances relating to the owner of the offending vehicle, impact of the crime on the victim/his family, aggravating factors and mitigating circumstances to be taken into consideration for sentencing and compensation under Sections 357/357A in road accident cases. The Court has to conduct a summary inquiry to ascertain the relevant facts/documents. Such an inquiry may be conducted through the SHO of the police station concerned who shall submit a report named as Victim Impact Report (in short VIR).

56. Mr. Dayan Krishnan, learned Additional Standing Counsel for Delhi Police submits that in terms of the order dated 30 th September, 2013, the Additional Commissioner of Police, Shri Anil Shukla has constituted a Committee of 17 officers who shall collect the relevant data/information in respect of the batch of petitions pending before this Court. It is submitted that the inspection of all the files would take approximately 10 days and the Committee would be in a position to collect the relevant data and submit the VIR within a period of 45 days thereafter.

57. Mr. Dayan Krishnan, learned Additional Standing Counsel for Delhi Police further submits that some information and documents relating to the insurance of the offending vehicles, the awards of the Motor Accident Claims Tribunal and the payment details would be required from the Insurance Companies. The Insurance Companies shall extend necessary cooperation to the Committee of Delhi Police and shall furnish the relevant information/documents to the Committee as and when called for. Ms. Manjusha Wadhwa, learned Standing Counsel for Oriental Insurance Co. Ltd. who was present in Court on the last date of hearing, submits that she has communicated the order dated 4 th October, 2013 to most of the Insurance Companies. The nominated counsels of some of the companies are present in Court today. The list of the nominated counsels of the Insurance Companies be handed over to Mr. Dayan Krishnan, learned Additional Standing Counsel for Delhi Police and the Committee members shall communicate with the nominated counsels as and when necessary. Wherever the Insurance companies do not have a nominated counsel, they may nominate a counsel for the purposes of this batch of petitions.

58. The Committee appointed by Delhi Police shall furnish the VIR in respect of these cases by 10th December, 2013. The individual cases on merits shall be taken up for hearing after the VIR is placed on record in terms of this order.

59. The learned Amici Curiae submit that the VIR would also be useful in all cognizable road accident matters. It is submitted that in fresh road accident cases, VIR should be submitted along with the challan before the concerned Metropolitan Magistrate. In cases where challan has already been filed, the VIR be submitted before the Court within the fixed time frame. Cases which have resulted in

conviction and are at the stage of sentence or cases where appeals are pending before the learned Sessions Court, VIR should be submitted before the concerned Court. The Standing Order by the Delhi Police would be necessary in this regard as has been done by the Delhi Police by implementing the Claims Tribunal Agreed Procedure in road accident matters in terms of the judgment of this Court in *Rajesh Tyagi v. Jaibir Singh*, IV (2010) ACC859 60. Mr. Dayan Krishnan, learned Additional Standing Counsel for Delhi Police submits that upon direction being issued by this Court, he would take up the matter with the Commissioner/Special Commissioner of Delhi Police for issuance of the necessary Standing Order.

61. In view of the above, it is directed that the Commissioner shall consider issuance of a Standing Order for preparation of VIR in all road accident matters.

62. Vide order dated 20th September, 2013, all the petitioners were directed to file their affidavits of assets, income and expenditure. Where such affidavits have been filed, advance copy thereof be furnished to the Committee of Delhi Police within a period of ten days. The petitioners who have not yet filed the affidavits are directed to file the same within a period of 15 days. The Committee appointed by the Delhi Police shall operate from the following particulars: (i) (ii) Mr. Premnath, IPS, DCP (Traffic) Southern Range, Sadik Nagar Josip Broz Tito Marg, New Delhi. Ph:

011. 26266748 Mr. Devender Sharma Staff Officer to DCP (Traffic) All coordination/communication can be through Mr. Sharma) Mob:

98681. 8072 DCP (Traffic) Email: premdp@yahoo.com routed Conclusion Victimology 63. Victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims family is ruined particularly in case of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc.

64. The criminal justice system is meant for doing justice to all - the accused, the society and the victim. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that the guilty man does not escape.

65. Criminal justice would look hollow if justice is not done to the victim of the crime.
66. The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.
67. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. Sections 357 & 357A Cr.P.C.
68. Section 357 Cr.P.C. empowers the Court to award compensation to victims who have suffered by the action of the accused.
69. The object of the Section 357(3) Cr.P.C. is to provide compensation to the victims who have suffered loss or injury by reason of the act of the accused. 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 indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread earner of the family.
70. The power under Section 357 Cr.P.C. is intended to reassure the victim that he/she is not forgotten in the criminal justice system.
71. The power under Section 357 Cr.P.C. is a measure of responding appropriately to crime as well as reconciling the victim with the offender.
72. The power under Section 357 Cr.P.C. is not ancillary to other sentences but in addition thereto.
73. The power under Section 357 Cr.P.C. is to be exercised liberally to meet the ends of justice in a better way.
74. Section 357 Cr.P.C. is a constructive approach to crimes. It is indeed a step forward in our criminal justice system.

75. The word may in Section 357(3) Cr.P.C. means shall and therefore, Section 357 Cr.P.C. is mandatory.

76. Section 357 Cr.P.C. confers a duty on the Court to apply its mind on the question of compensation in every criminal case.

77. If the Court fails to make an order of compensation, it must furnish reasons.

78. Section 357 Cr.P.C. is an important provision but the Courts have seldom invoked it perhaps due to ignorance of the object of it and therefore, the Supreme Court in Ankush Shivaji Gaikwad (supra) has given directions that the Courts shall consider the same in every criminal case. Quantum of compensation 79. The amount of compensation is to be determined by the Court depending upon the facts and circumstances of each case, nature of crime, justness of claim and the capacity of the accused to pay. While determining the paying capacity of the accused, the Court would also take into consideration the present occupation and income of the accused. The accused can also be directed to pay monthly compensation out of his income. When the compensation is paid through earnings, the accused will also be automatically reformed.

80. The Court has to compute the compensation which the victims are entitled to claim against the accused under Civil Law. Since the victims of the road accidents are entitled to compensation under the Motor Vehicles Act, 1988, the Court has to take recourse to the principles for computation of compensation under the Motor Vehicles Act, 1988.

81. In cases resulting in death, the multiplier method has been accepted as a sound method for determining the compensation to the family of the deceased in law of torts. The multiplier method is statutorily recognized for computation of compensation in Section 163A of the Motor Vehicles Act, 1988 in death cases. The multiplier method is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident.

82. Before awarding any compensation under Section 357 Cr.P.C., the Court shall consider whether any compensation has been received by the victim or his family

by an award of the Motor Accident Claims Tribunal. If the victim / his family have received adequate compensation by an award of the Motor Accident Claims Tribunal, the compensation under Section 357 Cr.P.C. shall be restricted to a reasonable conventional compensation in the facts and circumstances of each case. However, if the victim(s) / his family have not received any compensation by an award of the Motor Accident Claims Tribunal, the Court in exercise of its jurisdiction under Section 357 Cr.P.C. shall compute the compensation which the victim(s) / his family would be entitled by applying the well settled principles under the Motor Vehicles Act, 1988.

Protection of the compensation 83. Most of the victims of the road accidents are from the lower strata of the society and are sole bread earners having large family. The legal representatives of the deceased have no knowledge of investment and saving. There is a danger of the money being wasted or the victims being cheated. It is therefore in the interest of justice for the Court to formulate an appropriate investment plan for protection of the compensation amount.

Summary Inquiry 84. A summary inquiry is necessary to ascertain the above facts unless the facts as emerging in the course of trial are so clear that the Court considers it unnecessary to do so. The list of relevant facts/documents to be collected during such inquiry in road accident matters are as under:

Part-I - Circumstances of the offence

- 1 FIR No., Offence and Police Station .
- 2 Offences as per chargesheet .
- 3 Date, time and place of accident .
- 6 Particulars of the offending vehicle(s) . Whether the victim was: a. Pedestrian b. Cyclist c. Scooterist. If so, whether wearing helmet. d. Travelling by a vehicle?. If so, number of persons travelling.
- 4 Brief description of how the accident took place. .Enclose the photographs.
- 5 Exact spot of the vehicle(s) and the victim(s) involved .before and after the accident. Enclose copy of Site plan. Directions of movement of vehicle(s) Skid marks Lamp post Traffic lights?. If existed, whether functional?. Zebra crossing etc. Existence of speed breakers
- 8 Lane of the vehicle in which the accident took place. . Whether one way or two way?. of the road, whether it was having central verge or
- 1 Width 0 not?. . Visibility at the time of the accident Condition of the road Approximate speed of the vehicle(s). Permissible speed limit at the site of the accident.
- 1 Number of vehicles and other road users on the road at 3 the time of accident viz. whether the traffic on road was . dense or otherwise?. Mechanical inspection:a. Details of damage of the vehicle(s) b. Point

of impact c. Paint marks Who reported the accident to the police?. Who shifted the injured to the hospital and at what time?. Name of the hospital(s) where treated?. Period of hospitalization Period of treatment Whether injured underwent surgery(s)?. If so, give particulars. Also give particulars of future surgery(s), if required?. Whether any hospital refused to give treatment to the injured?. Whether there was any delay in starting the treatment?. Whether the injured was provided cashless treatment by the Insurance Company?. Consequences of the accident:a. Whether resulted in death or injury or both?. b. Number of persons injured/died.

Part-II - Circumstances of the accused Name and address Age G Gender Education Occupation Family Income (monthly) Driving conditions such as duty hours Driving licence:a. Driving License No.b. Period of validity c. Issued by d. Class of vehicle Whether driving licence suspended?. Whether disqualified from driving?. Whether the driving license found to be fake/forged?. If yes, whether accused prosecuted for procuring/using fake/forged license?. Give particulars. If learner licence, whether driving under supervision?. Whether driving under influence of liquor/drugs?. Whether accused is the owner/paid driver/otherwise of vehicle?. Whether driving with the consent of the owner?. Whether the accused reported the accident to the police?. Whether the accused provided any assistance to the victim?. If the accused fled from the spot, the date on which he appeared before the police. Whether the accused co-operated in the investigation?. Whether the accused discharged the duties under Sections 132 and 134 MV Act, 1988?. If no, whether the accused has been prosecuted under Section 187 of MV Act?. (a) Paying capacity of the accused and his family (i) Capacity to pay lump-sum compensation. (ii) Capacity to pay monthly compensation. (b) Whether the accused has truly disclosed all his assets, income and expenditure in his affidavit?. Part-III - Circumstances relating to the owner of the offending vehicle(s) Name and address of registered owner. In case of Companies, persons in charge as per Section 199 of MV Act. In case of sale of the vehicle, give particulars of the purchaser, date of transfer and attach documents relating to the transfer. Registration no., make, model, year, private or commercial (public service vehicle, goods carriage and educational institution bus) Particulars of the Insurance:a. Policy Number b. Period c. Validity d. Issued by e. Nature of policy i.e. Third party or comprehensive. Attach copy of the policy. If educational

institution bus, whether directions of Honble Supreme Court in R.K.Malik v. Kiran Pal, (2009) 14 SCC1 complied with?. In case of commercial vehicle:a. Particulars of fitness b. Particulars of permit Whether any breach of Insurance Policy?. Number of persons travelling in the offending vehicle. Whether the offending vehicle had tinted glasses. Whether the offending vehicle had faulty/ no number plate?. Mechanical condition of the vehicle before/after impact. Whether the brake lights & other lights were functional before accident?. Whether the vehicle was properly maintained?. Whether the owner reported the accident to the Insurance Company?. If so, when?. In case the accused-driver fled from the spot, did the owner produce the accused before the police?. If so, when?. Attach copy of notice under Section 133 MV Act and its reply. Was the driver employed on a monthly or daily basis?. Attach proof of employment of driver such as, appointment letter, salary slips, duty register or other relevant documents. Did the owner co-operate in the investigation?. Whether the owner discharged his duties under Sections 133 and 134 MV Act?. If no, whether the owner has been prosecuted under Section 187 MV Act?. In case of un-insured vehicle:(a) Has the owner been prosecuted under Section 196 of the Motor Vehicles Act?. (b) Did the owner make payment of compensation to the victim or his family?. If so, give particulars. (c) Has the offending vehicle been seized/sold in terms of Rule 6 of Delhi Motor Accident Claims Tribunal Rules, 2008 Part-IV - Impact of the offence on the victim(s) Death Cases:a. Name and address of the deceased b. Age of the deceased c. Gender of the deceased d. Occupation of the deceased e. Income (Monthly) of the deceased Legal heirs/Guardian:- f. Name g. Age h. Address i. Relationship j. Financial status/ condition of the deceaseds family Injury Cases:a. Name and address of injured b. Age c. Gender d. Occupation e. Income (Monthly) f. Nature of injury g. MLC details h. Whether any permanent disability?. If yes, give details i. Expenditure incurred on treatment, conveyance, special diet, attendant, etc. j. Whether the injured got reimbursement of medical expenses from employer or under Mediclaim policy. k. Loss of earning capacity l. Details of the family/ dependants of the victim. Financial/other loss suffered a. Nature of loss b. Quantum of loss/damage suffered c. Expenditure incurred by the victim in making good the loss d. Future expenses to be incurred. Whether the claimants filed a claim before MACT?. If yes, how much?. Whether any compensation has been

awarded by MACT?. If yes, how much and against whom?. Give the break-up of the share of the claimants in the award amount?. Enclose a copy of the award. Was the compensation awarded after an enquiry on merits or was it an order of Lok Adalat?. Whether the compensation awarded by MACT has been received by the claimant(s)?. If yes, enclose a copy of the receipt. Part-V - Relevant documents to be collected during Inquiry

85. First Information Report
Site plan
Photographs
MLC Mechanical inspection report
Driving license of the accused
Proof of employment of driver such as appointment letter, salary slips, duty register etc.
Registration certificate of the offending vehicle
In case of transfer of vehicle, sale documents, possession letter or any other document relating to transfer, if any.
Insurance Policy of the offending vehicle
Proof of age and income of the injured/deceased
Proof of injuries and expenditure on treatment
Disability certificate of the injured
Proof of reimbursement of medical expenses by employer or under a Mediclaim policy
Proof of legal heirs/guardian of the deceased
Award by MACT, if any
Receipt of award, if any
Affidavit of assets, income and expenditure of the accused in terms of *Puneet Kaur v. Inderjit Singh Sawhney*, 183 (2011) DLT403

If the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court shall invoke Section 357A Cr.P.C. to recommend the case to the State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2011. Need for a sentencing policy in road accident cases

86. It is the duty of the Courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed.

87. The Courts for the purpose of deciding just and appropriate sentence to be awarded for an offence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed.

88. The principles are dissected into two different compartments-one being the aggravating circumstances and, the other being the mitigating circumstance. To balance the two is the primary duty of the court.

89. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts.

90. A uniform sentencing policy has many benefits, namely, to reduce judicial disparity in sentencing; promote more uniform and consistent sentencing; make the sentencing process more open and understandable; and provide a rational basis for sentencing and increase judicial accountability.

91. A proper sentence is a composite of many factors, including the nature of the offence, the circumstances - extenuating or aggravating - of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, for such a deterrent in respect to the particular type of offence involved.

92. Courts ought to base sentencing decisions on various different rationales - most prominent amongst which would be proportionality and deterrence. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it. Sentencing guidelines 93. For awarding appropriate sentence to the accused in road accident cases, the Court has to take into consideration the nature of crime, circumstances of the crime, circumstances of the accused, impact of the crime on the victim(s)/his family, aggravating factors and mitigating circumstances. The list of circumstances of the crime, circumstances of the accused, impact of the crime on victim(s) are mentioned in paragraph 52 above. This Court has shortlisted the relevant aggravating and

mitigating circumstances in road accident matters which are as under: Aggravating factors Vehicle not insured Driving without valid driving licence Driving while disqualified Learner driving without supervision Fake/forged driving license Vehicle taken out without the consent of the owner Driving a stolen vehicle Accused under influence of liquor or drugs. Give quantity/ parameters/ recovery, if any. Driving dangerously or at excessive speed Non-observance of traffic rules Driving aggressively:a. Jumping red light b. Abrupt braking. c. Neglecting to keep to the left of the road d. Driving criss-cross e. Driving too close to the vehicle in front. f. Persistent inappropriate attempts to overtake g. Cutting in after overtaking h. Racing/competitive driving i. Crossing speed limit j. Disregarding any warnings k. Driving on the wrong side l. Overtaking where prohibited m. Driving with loud music n. Improper reversing o. Improper passing p. Improper turning q. Driving in no entry hours r. Not slowing down at crossing/road junction s. Turning without indication t. Not respecting stop sign on road surface. u. Not respecting right of way to pedestrian Previous conviction(s) Past history of bad driving Poorly maintained vehicle Dangerously loaded vehicle Using a mobile phone while driving Driving when knowingly deprived of adequate sleep or rest Guilty of violation of traffic rules in the past Improper parking/Parking on the wrong side of the road Suffering from medical condition that impairs driving skills. More than one injured/dead Irresponsible behaviour:a. Failing to stop after accident b. Ran away from the spot after leaving the vehicle c. Removed the vehicle from the spot. d. Destruction or attempt to destroy the evidence. e. Falsely claiming that one of the victims was responsible for the accident f. Trying to throw the victim off the bonnet of the vehicle by swerving in order to escape g. Causing death/injury in the course of dangerous driving post commission of crime or chased by police in an attempt to avoid detection or apprehension. h. Offence committed while the offender was on bail. i. Took any false defence j. Misled the investigation k. Post accident road rage behaviour, give details. Other offences under MV Act committed at the same time:a. Sections 3/181- Driving without license b. Sections 4/181- Driving by minor c. Sections 5/181-Allowing unauthorized person to drive d. Sections 56/192- Without fitness e. Sections 66(1)/192A - Without permit f. Sections 112/183(1)- Over speed g. Sections 113/194- Over weight h. Sections 119/177- Jumping red light i. Sections 119/177- Violation of mandatory signs (One way, No right turn, No

left turn) j. Sections 122/177- Improper obstructive parking k. Sections 146/196- Without insurance l. Section 177/RRR17(1)- Violation of One way m. Section 177/RRR29- Carrying High/Long Load n. Section 177/CMVR138(3)- Not using seat belt o. Section 177/RRR6- Violation of No overtaking p. Section 177/CMVR105- Without light after sunset q. Section 179- Misbehaviour with police officer r. Section 184- Driving dangerously s. Section 184- Using mobile phone while driving t. Section 185- Drunken driving/under influence of drugs u. Section 187- Violation of Sections 132(1)(c), 133 and 134 Mitigating circumstances Provided any direct/ positive assistance to the victim Informed the police/family of the victim Took the victim to the hospital Visited the victim at the hospital Remained at the spot till arrival of the police Did not remove the offending vehicle from the spot till the arrival of the police Paid compensation/ medical expenses to the victim/his family Co-operated in investigation Timely plea of guilt Good driving record No previous convictions Victim was a close relation or a friend Genuine shock or remorse Age and gender of the accused Accused also suffered injuries in the accident Victim or a third party contributed to the accident, give details. Weather condition/ visibility Any emergent condition while driving?. In case of a pedestrian-victim, the victim jumped the railing or did not use zebra crossing. Sudden braking for safety reasons Sufficient brakes applied by accused to avoid accident Traffic light not working Accused had a difficult/ deprived background Victim Impact Report (VIR) 94. The Court has to conduct a summary inquiry to ascertain the relevant facts/documents. Such an inquiry may be conducted through the SHO of the police station concerned who shall submit a report named as Victim Impact Report (in short VIR) which shall be in the following format: VICTIM IMPACT REPORT (VIR) (To be submitted in all cognizable road accident matters in terms of judgment dated 11th October, 2013 of the Honble Delhi High Court in Satya Prakash v. State, Crl. Rev. P.338/2009) PART-I - CIRCUMSTANCES OF THE OFFENCE1 2.

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5. FIR No., Offence and Police Station Offences as per chargesheet Date, time and place of accident Particulars of the offending vehicle(s) Whether the victim was: a. Pedestrian b. Cyclist c. Scooterist. If so, whether wearing helmet.

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23. d. Travelling by a vehicle?. If so, number of persons travelling. Brief description of how the accident took place?. Enclose the photographs. Exact spot of the vehicle(s) and the victim(s) involved before and after the accident. Enclose copy of Site plan. Directions of movement of vehicle(s) Skid marks Lamp post Traffic lights?. If existed, whether functional?. Zebra crossing etc. Existence of speed

breakers Lane of the vehicle in which the accident took place. Whether one way or two way?. Width of the road, whether it was having central verge or not?. Visibility at the time of accident Condition of the road Approximate speed of the vehicle(s). Permissible speed limit at the site of the accident. Number of vehicles and other road users on the road at the time of accident viz. whether the traffic on road was dense or otherwise?. Mechanical Inspection:a. Details of damage of the vehicle(s) b. Point of impact c. Paint marks Who reported the accident to
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33. the police?. Who shifted the injured to the hospital and at what time?. Whether the injured got proper treatment on time?. Name of hospital(s) where treated?. Period of hospitalization Period of treatment Whether injured underwent surgery(s)?. If so, give particulars. Also give particulars of future surgery(s), if required?. Whether any hospital refused to give treatment to the injured?. Whether there was any delay in starting the treatment?. Whether the injured was provided cashless treatment by the Insurance Company?. Consequences of the accident:a. Whether resulted in death or injury or both?. b. Number of persons injured/died. :
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PART-II - CIRCUMSTANCES OF THE ACCUSED³⁴ Name and address ³⁵.

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38. 39. Age Gender Education Occupation Family ⁴⁰.

41. Income (monthly) Driving conditions such as duty hours Driving licence:- ⁴².
Crl.Rev.P.No.338/2009 ⁴³.

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55. a. Driving License No.b. Period of validity c. Issued by d. Class of vehicle
Whether driving licence suspended?. Whether disqualified from driving?. Whether
the driving license found to be fake/forged?. If yes, whether accused prosecuted
for procuring/using fake/forged license?. Give particulars. If learner licence,
whether driving under supervision?. Whether driving under influence of
liquor/drugs?. Whether accused is the owner/paid driver/otherwise of vehicle?.
Whether driving with the consent of the owner?. Whether the accused reported the
accident to the police?. Whether the accused provided any assistance to the
victim?. If the accused fled from the spot, the date on which he appeared before
the police. Whether the accused cooperated in the investigation?. Whether the

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74. b. Particulars of permit Whether any breach of Insurance Policy?. Number of persons travelling in the offending vehicle. Whether the offending vehicle had tinted glasses. : ----- : ----- Whether the offending vehicle had faulty/ no number plate?. Mechanical condition of the vehicle before/after impact Whether the brake lights & other lights were functional before accident?. Whether the vehicle was properly maintained?. Whether the owner reported the accident to the Insurance Company?. If so, when?. In case the accused-driver fled from the spot, did the owner produce the accused before the police?. If so, when?. Attach copy of notice under Section 133 MV Act and its reply. Was the driver employed on a monthly or daily basis?. Attach proof of employment of driver such as, appointment letter, salary slips, duty register or other relevant documents. Did the owner co-operate in the investigation?. : :

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Whether the owner : discharged his duties under Sections 133 and 134 MV Act?. If no, whether the owner has been prosecuted under Section 187 MV Act?. In case of un-insured vehicle:- (a) Has the owner been : prosecuted under Section 196 of the Motor Vehicles Act?. (b) Did the owner make : payment of compensation to the victim or his family?. If so, give particulars. (c) Has the offending vehicle been seized/sold in terms of Rule 6 of Delhi Motor Accident Claims Tribunal Rules, 2008

PART-IV - IMPACT OF THE OFFENCE ON THE VICTIM(S) (In case of more than one deceased/injured, submit separate Part IV for each deceased/injured) 75. Death Cases:a. Name and address of : the deceased b. Age of the deceased : c. Gender of the deceased : d. Occupation of the deceased e. Income (Monthly) of the deceased Legal heirs/Guardian:f. Name g. Age h. Address i. Relationship j. Financial status/ condition of the deceaseds family 76. : -----

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Injury Cases:a. Name and address of : injured CrI.Rev.P.No.338/2009

b. c. d. e. f. Age Gender Occupation Income (Monthly) Nature of injury : : : : g. MLC details h. Whether any permanent disability?. If yes, give details i. Expenditure incurred on treatment, conveyance, special diet, attendant, etc. j. Whether the injured got reimbursement of medical expenses from employer or under a Mediclaim policy. k. Loss of earning capacity l. Details of the family/ dependants of the victim.

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79. : : Financial/other loss suffered a. Nature of loss b. Quantum of loss/damage suffered c. Expenditure incurred by the victim in making good the loss d. Future expenses to be incurred. Whether the claimants filed a claim before MACT?. If yes, how much?. Whether any compensation has been awarded by MACT?. If yes, how much and against whom?. Give the break-up of the share of
Crl.Rev.P.No.338/2009 : :

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81. the claimants in the award amount?. Enclose a copy of the award. Was the compensation : awarded after an enquiry on merits or was it an order of Lok Adalat?. Whether the compensation : awarded by MACT has been received by the claimant(s)?. If yes, enclose a copy of the receipt.-.-----

PART-V - AGGRAVATING FACTORS82 83.

84. 85. 86.

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92. Vehicle not insured Driving without valid driving licence Driving while disqualified Learner driving without supervision Fake/forged driving license Vehicle taken out without the consent of the owner Driving a stolen vehicle Accused under influence of liquor or drugs. Give quantity/ parameters/ recovery, if any. Driving

dangerously or at excessive speed Non-observance of traffic rules Driving aggressively: a. Jumping red light b. Abrupt braking. c. Neglecting to keep to the left of the road d. Driving criss-cross e. Driving too close to the vehicle in front f. Persistent inappropriate attempts to overtake g. Cutting in after overtaking h. Racing/competitive driving i. Crossing speed limit j. Disregarding any warnings k. Driving on the wrong side l. Overtaking where prohibited m. Driving with loud music n. Improper reversing o. Improper passing

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104. p. Improper turning q. Driving in no entry hours r. Not slowing down at crossing/road junction s. Turning without indication t. Not respecting stop sign on road surface. u. Not respecting right of way to pedestrian Previous conviction(s) Past history of bad driving Poorly maintained vehicle Dangerously loaded vehicle Using a mobile phone while driving Driving when knowingly deprived of adequate sleep or rest Guilty of violation of traffic rules in the past Improper parking/Parking on the wrong side of the road Suffering from medical condition that impairs driving skills. More than one injured/dead Irresponsible behaviour:a. Failing to stop after accident b. Ran away from the spot after leaving the vehicle c. Destruction or attempt to destroy the evidence. d. Falsely claiming that one of the victims was responsible for the accident e. Trying to throw the victim off the bonnet of the vehicle by swerving in order to escape f. Causing death/injury in the course of dangerous driving post commission of crime or chased by police in an attempt to

avoid detection or apprehension. g. Offence committed while the offender was on bail. h. Took any false defence i. Misled the investigation j. Post accident road rage behaviour, give details. Other offences under MV Act committed at the same time: a. Sections 3/181- Driving without license b. Sections 4/181- Driving by minor c. Sections 5/181- Allowing unauthorized person to drive d. Sections 56/192- Without fitness e. Sections 66(1)/192A - Without permit f. Sections 112/183(1)- Over speed g. Sections 113/194- Over weight h. Sections 119/177- Jumping red light

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124. Provided any direct/ positive assistance to the victim Informed the police/family of the victim Took the victim to the hospital Visited the victim at the hospital Remained at the spot till arrival of the police Did not remove the offending vehicle form the spot till the arrival of the police Paid compensation/ medical expenses to the victim/his family Co-operated in investigation Timely plea of guilt Good driving record No previous convictions Victim was a close relation or a friend Genuine shock or remorse Age and gender of the accused Accused also suffered injuries in the accident Victim or a third party contributed to the accident, give details. Weather condition/ visibility : : : : : :
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Any emergent condition while driving?. : In case of a pedestrian-victim, the victim jumped the railing or did : not use zebra crossing.

125. 126.

127. 128.

129. Sudden braking for safety reasons Sufficient brakes applied by accused to avoid accident Traffic light not working Accused had a difficult/ deprived background Any other mitigating circumstance : : : : :

PART-VII - RELEVANT DOCUMENTS TO BE ATTACHED130 131.

132. 133.

134. 135.

136. 137.

138. 139.

140. 141.

142. 143.

144. 145.

146. 147.

148. First Information Report Site plan Photographs MLC Mechanical inspection report Driving license of the accused Proof of employment of driver such as appointment letter, salary slips, duty register etc. Registration certificate of the offending vehicle In case of transfer of vehicle, sale documents, possession letter or any other document relating to transfer, if any. Insurance Policy of the offending vehicle Proof of age and income of the injured/deceased. Proof of injuries and expenditure on treatment Disability certificate of the injured Proof of reimbursement of medical expenses by employer or under a Mediclaim policy Proof of legal heirs/guardian of the deceased Award by MACT, if any Receipt of award, if any Affidavit of assets, income and expenditure of the accused in terms of *Puneet Kaur v. Inderjit Singh Sawhney*, 183 (2011) DLT403 Any other relevant document(s) Place: : : : : : -----

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----- : ----- Signatures and particulars of the Dated:

SHO _____ ACP _____ 95. The accused, victim(s) and Insurance Companies shall extend full cooperation Crl.Rev.P.No.338/2009 and shall furnish the information/documents to the Investigating Officer.

96. The Court shall provide the copy of the VIR to the accused as well as the victim and shall afford them a reasonable opportunity to respond to the same. The Court shall hear the accused, victim(s) and State before passing the order on the sentence and compensation.

97. The Court shall take into consideration the aggravating factors and its interaction with the mitigating circumstances in the facts of each case to ascertain whether the case falls in the category of Most Serious Cases; Serious Cases or Less Serious Cases to award the appropriate sentence. The Most Serious Cases may warrant higher punishment whereas the Less Serious Cases may warrant

lower punishment.

98. With respect to the fresh road accident cases where the challans have not yet been filed, the VIR shall be filed before the learned Metropolitan Magistrate along with the challan/final report under Section 173 Cr.P.C. The copy of the VIR be also filed before the concerned Motor Accident Claims Tribunal along with the Detailed Accident Report.

99. The accident cases where the challan has already been filed, the VIR be submitted before the concerned Metropolitan Magistrate within a period of 60 days.

100. The accident cases in which the accused has been convicted and the order of sentence has not been passed, the VIR be submitted before hearing on sentence.

101. In cases of pending appeals/revisions against the conviction/ sentence, the VIR be submitted before the final hearing.

102. The Trial Courts shall ensure strict compliance of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 which prohibits the Court from releasing the uninsured vehicle unless the registered owner furnishes sufficient security to the satisfaction of the Court. On the expiry of three months of the seizure, the Magistrate has to auction the offending vehicle and send the amount received in auction to the Claims Tribunal to be adjusted in the award amount.

103. The Trial Courts shall also take note of the Claims Tribunal Agreed Procedure in *Rajesh Tyagi v. Jaibir Singh*, IV (2010) ACC859 in which Delhi Police agreed to complete the investigation and to file the challan in all road accident matters within 30 days. Considering that the victims of the road accidents are mostly from the lowest strata of the society, the need of compensation is immediate, the civil action for damages is a cumbersome process and the object of Section 357 Cr.P.C. being to provide immediate compensation to the victims instead of waiting for the outcome of the civil action, the Trial Courts should endeavour to complete the trial within one year.

104. Sections 3 and 4 of the Probation of Offenders Act, 1958 and Chapter XXI-A (Plea bargaining) Cr.P.C. for probation and admonition cannot be invoked in Section 304-A IPC road accident trials and therefore, these cases cannot be taken up for plea bargaining. However, Section 482 Cr.P.C. can be invoked in appropriate cases. [See Dalbir Singh v. State of Haryana (supra) and State of Punjab v. Balwinder Singh (supra)].

105. All Courts below namely Metropolitan Magistrates and Sessions Courts shall submit their response as to working of these guidelines and further suggestions. The report for the period from 1st November, 2013 to 31st January, 2014 be submitted to Registrar (Vigilance) of this Court through the District and Sessions Judges by 15th February, 2014. The Public Prosecutors and the Police shall also submit their response through Mr. Dayan Krishnan, Additional Standing Counsel for Delhi Police. The Central Government shall also submit their response through Mr. Sidharth Luthra, learned Additional Solicitor General. The parties in this batch of petitions pending before this Court are also permitted to file their response before 15th February, 2014. This Court shall pass a final order after considering response of the Courts below, prosecution, police and the parties.

106. Copy of the Victim Impact Report (VIR) is attached as Annexure to this judgment for the convenience of the parties.

107. Copy of this judgment be sent to the District and Sessions Judges for circulation to all judicial officers. Copy of this judgment be sent to Registrar (Vigilance) of this Court. Copy of this judgment be also sent to Delhi Judicial Academy and Delhi State Legal Services Authority. Copy of this judgment be also sent to the Director of Prosecution for circulation to all Prosecutors. Copy of this judgment be also sent to Commissioner of Police and Additional Commissioner of Police (Traffic) for compliance by all the SHOs.

108. Copy of this judgment be given dasti to learned Additional Standing Counsel for Delhi Police and learned amici curiae. Copy of this judgment be also given dasti to Ms. Manjusha Wadhwa, learned nominated counsel for Oriental Insurance Co. Ltd. for circulation to all the Insurance Companies either directly or through their nominated counsels.

109. This Court appreciates the valuable and effective assistance rendered by Mr. S.S. Rathi, learned AD&SJ/OSD, Delhi State Legal Services Authority; Mr. Sidharth Luthra, learned Additional Solicitor General; Mr. Dayan Krishnan, learned Additional Standing Counsel for Delhi Police; the learned Amici Curiae (Mr. J.P. Sengh, Senior Advocate and Mr. Manoj Taneja, Advocate); the learned APPs attached to this Court (Mr. Varun Goswami, Mr. M.P. Singh, Mr. Neeraj Kumar Singh, Mr. Karan Singh and Ms. Ritu Gauba); the Law Researchers (Mr. Rituj Chopra and Mr. Siddhant Srivastava); and the Law Interns.

110. This Court hopes and trusts that principles formulated by this Court will help the victims shall get timely justice. This Court hopes and trusts that the competent authorities of the State shall follow the same in true letter and spirit and would not show any kind of deviancy.

111. List for hearing the petitions on merits on 17 th December, 2013 at 2:30 pm. J.R. MIDHA, J OCTOBER11 2013 aj ANNEXURE VICTIM IMPACT REPORT (VIR) (To be submitted in all cognizable road accident matters in terms of judgment dated 11th October, 2013 of the Honble Delhi High Court in Satya Prakash v. State, Crl. Rev. P.338/2009) PART-I - CIRCUMSTANCES OF THE OFFENCE1 2.

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12. FIR No., Offence and Police Station Offences as per chargesheet Date, time and place of accident Particulars of the offending vehicle(s) Whether the victim

was: a. Pedestrian b. Cyclist c. Scooterist. If so, whether wearing helmet. d. Travelling by a vehicle?. If so, number of persons travelling. Brief description of how the accident took place?. Enclose the photographs. Exact spot of the vehicle(s) and the victim(s) involved before and after the accident. Enclose copy of Site plan. Directions of movement of vehicle(s) Skid marks Lamp post Traffic lights?. If existed, whether functional?. Zebra crossing etc. Crl.Rev.P.No.338/2009

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-----: ----- Whether the injured got proper treatment on time?. Name of hospital(s) where treated?. Period of hospitalization Period of treatment Whether injured underwent surgery(s)?. If so, give particulars. Also give particulars of future surgery(s), if required?. Whether any hospital refused to give treatment to the injured?. Whether there was any delay in starting the treatment?. Whether the injured was provided cashless treatment by : ----- CrI.Rev.P.No.338/2009 :

Company?. Consequences of the accident:a. Whether resulted in death or injury or both?. b. Number of persons injured/died. : -----:

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38. 39. Age Gender Education Occupation Family 40.

41. Income (monthly) Driving conditions such as duty hours Driving licence:a. Driving License No.b. Period of validity c. Issued by d. Class of vehicle Whether driving licence suspended?. Whether disqualified from driving?. Whether the

driving license found to be fake/forged?. If yes, whether accused prosecuted for procuring/using fake/forged license?. Give particulars. If learner licence, whether driving under supervision?. Whether driving under influence of liquor/drugs?. Whether accused is the owner/paid driver/otherwise of vehicle?.

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48. Crl.Rev.P.No.338/2009 :

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56. Whether driving with the consent of the owner?. Whether the accused reported the accident to the police?. Whether the accused provided any assistance to the victim?. If the accused fled from the spot, the date on which he appeared before the police. Whether the accused cooperated in the investigation?. Whether the accused discharged the duties under Sections 132 and 134 MVAct, 1988?. If no, whether the accused has been prosecuted under Section 187 of MV Act?. (a)

Paying capacity of the accused and his family:(i) Capacity to pay lumpsum compensation. (ii) Capacity to pay monthly compensation (b) Whether the accused has truly disclosed all his assets, income and expenditure in his affidavit?. Any other information regarding conduct of the accused : -----:

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----- PART-III - CIRCUMSTANCES RELATING TO THE OWNER OF THE OFFENDING VEHICLE(S) 57. Name and address of : registered owner. In case of Companies, persons in charge as per Section 199 of MV Act. In case of sale of the vehicle, give particulars of the purchaser, date of transfer and attach documents relating to the transfer. Crl.Rev.P.No.338/2009 58.

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69. Registration no., make, model, year, private or commercial (public service vehicle, goods carriage and educational institution bus) Particulars of the Insurance:a. Policy Number b. Period c. Validity d. Issued by e. Nature of policy i.e. Third party or comprehensive. Attach copy of the policy. If educational institution bus, whether directions of Honble Supreme Court in R.K.Malik v. Kiran Pal, (2009) 14 SCC1complied with?. In case of commercial vehicle:a. Particulars of fitness b. Particulars of permit Whether any breach of Insurance Policy?. Number of persons travelling in the offending vehicle. Whether the offending

vehicle had tinted glasses. :

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----- : ----- Whether the offending vehicle had faulty/ no number plate?. Mechanical condition of the vehicle before/after impact Whether the brake lights & other lights were functional before accident?. Whether the vehicle was properly maintained?. Whether the owner reported the accident to the : CrI.Rev.P.No.338/2009 : -----: -----: ----- : ----- :

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74. Insurance Company?. If so, when?. In case the accused-driver : fled from the spot, did the owner produce the accused before the police?. If so, when?. Attach copy of notice under Section 133 MV Act and its reply. Was the driver employed : on a monthly or daily basis?. Attach proof of employment of driver such as, appointment letter, salary slips, duty register or other relevant documents. Did the owner co-operate in : the investigation?. Whether the owner : discharged his duties under Sections 133 and 134 MV Act?. If no, whether the owner has been prosecuted under Section 187 MV Act?. In case of un-insured vehicle:(a) Has the owner been : prosecuted under Section 196 of the Motor Vehicles Act?. (b) Did the owner make : payment of compensation to the victim or his family?. If so, give particulars. (c) Has the offending vehicle been seized/sold in terms of Rule 6 of Delhi Motor Accident Claims Tribunal Rules, 2008 CrI.Rev.P.No.338/2009

PART-IV - IMPACT OF THE OFFENCE ON THE VICTIM(S) (In case of more than one deceased/injured, submit separate Part IV for each deceased/injured) 75.
Death Cases:a. Name and address of : the deceased b. Age of the deceased : c. Gender of the deceased : d. Occupation of the deceased e. Income (Monthly) of the deceased Legal heirs/Guardian:f. Name g. Age h. Address i. Relationship j. Financial status/ condition of the deceaseds family 76. : -----
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Injury Cases:a. Name and address of : injured b. c. d. e. f. Age Gender Occupation Income (Monthly) Nature of injury g. MLC details : : : : : : h. Whether any permanent : disability?. If yes, give details CrI.Rev.P.No.338/2009

i. Expenditure incurred on treatment, conveyance, special diet, attendant, etc. j. Whether the injured got reimbursement of medical expenses from employer or under a Mediclaim policy. k. Loss of earning capacity l. Details of the family/ dependants of the victim.

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81. Financial/other loss suffered a. Nature of loss b. Quantum of loss/damage suffered c. Expenditure incurred by the victim in making good the loss d. Future expenses to be incurred. Whether the claimants filed a claim before MACT?. If yes, how much?. Whether any compensation has been awarded by MACT?. If yes, how much and against whom?. Give the break-up of the share of the claimants in the award amount?. Enclose a copy of the award. Was the compensation awarded after an enquiry on merits or was it an order of Lok Adalat?. Whether the compensation awarded by MACT has been received by the claimant(s)?. If yes, enclose a copy of the receipt. CrI.Rev.P.No.338/2009 : :

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----- : PART-V - AGGRAVATING FACTORS82 83.

84. 85. 86.

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94. 95. Vehicle not insured : Driving without valid driving licence : Driving while disqualified : Learner driving without supervision : Fake/forged driving license : Vehicle taken out without the consent of the owner : Driving a stolen vehicle : Accused under influence of liquor or drugs. Give quantity/ : parameters/ recovery, if any. Driving dangerously or at excessive speed : ----- Non-observance of traffic rules Driving aggressively:a. Jumping red light b. Abrupt braking. c. Neglecting to keep to the left of the road d. Driving criss-cross e. Driving too close to the vehicle in front : ----- : : : ----- f. Persistent inappropriate attempts to overtake g. Cutting in after overtaking h. Racing/competitive driving i. Crossing speed limit j. Disregarding any warnings k. Driving on the wrong side l. Overtaking where prohibited m. Driving with loud music n. Improper reversing o. Improper passing p. Improper turning q. Driving in no entry hours r. Not slowing down at crossing/road junction s. Turning without indication t. Not respecting stop sign on road surface. u. Not respecting right of

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105. p. Section 177/CMVR105- Without light after sunset q. Section 179- Misbehaviour with police officer r. Section 184- Driving dangerously s. Section 184- Using mobile phone while driving t. Section 185- Drunken driving/under influence of drugs u. Section 187- Violation of Sections 132(1)(c), 133 and 134 v. Any other offence Any other aggravating factor : : : : : : : :

----- PART-VI -
MITIGATING CIRCUMSTANCES106 107.

108. 109.

110. 111.

112. 113.

114. 115.

116. 117.

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120. 121.

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129. Provided any direct/ positive assistance to the victim Informed the police/family of the victim Took the victim to the hospital Visited the victim at the hospital Remained at the spot till arrival of the police Did not remove the offending vehicle form the spot till the arrival of the police Paid compensation/ medical expenses to the victim/his family Co-operated in investigation Timely plea of guilt Good driving record No previous convictions Victim was a close relation or a friend

Genuine shock or remorse	Age and gender of the accused	Accused also suffered injuries in the accident	Victim or a third party contributed to the accident, give details.	Weather condition/visibility	:	:	:	:	:	:
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132. 133.

148. First Information Report Site plan Photographs MLC Mechanical inspection report Driving license of the accused Proof of employment of driver such as appointment letter, salary slips, duty register etc. Registration certificate of the offending vehicle In case of transfer of vehicle, sale documents, possession letter or any other document relating to transfer, if any. Insurance Policy of the offending vehicle Proof of age and income of the injured/deceased. Proof of injuries and expenditure on treatment Disability certificate of the injured Proof of reimbursement of medical expenses by employer or under a Mediclaim policy Proof of legal heirs/guardian of the deceased Award by MACT, if any Receipt of

award, if any Affidavit of assets, income and expenditure of the accused in terms
of Puneet Kaur v. Inderjit Singh Sawhney, 183 (2011) DLT403Any other relevant
document(s) Place: Dated: : : : : : : :

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----- Signatures and particulars of the SHO_____

ACP_____

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