

+ MAC.APP.No.602/2009Date of Decision: 5th February, 2010

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PRAKASH & ORS Appellants
 Through : Mr. F.K. Jha,
 Mr. Rupesh Rayan and
 Mr. R.N. Singh, Advs.

versus

ARUN KUMAR SAINI & ANR Respondents
 Through : Mr. Pankaj Seth, Adv.
 for R-2.
 Ms. Rajdipa Behura, amicus
 curiae.

**CORAM :-
 THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. This appeal involves a important question as to whether an unborn child in womb should be considered at par with a minor child.
2. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.6,11,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.
3. The accident dated 8th June, 2008 resulted in the death of Indu Devi. The deceased was survived by her husband and two

children who filed the claim petition before the learned Tribunal.

4. The deceased was aged 25 years at the time of the accident. The deceased was a housewife. It was claimed that the deceased was also working as a housemaid and was earning Rs.5,500/- to Rs.6,000/- per month. However, in the absence of any documentary proof of occupation and income, the learned Tribunal took the deceased to be a housewife and the value of her services was taken as Rs.3,000/- per month and the multiplier of 16 was applied to compute the loss of dependency at Rs.5,76,000/-. Rs.10,000/- has been awarded for loss of consortium, Rs.20,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The total compensation awarded is Rs.6,11,000/-.

5. The learned counsel for the appellants submits that the deceased was pregnant with a foetus of about 24 to 28 weeks (about seven months) at the time of the accident. The learned counsel further submits that the appellants are entitled to compensation for the death of unborn child in the womb.

6. The learned Tribunal has held that though seven months pregnancy was recorded in the MLC but the post-mortem report – Ex.P-1 (colly.) recorded that the uterus of the deceased did not contain any foetus. The learned Tribunal further held that no doctor has been examined to prove the pregnancy of the deceased and, therefore, no compensation was awarded for the death of the foetus. The finding of the learned Tribunal in this regard is as under:-

“In the MLC of the deceased Indu Devi bearing no.99734, it has been mentioned that the deceased had a history of 7 months pregnancy but the postmortem report, which has been brought on record collectively as Ex.P-1 clearly states that the Uterus of the deceased did not contain any foetus or any placenta. If the deceased was operated upon the foetus, if any, was removed, then this fact has not been established on record by the petitioner. Even in the petition filed by the petitioner, it has nowhere been mentioned by the petitioner that the deceased Indu Devi was pregnant at the time of accident and carrying a 7 months old foetus and the affidavit of petitioner, which is Ex.PW2/A, carries only a bald testimony of the petitioner no.1 to this effect. No doctor has also been examined by the petitioner to prove this fact. However, the medical evidence in the form of the postmortem report, which has been placed on record, does not fortify the bald stand of the petitioner also. Any other treatment record, which would establish that the deceased was actually pregnant at the time of accident, the mentioning of pregnancy in the MLC is only a history of the patient i.e. the deceased, which was narrated by the person who was accompanying the deceased and in the instant case, it was most probably the petitioner Smt. Ratha. Since the medical evidence has not corroborated this fact, it is held that it was only the deceased Indu Devi, who sustained fatal injuries in the accident in question.”

7. The learned counsel submits that the accident occurred on 8th June, 2008 and the MLC records the “uterus size up to umbilical weight approximately 24 to 28 weeks.” It is submitted that the unborn child died in womb on 17th June, 2008 and was removed while the mother was alive. The mother expired on 14th August, 2008 and at that time, the foetus was not inside the womb of the deceased. However, no material was placed before the Claims Tribunal to prove that the foetus was removed before the death of the deceased.

8. The learned Tribunal did not conduct any inquiry under Section 168 of the Motor Vehicles Act to ascertain whether the dead foetus was removed from the body of the deceased before her death. This Court, therefore, conducted an inquiry under Section 168 of the Motor Vehicles Act to ascertain the truth. Vide order dated 21st December, 2009, the notice was issued to Sushruta Trauma Centre as well as LNJP Hospital to send the doctor who treated the deceased along with the complete medical record of the deceased.

9. On 27th January, 2010, Dr. Satender Kumar, CMO (Casualty Medical Officer), Sushruta Trauma Centre, Delhi and Dr. P.N. Pandey, Head of Neurosurgery Department, LNJP Hospital, New Delhi appeared before this Court and their statements on oath were recorded before this Court. Dr. Satender Kumar deposed that the deceased was brought to Sushruta Trauma Centre on 8th June, 2008 after a road accident. Dr. Satender Kumar examined the deceased and prepared the MLC and admitted her in neurosurgery department. The complete medical record of Sushruta Trauma Centre relating to the deceased was produced and marked as Ex.PW1/1 (Colly.) in which the pregnancy of the deceased has been mentioned at points 'A' & 'B'. The ultrasound of the deceased was also done at Sushruta Trauma Centre. The report of the ultrasound was marked at point 'C'. The deceased was thereafter shifted to LNJP Hospital on the same day.

10. Dr. P.N. Pandey, Head of Neurosurgery Department, LNJP Hospital deposed that the deceased was admitted in LNJP Hospital on 8th June, 2008. CT Scan was performed and the deceased was operated for acute subdural hematoma. After the operation, the deceased was shifted to I.C.U. On 17th June, 2008, there was absence of foetus movement and it was found that the foetus had died. The foetus was removed by the Gynecologist on 17th June, 2008. The original record of LNJP Hospital was produced before this Court and was marked as Ex.PW-2/1 (Colly.) in which the removal of the foetus was mentioned in the record at point 'A'. The deceased expired on 14th August, 2008. Since the foetus was removed from the body of the deceased on 17th June, 2008, there was no foetus in the womb at the time of death of the deceased and, therefore, it did not find mention in the post-mortem report.

11. From the statements of Dr. Satender Kumar, CMO, Sushruta Trauma Centre, Dr. P.N. Pandey, Head of Neurosurgery Department, LNJP Hospital and medical records – Ex.PW1/1 of Sushruta Trauma Centre, Ex.PW2/1 of LNJP Hospital and MLC – Ex. P-1 (colly.), it has been proved beyond doubt that the deceased was about seven months pregnant at the time of the accident on 8th June, 2008. The MLC clearly records “uterus size up to umbilical weight approximately 24 to 26 weeks.” It has further been proved from the statement of Dr. P.N. Pandey and the medical

record – Ex.PW2/1 that the foetus died on 17th June, 2008 and was removed on the same day. The removal of the foetus is mentioned in Ex.PW2/1 (Colly.) at point 'A'. The deceased expired on 14th August, 2008, i.e, after about two months from the date of death of the foetus and, therefore, the foetus was not found in the post-mortem report.

12. The learned counsel for the appellants submits that the unborn child in womb should be considered at par with a minor child and the compensation be awarded for the death of the unborn child.

13. The **Karnataka High Court, Madhya Pradesh High Court, Andhra Pradesh High Court and Kerala High Court** have taken a view that the death of the foetus should be considered as equal to the death of the child for the purpose of computation of compensation in the following cases:-

(i) The Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation Vs. Vidya Shindhe, 2005 ACJ 69 (Karnataka High Court) -

The accident resulted in grievous injuries to a pregnant woman. The surgery known as 'Foetal distress' was conducted and she gave birth to a child who died after two days of delivery. The claim for compensation on account of the death of the child was filed. The learned Tribunal awarded Rs.1,50,000/- towards death of the child which was challenged before the Karnataka High Court on the ground that the claim

was not maintainable as the child was not born on the date of the accident.

The Karnataka High Court held that as per the doctor's advice if the foetus had completed 37 weeks, for all practical purposes even the still-born child has to be considered as child and the claim petition filed by the mother on account of death of her two days old child who was born subsequent to the date of the accident was maintainable. The award of Rs.1,50,000/- by the learned Tribunal was upheld.

The findings of the Karnataka High Court in the above case are as under:-

“As per the doctor's evidence, if the foetus has completed 37 weeks, for all purposes even the still-born child has to be considered as child. In the instant case, in the accident the child had also received injuries which compelled the mother to undergo a surgery. The baby died due to the injuries sustained by him in the accident while in the womb. Though there is no direct impact between the vehicle and the baby, since the baby had received injuries while in the womb; this Court has to hold that there is a nexus between the accident and the cause of death of the child. In the circumstances, this Court is of the opinion that the claim petition filed by the mother on account of the death of her two days baby who has born subsequent to the accident as maintainable.”

(ii) Bhawaribai Vs. New India Assurance Co. Ltd., 2006 ACJ 2085 (Karnataka High Court) -

The claimant suffered abortion on account of the accident. The Karnataka High Court considered the death of foetus in womb at par with death of a minor. The findings of the Court are as under:-

“In the case of abortion and death of foetus in the womb should be considered on par with the case of a death of a minor.”

(iii) Shraddha Vs. Badresh, 2006 ACJ 2067 (Madhya Pradesh High Court) –

The accident resulted in injury to a pregnant women carrying seven months old foetus. Due to accident, the claimant delivered a dead male baby by operation. The Tribunal awarded Rs.70,000/- towards the medical expenses and Rs.80,000/- towards the non-pecuniary compensation.

The appeal was filed for enhancement of the compensation. Madhya Pradesh High Court followed the judgment of the Karnataka High Court in the case of Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation (supra) and enhanced the compensation from Rs.1,50,000/- to Rs.2,50,000/- . The Court held that a still-born baby has to be considered as child.

The findings of the Court are as under:-

“For the purpose of considering the case for awarding compensation even the stillborn baby has to be considered as child. Stillborn baby died in the womb due to the injuries sustained by the appellant in the accident. In the opinion of this Court there is a nexus between the accident and the cause of death of the child. Appellant is entitled for compensation on account of death of or stillborn male baby. It was first delivery of the appellant. Since, no separate amount has been awarded on that account, therefore, this appeal stands allowed. Appellant shall be further entitled for a sum of Rs. 1,00,000 on account of

death of stillborn male child. Total sum for which appellant shall be entitled comes to Rs. 2,50,000. The enhanced amount of Rs. 1,00,000 shall carry interest at the rate of 6 per cent per annum from the date of application.”

(iv) Branch Office, New India Assurance Co. Ltd. Vs. Krishnaveni, MANU/TN/2882/2009 (Madras High Court) -

The accident resulted in death of a pregnant woman with a nine month pregnancy. The Madras High Court following the Karnataka High Court and Madhya Pradesh High Court held that the still-born baby has to be considered as a child and compensation of Rs.2,00,000/- was awarded for loss of child in mother’s womb. It was held as under:-

“7. Learned Counsel for the first respondent/claimant would submit that the Tribunal has lost sight of awarding any compensation for the death of child in the mother's womb and a considerable compensation has to be awarded in this regard. He placed reliance upon a decision of the Karnataka High Court in 2004 (2) T.A.C. 574 (Kant.) Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation, Bangalore v. VidyaShinde and Anr. decided in the case of death of the foetus, completed 37 weeks, in the mother's womb, she was awarded a sum of Rs. 1,50,000/- as compensation. In the said case, the claimant lady has undergone surgery known as 'foetal distress' and male baby was born and she was kept in I.C.U but died after two days of delivery. It is also argued before this Court that if the mother had a normal delivery, there is no necessity to keep the baby in I.C.U. and there is no necessity for the claimant/respondent to undergo surgery.

8. The learned Counsel for the first respondent also garnered support from and decision of the Madhya Pradesh High Court in : 2006 ACJ 2067 Shradha v. Badresh and Ors. wherein identical situation arose that the baby was stillborn and it has to be considered as a child, that the child died due to the accident and separate amount of compensation was payable to its death. For this purpose, the amount of Rs. 1,50,000 awarded by the Tribunal was enhanced to Rs. 2,50,000/- from Rs. 1,50,000/-.

9. This Court is in respectful agreement with the concluding in the above said two decisions of the High Courts and holding that the stillborn baby is also to be considered as a child. This Court also records finding that since the child died in the womb due to the accident, the mental agony and physical strain and pain experienced by the mother should have been more and that has to be compensated in an appropriate manner. In the considered opinion of this Court a sum of Rs. 2,00,000/- may be fixed under the head loss of child in the mother's womb."

(v) Oriental Insurance Co. Ltd. Vs. Santhilal Patal, 2007(4) ACD 835 (Andhra Pradesh High Court) –

The accident resulted in the death of a women and ten month old foetus. The Andhra Pradesh High Court held that an unborn child aged five months onwards in the mother's womb till its birth can be treated as a child in existence. The unborn child to whom the live birth never comes can be held to be a 'person' who can be the subject of an action for damages for his death. The findings of the Court are as under:-

"6.Under Section 166 of the Act a person who has sustained injury or the legal heirs of the deceased person are entitled for compensation arising out of the accident involving death or bodily injuries. Therefore, if the child comes within the definition of person, I am of the opinion that the legal

heirs of the child are entitled for compensation. Under Section 8 of the Indian Penal Code, 1860 a gender means the pronoun "he" and its derivatives are used of any person, whether male or female. The meaning of a person as per Oxford Dictionary is 'a human being regarded as an individual and an individual's body : concealed on his person'.

7. No doubt, the Karnataka High Court in Divisional Controller, Karnataka State Road Transport Corporation v. Vidya Shindhe 2005 ACJ 069 : 2003 ILR (Kar) 04269, held that the stillborn child has to be considered as a child. The Madhya Pradesh High Court in Shradha v. Headrest's II (2006) ACC 304, following the aforesaid judgment of the Karnataka High Court held that the stillborn child died in the accident due to the injuries sustained by its mother in the accident is also entitled to compensation, as there is nexus between the accident and the cause of death of the child and awarded a compensation of Rs. 1,00,000/- for the death of the stillborn child. In the said case the appellant was having pregnancy of 28 weeks whereas in the instant case the child in the womb was counting his days for delivery as he was aged about 10 months i.e. 40 weeks. In fact, the Supreme Court in S. Said-ud-Din v. Commissioner Bhopal Das Victims : (1997)11SCC460 , awarded compensation to a child, who was adversely affected due to the gas leakage, which was inhaled by her mother when the child was in the womb. The doctor who examined the child on the sixth day of its birth found symptoms including eruption of body and smarting of the eye as well as breathlessness. Therefore, the Supreme Court held that as the infant too was the victim of the MIC poison, she was entitled to compensation. Various Human Rights Commissions also held that the stillborn child is entitled to compensation on account of the injuries caused or death occurred due to violation of human rights. Even the Transfer of Property Act recognized the rights of the stillborn child and several provisions of the Indian Penal Code, 1980, also provide for punishment by reason of

hurt or birth or abortion with regard to the stillborn child.

8. To decide whether a child in the womb of the mother can be called as a person, it is pertinent to discuss different stages of birth of a child in the womb of a mother. Technically the term developing ovum is used for the first seven to ten days after conception i.e. until implantation occurs. It is called an 'embryo' from one week to the end of the second month and later it is called 'foetus'. It becomes an infant only when it is completely born. The life may enter immediately on the date of conception in the form of a small cell, which gets multiplied, but physically a mother can feel the movement of child only when the foetus is twenty weeks old i.e., five months, as the cell changes its structures and texture to become an eye, legs, bones, blood, head etc. and only when the child makes movements touching the internal walls of the womb, then the actual life does take its physical form, therefore, there may be controversy as regards the exact date of life entering the foetus but there cannot be any controversy as regards the life of the unborn child if a woman is carrying seven months pregnancy, as in many instances premature delivery takes place during the seventh month of pregnancy and the child still survives.

An unborn child aged five months onwards in the mother's womb till its birth can be treated as equal to a child in existence. The unborn child to whom the live birth never comes can be held to be a 'person' who can be the subject of an action for damages for his death. As already stated above a person means a human being regarded as an individual and an individual's body : concealed on his person'. Therefore, human foetus to whom personhood could be attributed was also destroyed in the accident in the instant case; had the accident not occurred the unborn child would have survived and seen the light of the day.

9. In the instant case, admittedly the age of the stillborn child is ten months; therefore, I am of the opinion that the claimant is entitled to compensation under Section 140 read with Section 166 of the Act. In view of the aforesaid facts and circumstances of the case, I do not see any merit in any of the contentions of the learned Counsel for the appellant - insurance company."

(vi) Manikuttan Vs. M.N. Baby, 2009 ACJ 1497 (Kerala High Court) –

The accident resulted in the death of a pregnant woman carrying a four month old foetus. Compensation for loss of foetus was claimed. The Kerala High Court held that foetus is another life in the woman and it comes as a baby in the course of time. Loss of foetus upon death of a pregnant woman is actually loss of a child in the offing for the husband of the woman. The Court held that compensation to be granted for the death of a pregnant women is for loss of two lives.

The findings of the Court are as under:-

"In the first place, foetus is another life in the woman and it comes as a baby in the course of time. Though foetus grows in the body of the woman, it cannot be equated to or considered to be a part of the body of the woman. In effect, loss of the foetus consequent upon the death of the pregnant woman is actually loss of a child in the offing for the husband of the woman. Secondly, there is no scope for considering compensation for the bodily injury of the victim who died in the road accident. Therefore, it would be illogical to grant compensation treating death of the foetus along with the woman dying in the accident treating

death of the foetus along with the Woman dying in the accident treating it as another bodily injury. **In our view, compensation to be granted for the death of a pregnant woman in motor accident is for loss of two lives.** Therefore, appellant in this case is certainly entitled to claim compensation separately for the loss of his child in the womb of his wife who perished in the accident.”

14. The Himachal Pradesh High Court in the case of **Rakesh Kumar Vs. Prem Lal, 1996 ACJ 980 - (MANU/HP/0043/1995)** has taken the view that the foetus is a part of the body of the deceased and no separate compensation is admissible on the ground of loss of foetus.

15. The Bombay High Court, in the case of **Margappa Shethappa Vadar Vs. Proctor and Gamble India, 2008 ACJ 2802**, has taken the contrary view holding that unborn child in the womb is not a person within the meaning of Sections 165 and 166 of the Motor Vehicles Act. The accident resulted in death of a pregnant woman with 28 weeks old foetus in her womb. Two claim petitions were filed before the Claims Tribunal – one for the death of the woman and the other for the death of unborn child in the womb. The learned Tribunal rejected the claim holding that unborn child in the womb will not be included in the word ‘person’. Following the Division Bench judgment of the Himachal Pradesh High Court in the case of Rakesh Kumar Vs. Prem Lal, Bombay High Court dismissed the appeal holding that the foetus or a

child in the womb is not a person within the meaning of Sections 165 and 166 of the Motor Vehicles Act.

16. The rights of an unborn child are well recognized in various different legal contexts which are as under:-

(i) Section 6 of the Limitation Act, 1963 provides that where a person entitled to institute a suit or make an application for execution of the decree is, at the time from which the prescribed period is to be reckoned, a minor, he may institute the suit or make the application within the same period after the disability has ceased. Explanation to Section 6 reads thus:

"Explanation:-- For the purposes of this section, 'minor' includes a child in the womb."

(ii) Section 20 of the Hindu Succession Act, 1956 recognises the rights of a child in the womb. Section 20 reads thus:

"Section 20. Right of child in womb:

A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born, before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate."

(iii) Mulla on Hindu Law, Fifteenth Edition, contains a commentary by the author while dealing with Section 20. The commentary reads thus:

"It is by fiction or indulgence of the law that the rights of a child born *justo matrimonio* are regarded by reference to the moment of conception and not of birth and

the unborn child in the womb if born alive is treated as actually born for the purpose of conferring on him benefits of inheritance. The child in embryo is treated as in esse for various purposes when it is for his benefit to be so treated. This view is not peculiar to the ancient Hindu law but one which is adopted by all mature systems of jurisprudence. This section recognises that rule of beneficent indulgence and the child in utero although subsequently born is to be deemed to be born before the death of the intestate and inheritance is to be deemed to vest in the child with effect from the date of the death of the intestate."

(iv) In the Indian Succession Act, 1925, 'minor' is defined under Section 2(e), which reads as follows:

"Section(2)(e) "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and "minority" means the status of any such person;"

Section 7 of the Indian Succession Act provides that the domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled and in the case of a posthumous child, in the country in which his father was domiciled at the time of the father's death. Section 112 of the Indian Succession Act recognises the rights of a person coming into existence after the death of a testator.

(v) Sections 13 and 20 of the Transfer of Property Act deal with situations in which on a transfer of property, an interest therein is created for the benefit of a person not in existence. As per Section 20, where on a transfer of property an

interest therein is created for an unborn person, he acquires on his birth, a vested interest.

(vi) Sections 312 to 316 of the Indian Penal Code provide for punishment for the offence of miscarriage; for doing any act with intent to prevent child being born alive; for causing death of quick unborn child by act amounting to culpable homicide etc.

(vii) The question whether a posthumous child would succeed to the estate of his father or a testator was a vexed one for the courts. In **Elliot v. Lord Joicey and Ors., 1935 A.C. 209**, it was held thus:

"From the earliest times the posthumous child has caused a certain embarrassment to the logic of the law, which is naturally disposed to insist that at any given moment of time a child must either be born or not born, living or not living. This literal realism was felt to bear hardly on the interests of posthumous children and was surmounted in the Civil Law by the invention of the fiction that in all matters affecting its interests the unborn child in utero should be deemed to be already born. The classical statement is to be found in the words of Paulus: "Qui in utero est, perinde ac si in rebus humanis esset, custoditur, quoties de commodis ipsius partus quaeritur: quanquam alii, antequam nascatur, nequaquam prosit" (Dig. Bk.I. Tit. v. De Statu Hominum, Section 7), thus rendered in Monro's translation: "An unborn child is taken care of just as much as if it were in existence, in any case in which the child's own advantage comes in question; though no one else can derive any benefit through the child before its birth." "There is indeed," says Craig, commenting on this passage, "no reason in the case of a posthumous child to aggravate the calamity it suffers by the premature death of the father, nor to make

that event a ground for diminishing its rights" (Jus Feudale, Lib. II., Dieg. 13, Section 15; Lord Clyde's translation II .p.643).

This fiction has undoubtedly been adopted in the law of Scotland....

It is satisfactory for the purposes of the present case to find that the law of England in this matter is to all intents and purposes the same as the law of Scotland. The same fiction, derived from the same source in the Civil Law, and qualified by the same condition, is common to both systems. In the English case of *Villar v. Gilbey*, (1907) A.C. 139 your Lordships' House had occasion to emphasize that the limitation, which the Court of Appeal had there discarded, was an essential part of "this peculiar rule of construction," which accordingly applies only where it is for the benefit of the unborn child to apply it."

(viii) In **Moore v. Wingfield, (1903) 2 Ch. 411**, **Justice Vaughan Williams L.J.** held:

"In Blackstone's Commentaries, 4th ed. vol.i. 129, 130, it is stated that in contemplation of law life begins as soon as an infant is able to stir in the mother's womb: "For if a woman is quick with child, and by a potion, or otherwise, killeth it in her womb; or if any one beat her, whereby the child death in her body, and she is delivered of a dead child; this, though not murder, was by the ancient law homicide or manslaughter." Then the learned author goes on: "An infant in ventre sa mere, or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to it's use, and to take afterwards by such limitation, as if it were then actually born." And the rule as to a posthumous child being capable of taking in remainder (1) is stated in the same work, vol.ii, 169.1 merely mention this because part of Mr. Buckmaster' s argument seems to have proceeded upon the assumption that

although, according to Buckley J's judgment, there was a rule that a child during the period of gestation was to be treated as "a life in being," that was a rule of law applicable in some cases only. In my opinion, upon the authorities, that rule is applicable when you have to deal with the rule against perpetuities. For that purpose it is plain that, as soon as the child is born, that satisfies the limitation, and you retrospectively treat the life of that child as "a life in being" at the death of the testator."

In the same decision, **Romer L.J.**, held thus:

"For the purpose of deciding questions of perpetuity arising upon gifts in a will of the kind we find in the will in the present case, there is, in my opinion, an established rule that a child en ventre sa mere at the time of the testator's death, who is subsequently born, must be treated as having been alive at the death of the testator. And I do not think that rule should be departed from merely because, for some reason, it is in the interest of the child to contend that the gift is void as infringing the rule against perpetuity."

(ix) In **Aswini Kumar Pan v. Parimal Debi, : AIR1964Cal354** , a question arose whether a posthumous son, within three years of his attaining majority, could challenge an alienation made by his widowed mother. Holding in the affirmative, it was held:

"13. We put it on the short ground that, in law, a child in the mother's womb is deemed to be in existence, at least for purposes of inheritance, which alone are relevant here, and has thus a right to challenge any transaction, which affects its interest at the time. If so, it has a right of action or a cause of action in respect of the said transaction and is entitled to institute a suit upon the same and, as such a child, as aforesaid, cannot, under the Indian Majority Act, be held to be a major, it must be held to be a minor, that is, a person, suffering from

disability, as contemplated in the aforesaid Section 6 of the Indian Limitation Act. This, we may respectfully add, has been rightly pointed out in the above three decisions of the Madras, Bombay and Allahabad High Courts, namely, : AIR1951All630 , already cited, and their Lordships have sufficiently demonstrated in those three decisions that there is nothing in the Indian Majority Act or in the Indian Limitation Act either, which conflicts with the view that a child in the mother's womb is a person in existence and is a minor. Indeed, so far as this latter part is concerned, namely, that such a child, if it be a person in existence, must be a minor, the relevant statute (the Indian Majority Act) carries its own confirmation, as, obviously on the terms of Section 3 and/or Section 4 of the said Act, a person is a minor until he attains the relevant age of majority, be it eighteen or twenty-one years, as the case may be, and as, so far as the theory of a child en ventre sa mere is concerned, if it otherwise applies to a particular case, as here, which is a case of inheritance, neither of the above two statutes would exclude it or render it inapplicable."

(x) Black's Law Dictionary refers to "rights of unborn child", thus: "The rights of an unborn child are recognised in various different legal contexts; e.g. in criminal law, murder includes the unlawful killing of a foetus (Cal. Penal Code Section187), and the law of property considers the unborn child in being for all purposes which are to its benefit, such as taking by will or descent. After its birth, it has been held that it may maintain a statutory action for the wrongful death of the parent. In addition, the child, if born alive, is permitted to maintain an action for the consequences of prenatal injuries, and if he dies of such injuries after birth, an action will lie for his wrongful death. While certain States have allowed recovery even though the injury occurred during the early weeks

of pregnancy, when the child was neither viable nor quick, *Sinkler v. Kneale*, 401 Pa.267,167 A.2d.93; *Smith v. Brennan*, 31 N.J.353, 157 A.2d.497, other States require that the foetus be viable before a civil damage action can be brought on behalf of the unborn child."

(xi) The legal status of unborn persons is discussed in **Salmond on Jurisprudence**, 11th Edition, at pages 354 and 355, the relevant portion of which reads as follows:

"Though the dead possess no legal personality, it is otherwise with the unborn. There is nothing in law to prevent a man from owning property before he is born. His ownership is necessarily contingent, indeed, for he may never be born at all; but it is none the less a real and present ownership.
....

A child in its mother's womb is for many purposes regarded by a legal fiction as already born, in accordance with the maxim, *Nasciturus pro jam nato habetur*. In the words of Coke: "The law in many cases hath consideration of him in respect of the apparent expectation of his birth". Thus, in the law of property, there is a fiction that a child *en ventre sa mere* is a person in being for the purposes of (1) the acquisition of property by the child itself, or (2) being a life chosen to form part of the period in the rule against perpetuities."

The rights of the child in the womb, in the matter of succession, are well protected by laws of the land.

17. This Court is of the view that the rights of an unborn child are recognised in various different legal contexts; e.g. in criminal law causing death of foetus has been held to be an offence under Sections 312 to 316 of the Indian Penal Code, and the law of property considers the unborn child in

being for all purposes which are to its benefit, such as taking by will or descent. This Court is in respectful agreement with the judgments of Andhra Pradesh High Court in the case of **Oriental Insurance Co. Ltd.** (supra) and Kerala High Court in the case of **Manikuttan** (supra), and holds that an unborn child aged five months onwards in mother's womb till its birth is treated as equal to a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The foetus is another life in woman and loss of foetus is actually a loss of child in the offing. The appellants are, therefore, entitled to compensation for the loss of foetus.

18. The learned counsel for the appellants refers and relies upon the judgment of this Court in the case of **National Insurance Co. Ltd. Vs. Farzana, MAC APP. No.13/2007** decided on 14th July, 2009 in which compensation of Rs.3,75,000/- has been determined in respect of the death of a child aged 7 years, following the judgments of the Hon'ble Supreme Court and this Court in the cases of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, Sobhagya Devi Vs. Sukhvir Singh, II (2006) ACC 1997, Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320, R.K. Malik vs. Kiran Pal, III (2006) ACC 261, R.K. Malik vs. Kiran Pal, 2009(8) Scale 451.** This Court held as under: -

“4. In the case of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257**, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-“

5. The case of **Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997** relates to the death of a 12-year old boy. Following the decision of the Apex Court in **Manju Devi’s case (supra)**, the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of **Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320** relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in **Manju Devi’s case (supra)** awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any

evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of

enhancing the compensation to Rs.2,75,000/-.

7. In the case of **R.K. Malik vs. Kiran Pal, III (2006) ACC 261**, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as **R.K. Malik vs. Kiran Pal, 2009(8) Scale 451**. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children. The findings of the Hon'ble Supreme Court are as under:-

“19. The other issue is with regard to non-pecuniary compensation to the appellants-dependents on the loss of human life, loss of company, companionship, happiness, pain and suffering, loss of expectation of life etc.

20. In the Halsbury's Laws of England, 4th Edition, Vol. 12, page 446, it has been stated with regard to non-pecuniary loss as follows:

“Non-pecuniary loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being

interpreted by the Courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstance of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.

21. In the case of *Ward v. James* (1965) 1 All E R 563, it was observed:

“Although you cannot give a man so gravely injured much for his ‘lost years’, you can, however, compensate him for his loss during his shortened span, that is, during his expected ‘years of survival’. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh

insoluble. They are being asked to calculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.

22. The Supreme Court in the case of R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551, at page 556, has observed as follows in para 9:

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person

concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

In this case, the Court awarded non-pecuniary special damages of Rs. 3, 00,000/- to the claimants.

23. In *Common Cause, A Registered Society v. Union of India* (1999) 6 SCC 667 @ page 738, it was observed:

“128. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In *Mediana, Re Lord Halsbury*, L.C. observed as under: “How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... But nevertheless the law recognises that as a topic upon which damages may be given.”

24. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life". This head of compensation need not be restricted to a case where the injured person himself initiates action but is equally admissible if his dependant brings about the action.

25. That being the position, the crucial problem arises with regard to the quantification of such compensation. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have therefore used the expression "standard compensation" and "conventional amount/sum" to get over the difficulty that arises in

quantifying a figure as the same ensures consistency and uniformity in awarding compensations.

26. While quantifying and arriving at a figure for "loss of expectation of life", the Court have to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head i.e. pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

27. In the case of Lata Wadhwa (supra), wherein several persons including children lost their lives in a fire accident, the Court awarded substantial amount as compensation. No doubt, the Court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term "conventional compensation" used in the said case has been used for non pecuniary compensation payable on account of pain and suffering as a result of death. The Court in the said case referred to Rs. 50, 000/- as conventional figure. The reason was

loss of expectancy of life and pain and suffering on that account which was common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

28. In Lata Wadhawa case (supra), wherein the accident took place on 03.03.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1.50 lakhs was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000/- was awarded towards "conventional compensation". In the case of children between 10 to 18 years compensation of Rs. 4.10 lakhs was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/- per annum instead of Rs. 12,000/- per annum as recommended by Justice Y. V. Chandrachud Committee. This was in view of the fact that the company in question had an un-written rule that every employee can get one of his children employed in the said company.

29. In the case of M.S. Grewal v. Deep Chand Sood MANU/SC/0506/2001, wherein 14 students of a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, this Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was emphasized that the Court must ensure that a just compensation was awarded.

30. In Grewal case (supra), compensation of Rs. 5 lakhs was awarded to the claimants and the same was held to be justified. Learned Counsel for the respondent No. 3, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as was apparent from the fee structure and therefore the compensation of Rs. 5 lakhs as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the compensation was awarded in that case would equally apply to the present case.

31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in General Manager, Kerala S. R. T. C. v. Susamma Thomas(1994) 2 SCC 176; Sarla Dixit v. Balwant Yadav (1996) 3 SCC 179; and Lata Wadhwa case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M. S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M. S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

33. Besides, the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to R. D. Hattangadi case (supra). Further, the said compensation must be just and

reasonable. This Court has observed as follows in State of Haryana v. Jasbir Kaur (2003) 7 SCC 484:

“7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the

Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

34. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75, 000/- in all connected appeals. We

do not find any infirmity in that regard.”

9. The learned Tribunal was in error in taking the notional income to be Rs.22,500/- per annum. Following the aforesaid judgments, the notional income of the deceased is taken to be Rs.15,000/- per annum and applying the multiplier of 15, the claimants are entitled to loss of dependency of Rs.2,25,000/-. The claimants are also entitled to compensation of Rs.75,000/- towards the future prospects in terms of the judgment of the Hon'ble Supreme Court in **R.K. Malik Vs. Kiran Pal, 2009 (8) Scale 451**. The claimants are also entitled to a further sum of Rs.75,000/- towards non-pecuniary damages in terms of the judgment of this Court in the case of **R.K. Malik Vs. Kiran Pal, III (2006) ACC 261** upheld by the Hon'ble Supreme Court. The claimants are entitled to total compensation of Rs.3,75,000/- (Rs.2,25,000/- + Rs.75,000/- + Rs.75,000/-).”

19. The learned counsel for the appellants submits that compensation of Rs.3,75,000/- be awarded to the appellants following the judgment of this Court in **National Insurance Company Ltd. Vs. Farzana** (supra).

20. The judgment of this Court in **National Insurance Company Ltd. Vs. Farzana** (supra) relates to the death of 7 year old child whereas the present case relates to the death of a seven months old foetus. The seven months old foetus cannot be compared with seven years old child and, therefore, this Court is not inclined to award Rs.3,75,000/- to the appellants. A foetus shall be treated as a child does not mean that the compensation in respect of a foetus shall be equal to a seven year old school going child. The love and affection of the parents for seven year old child cannot be

equated with that of a foetus which has yet to take birth. The love and affection develops after the birth of the child and it keeps on growing and goes deep in the memory. The death of a seven year old child would leave deep memories and, therefore, deeper hurt. In case of death of a child, the photographs of the child and other articles belonging to him/her keep on reminding the parents of the child and make them sad. Memories are also refreshed when parents see other children of same age and it takes a very long time for pain and suffering to dissolve, whereas there are no such memories in case of a foetus and, therefore, lesser hurt. The compensation awarded to a seven year old child, therefore, needs appropriate correction. Considering that Rs.2,50,000/- was awarded by Madhya Pradesh High Court in the case of **Shraddha** (supra), Rs.2,00,000/- by Madras High Court in the case of **Krishnaveni** (supra) and Rs.1,50,000/- by Karnataka High Court in the case of **Bhawaribai** (supra), Rs.2,50,000/- is awarded to the appellants in the present case.

21. The appeal is allowed and the compensation of Rs.2,50,000/- along with interest @7.5% per annum from the date of filing of the petition till realization is awarded to appellant No.1 towards the death of seven months old foetus on 17th June, 2008.

22. Considering the important question of law involved, this Court appointed Ms. Rajdipa Behura, Advocate as amicus

curiae to assist this Court. This Court appreciates the able assistance rendered by the learned amicus curiae.

23. The award amount be deposited by respondent No.2 with UCO Bank, Delhi High Court Branch A/c Prakash by means of a cheque through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

24. Upon the aforesaid deposit being made, the UCO Bank is directed to keep a sum of Rs.2,00,000/- in fixed deposit in the name of appellant No.1 in the following manner:-

- (i) Fixed deposit for Rs.25,000/- for a period of six months.
- (ii) Fixed deposit for Rs.25,000/- for a period of one year.
- (iii) Fixed deposit for Rs.25,000/- for a period of one and a half years.
- (iv) Fixed deposit for Rs.25,000/- for a period of two years.
- (v) Fixed deposit for Rs.25,000/- for a period of two and a half years.
- (vi) Fixed deposit for Rs.25,000/- for a period of three years.
- (vii) Fixed deposit for Rs.25,000/- for a period of three and a half years.
- (viii) Fixed deposit for Rs.25,000/- for a period of four years.

25. The remaining amount be released to appellant No.1 by transferring the same to his Saving Bank Account.

26. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

27. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.

28. No cheque book be issued to appellant No.1 without the permission of this Court.

29. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to appellant No.1 along with the photocopy of the FDRs.

30. The original Fixed Deposit Receipts shall be handed over to appellant No.1 on the expiry of the period of the FDRs.

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

31. Half yearly statement of account be filed by the Bank in this Court.

32. On the request of appellant No.1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellant.

33. Appellant No.1 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

34. List for reporting compliance on 23rd April, 2010.

35. Copy of the order be given dasti to counsel for both the parties under the signature of Court Master.

36. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

FEBRUARY 05, 2010

J.R. MIDHA, J