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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

M.A.C. Appeal No.2 of 2021
Ref: M.A.C. Case No.56 of 2017

The Branch Manager New India Assurance Co. Ltd. Chingmeirong,
Imphal West, Manipur.

..... Appellant/s

– Versus –

1. Smt. Sanju Khatiwada aged about 30 years, w/o late Hari Prasad Khatiwada.
2. Agya Khatiwada aged about 4 years, d/o late Hari Prasad Khatiwada.
3. Netra Prasad Khatiwada aged about 56 years s/o late Chandra Dutta Khatiwada.
4. Smt. Shita Devi Khatiwada aged about 53, w/o Netra Prasad Khatiwada.

All resident of Japhou Bazar, P.O. & P.S. Chandel, District:
Chandel District, Manipur at present Kanglatombi Shantipur
near Durga Mandir, P.O. & P.S. Sekmai, Imphal West,
Manipur.

5. Sukhraj Singh aged about 30 years, s/o Kulwinder Singh of Beltola Tinali, Dharanpur Path, House No.8 P.O. & P.S. Bashstha Guwahati, Assam.

Temporary address at TCP Gate Kohima, Nagaland-797001
(registered owner of the Tata Truck bearing Regn. No. NL-01K-0763)

6. Pankaj Sharma aged about 35 years, s/o Juganta Sharma of Ongurhi P.S. Olani P.O. Koliyabor, District Nagaon, Assam (Driver of the Tata Truck bearing Regn. No. NL01K07763)
7. The Manager, ICICI Lombard, Lombard House 414 P. Balu Marg, SVS Road near Siddhivinayak Temple, Prabhadevi, Mumbai, Maharashtra – 400025.
8. Prem Gurung aged about 30 years, s/o Karna Bahadur Gurung of PR Hill Kohima, Nagaland – 797001.

At present c/o Gopal Gurung AR Colony, Kanglatombi, P.O. & P.S. Sekmai, Imphal West District, Manipur (registered owner of the Tata Truck bearing Regd. No. NL01-K4166)

9. Milan Gurung aged about 28 years, s/o Kumar Gurung of Willong Khullen, P.O. & P.S. Senapati, Senapati District, Manipur. (driver of the Tata Truck bearing Regn. No. NL01K-4166)

.... **Respondent/s**

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Appellant : Mr. A. Denni Sharma, Adv.

For the Respondents : Mr. H. Dijen Sharma, Adv. for Respondent Nos.1 to 4
Mr. H. Chandrakumar, Adv. for Respondent No.7

Date of Hearing : 10.02.2023

Date of Judgment &
Order : **24.02.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar Sharma, J)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is filed against the final judgment and award dated 23.11.2020 passed by the Ld. Presiding Officer, Motor Accident Claims Tribunal, Manipur in MAC Case No.56 of 2017 whereby the Ld. Tribunal directed the appellant herein to pay a sum of Rs.36,67,500/- (Rupees thirty-six lakhs sixty seven thousand and five hundred) only to the respondent Nos.1 to 4 for the death of Hari Prasad Khatiwada who succumbed to his injuries in a road accident that occurred on 06.06.2017 within 60 days from the date of passing of the award along with interest @ 6% p.a. from the date of filing of the claim case, i.e., from 08.11.2017 till the date of realization.

[2] The brief fact of the case is that on 06.06.2017, while deceased Hari Prasad Khatiwada was returning by riding his TVS Jupiter Discle(scooter) from Imphal towards his resident at Kanglatombi, he was knocked down by one Tata Truck bearing Regd. No.NLO1K-0763 which was also coming from the same direction. At the time of the accident, another vehicle Tata Truck bearing Regd. No.NLO1K-4166 was also involved. Shri Hari Prasad Khatiwada got serious injury and later on, succumbed to his injuries. The present respondent Nos.1 to 4 filed a claim in MAC Case No.56

of 2017 before the Motor Accident Claims Tribunal, Manipur for payment of compensation for a sum of Rs.45,00,000/- (Rupees forty five lakhs) only for the death of Shri Hari Prasad Khatiwada. The appellant filed written statement denying any liability of compensation as the accident happened in rash and negligent driving of the deceased himself who was driving 2 wheelers at the same time. The learned Tribunal framed 5(five) issues as given below:

1. *Whether Hari Prasad Khatiwada riding his TVS Jupiter bearing Regd. No.MN-01AC-7041, registered in his name was returning back to his residence from his office on 06.06.2017 at about 5.25 pm and on reaching Sekmai Koujengleima, along NH 2, one Tata Truck bearing Regd. No.NL01K-0763, coming from the same direction knocked down his vehicle, as a result he sustained injuries and succumbed to his injuries at the spot, due to the rash and negligent driving on part of the driver of the said Tata Truck or was there contributory negligence on part of the deceased?*
2. *Whether the respondents are jointly and severally liable to pay compensation to the claimants for causing death of the deceased in the said road traffic accident or not?*
3. *Whether Hari Prasad Khatiwada was serving as a Cashier cum accountant or not?*

4. *What would be the appropriate amount of compensation liable to be paid to the claimants, who are the dependents of the deceased?*

5. *Reliefs?*

Vide impugned judgment and award dated 23.11.2022, the learned MACT, Manipur directed the appellant to pay a sum of Rs.36,67,500/- (Rupees thirty six lakhs sixty seven thousand and five hundred) only to the claimant as compensation along with an interest @ 6% per annum from the date of filing of the claim petition, i.e., on 08.11.2017. The details of the compensation is reproduced below:

Sl. No.	Heads	Calculations
(i)	Salary	Rs.15,000/- per month
(ii)	50% of (i) to be added as future prospect	Rs.15,000/- + Rs.7500/- = Rs.25,000/-
(iii)	1/4 th of (ii) to be deducted as personal expenses of the deceased	Rs.22,500/- - Rs.5625/- = Rs.16,875/-
(iv)	Compensation after applying age multiplier of 17	16,875/- X 12 X 17 = 34,42,500/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of care and guidance for minor children	Rs.1,00,000/-
(vii)	Funeral expenses	Rs.25,000/-
(viii)	Total (i+ii+iii+iv+v+vi+vii+viii)	Rs.36,67,500/-

Being aggrieved by the final judgment and award passed by the MACT, Manipur, the appellant herein filed the present appeal amongst on the following grounds:

1. The multiplier in case of a person of 35 years should be 16 and not 17 as calculated and as applied in the impugned judgment.
2. The Ld. Tribunal has strongly deducted $\frac{1}{4}$ th only for personal expenses which should be $\frac{1}{3}$ rd as the claimants have failed to prove that the father of the deceased is depending on him, as father will not be dependent for calculation of compensation unless proof in contrary.
3. The learned Tribunal has awarded a sum of Rs.1,00,000/- (Rupees one lakh) only for the loss of consortium in violation of the direction of the Hon'ble Supreme Court in the case of Pranay Sethi's Case which clearly fix at the sum of Rs.40,000/- (Rupees forty thousand) only.
4. The Ld. Tribunal has awarded another sum of Rs.1,00,000/- (Rupees one lakh) only under the loss of care and guidance of minor children and Rs.25,000/- (Rupees twenty five) only as funeral charges in place of Rs.15,000/- (Rupees fifteen thousand) only.
5. The learned Tribunal has failed to give any finding regarding the negligence of the deceased in the accident and to ascertain the amount to be deducted for his own fault.
6. The accident happened due to involvement of 2(two) vehicles and any liability has to be shared between the 2(two) vehicles.

7. The learned Tribunal has directed the appellant to pay interest @ 6% from the date of filing of the case, i.e., on 08.11.2017 whereas the present case has been long pending due to negligence of the claimants in producing their witness in time.

[3] The claimants produced 5(five) PWs including the claimant No.1 and exhibited as many as 17 documents in support of their claim case.

[4] After hearing the parties and perusing the materials and documents, the learned Tribunal held that Shri Hari Prasad Khatiwada, aged about 35 years was knocked down by one Tata Truck bearing Regd. No. NL-01K-0763 registered in the name of respondent No.5 and driven by respondent No.6 which is insured with the appellant due to rash and negligent driving on the part of the respondent No.6. It is observed that at the time of the accident, respondent No.6 was having a valid license and the offending Tata Truck was under the validity of the insurance and respondent No.3 being insurer of the offending vehicle was held to pay the compensation amount to the claimants (Respondent Nos.1 to 4). Accordingly, it was to pay a sum of Rs.36,67,500/- (Rupees thirty six lakhs sixty seven thousand and five hundred) only.

[5] Vide order dated 21.10.2021, this Court issued notice to respondent Nos.1 to 4 appearing on Caveat through Mr. H. Dijen Singh, learned counsel and it was directed to take steps for respondent Nos.5 to 9

by speed post. On 04.03.2022, Vakalatnama was filed on behalf of respondent Nos.5 and 6 and Mr. Th. Jugindro, learned counsel appeared on behalf of respondent Nos.5 and 6. On 06.04.2022, this Court admitted the appeal for hearing and the question of maintainability of the appeal to be considered at the time of hearing and called for the records from MACT, Manipur. Paper book was ready and the matter was set for hearing.

[6] Before going to the merit of the case, it will be pertinent to consider the question of admissibility of the present appeal as claimant/respondent Nos.1 to 4 have raised the question of maintainability of the appeal in view of Section 170 of Motor Vehicles Act, 1988.

[7] Heard Mr. A. Deni Sharma, learned counsel for the appellant, Mr. H. Dijen Singh, learned counsel for respondent Nos.1 to 4 and Mr. H. Chandrakumar, learned counsel for respondent No.7.

[8] Mr. H. Dijen Singh, learned counsel for respondent Nos.1 to 4 submits that in the proceeding before the MACT, Manipur, the appellant has not taken leave of the Tribunal to defend the case as provided under Section 170 of the Motor Vehicles Act, 1988. It cannot prefer an appeal under Section 173 of the Motor Vehicles Act, 1988 except for limited grounds and he prays that the appeal may be dismissed as not maintainable on this ground alone.

[9] Mr. A. Deni Sharma, learned counsel for the appellant/insurer submits that that when the claimants themselves have impleaded the insurer as a party respondent in the claim case before the learned Tribunal, it can prefer an appeal without the leave of the Court under Section 170 of the MV Act. He has differentiated the difference between the insurer who has been impleaded as party respondent in the claim case before the Tribunal and an insurer who has been only a noticee. In this regard, he relies on the judgment of 3(three) Judge Bench of the Hon'ble Supreme Court in the case of **United India Insurance Co. Ltd. Vs. Shila Datta, (2011)10 SCC 509**. He submits that the present appeal filed under Section 173 of the MV Act preferred by the insurer is maintainable in the present form, as the insurer was impleaded as a party-respondent by the claimants themselves before the Tribunal.

For clear understanding, the relevant Para of **Shilla Dutta** case (supra) are reproduced herein below:

"Re : Point (i) : The position in cases where the claimants implead the insurer as a respondent in the claim petition

13. The scheme of the Motor Vehicles Act, 1988 as contained in Chapters XI (Insurance of Motor Vehicles against Third-party Risks) and XII (Claims Tribunals) proceeds on the basis that an insurer need not be impleaded as a party to the claim proceedings and it should only be issued a statutory notice under Section 149(2) of the Act so that it can be made liable to pay the compensation awarded by the Tribunal and also resist the claim on any one of the grounds mentioned in clauses (a) and (b) of sub-section (2) of Section 149. Sub-sections (1), (2) and (7) of Section 149 clearly refer to the insurer being merely a noticee and not a party. Similarly, Sections 158(6), 166(4), 168(1) and 170 clearly provide for and contemplate the insurer

being merely a noticee for the purposes mentioned in the Act and not being a party-respondent. Section 170 specifically refers to impleading of insurer as a party to the claim proceedings.

14. When an insurer is impleaded as a party-respondent to the claim petition, as contrasted from merely being a noticee under Section 149(2) of the Act, its rights are significantly different. If the insurer is only a noticee, it can only raise such of those grounds as are permissible in law under Section 149(2). But if he is a party-respondent, it can raise, not only those grounds which are available under Section 149(2), but also all other grounds that are available to a person against whom a claim is made. It, therefore, follows that if a claimant impleads the insurer as a party-respondent, for whatever reason, then as such respondent, the insurer will be entitled to urge all contentions and grounds which may be available to it.

15. The Act does not require the claimants to implead the insurer as a party-respondent. But if the claimants choose to implead the insurer as a party, not being a noticee under Section 149(2), the insurer can urge all grounds and not necessarily the limited grounds mentioned in Section 149(2) of the Act. If the insurer is already a respondent (having been impleaded as a party-respondent), it need not seek the permission of the Tribunal under Section 170 of the Act to raise grounds other than those mentioned in Section 149(2) of the Act.

16. The entire scheme and structure of Chapters XI and XII is that the claimant files a claim petition only against the owner and driver and the Tribunal issues notice to the insurer under Section 149(2) so that it can be made liable to pay the amount awarded against the insurer and if necessary, deny liability under the policy of insurance, on any of the grounds mentioned in Section 149(2). If an insurer is only a noticee and not a party-respondent, having regard to the decision in Nicolletta Rohtagi^{1a}, it can defend the claim only on the grounds mentioned in Section 149(2) and not any of the other grounds relating to merits available to the insured respondent. This is the position even where the claim proceedings are initiated suo motu under Sections 149(7) [sic Section 166(4)] and 158(6) of the Act, without any formal application by the claimants, as the insurer is only a noticee under Section 149(2) of the Act.

17. Section 170 of the Act does not contemplate an insurer making an application for impleadment. Nor does it contemplate the insurer, if he is already impleaded as a party-respondent by the claimants, making any application seeking permission to contest the matter on merits. Section 170 proceeds on the assumption that a claim petition is filed by the claimants,

or is registered suo motu by the Tribunal, with only the owner and driver of the vehicle as the respondents. It also proceeds on the basis that in such a proceeding, a statutory notice would have been issued by the Tribunal to the insurer so that the insurer may know about its future liability in the claim petition and also resist the claim, on any of the grounds mentioned in Section 149(2).

18. Section 170 of the Act also assumes that the Tribunal will hold an inquiry into the claim, where only the claimants and the owner and driver will be the parties. Section 170 provides that if during the course of such inquiry, the Tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, the Tribunal may suo motu, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of the claim, who was till then only a noticee, shall be treated as a party to the proceedings. The insurer so impleaded, without prejudice to the provisions of Section 149(2), will have the right to contest the claim on all or any of the grounds that are available to the driver/owner.

19. Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party.

20. When a statutory notice is issued under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can, however, be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."

[10] In the present case, on bare perusal of the impugned judgment and award passed by the learned MACT, Manipur, it is seen that the appellant has been impleaded as respondent No.3 in the claim case filed by

the respondent Nos.1 to 4 herein. As per the decision of the Hon'ble Supreme Court in **Shila Datta** (*supra*), an insurer who has been impleaded as a party respondent by the claimants themselves, can prefer an appeal without taking leave under Section 170 of the Act.

Accordingly, this Court is of the view that the present appeal filed by the appellant/insurer on merit is maintainable in the present form as it has been impleaded as a party respondent by the claimants themselves in the proceeding before the MACT, Manipur. Hence, preliminary issue is decided in favour of the appellant/insurer.

[11] Mr A. Deni Sharma, learned counsel for the appellant pointed out that as per the judgment of **Sarla Verma vs. DTC, (2009) 6 SCC 121**, the Hon'ble Supreme Court has recalculated the multiplier applicable according to the age of the deceased or injured in para 42 as below:

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra⁴ and Charlie⁹), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

[12] The main ground of appeal is that the learned Tribunal has wrongly applied the appropriate multiplier in respect of a deceased person aged 35 years. He points out that the appropriate multiplier for 35 years of age is 16 as given in Para No.42 of the judgment in ***Sarla Verma v. DTC, (2009) 6 SCC 121***. He points out that in the impugned order of the MACT, Manipur, multiplier 17 is used for calculating the compensation as such this multiplier in calculation of total income has to be corrected by this Court.

The next ground of challenge is that loss consortium is calculated as a sum of Rs.1,00,000/- (Rupees one lakh) only in the award. Mr. A. Deni Sharma, learned counsel for the appellant points out to the judgment of 5(five) Judge Bench of Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi (2017)16 SCC 680***. The multiplier calculated at Para 42 of the ***Sarla Verma (supra)*** has been confirmed by the Constitution Bench of the Hon'ble Supreme Court of India in Para 59.6 and 59.7 of the judgment in ***Pranay Sethi (supra)***. He submits that appropriate multiplier is 16 not as 17 used by the Ld. Tribunal in the impugned award.

The next ground of challenge is that the Tribunal had given an excessive amount towards loss of consortium as Rs.1,00,000/- (Rupees one lakh) only. He relies upon the judgment of ***Pranay Sethi (supra)*** where in Para 59.8, it was held that

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

[13] Mr. A. Deni, learned counsel for the appellant points out that only a sum of Rs.40,000/- (Rupees forty thousand) only has been earmarked as compensation towards loss of consortium and he insists that only this amount has to be awarded by the Ld. Tribunal. Another ground of challenge is the compensation towards loss of care and guidance for minor children as 1,00,000/- (Rupees one lakh) only. Mr. A. Deni, learned counsel for the insurer points out that this head is not mentioned in the schedule appended to Motor Vehicles Act, 1988 nor in the **Sarla Verma** (*supra*) nor in the **Pranay Sethi** (*supra*) and this amount have to be deleted while calculating the total amount of compensation.

[14] Mr. A. Deni, Ld. Counsel for the appellant further points out that an excessive amount of Rs.25,000/- (Rupees twenty five thousand) only is awarded towards funeral expenses. He refers to Para 59.8 of **Pranay Sethi** (*supra*) judgment where an amount of Rs.15,000/- (Rupees fifteen thousand) only is provided towards funeral expenses and he prays that this compensation for funeral expenses to be reduced.

However, during the course of hearing, Mr. A. Deni, learned counsel for the appellant has not addressed the question of composite/contributory negligence on the part of the deceased. Even though, it was one of the grounds of appeal, Mr. A. Deni, learned counsel for the appellant has not addressed the question of negligence on the part of the deceased. This Court is bound to consider this issue as it is one of the grounds of appeal. Whenever more than one vehicles are involved in an accident, the share of respective contributory negligence of all the vehicles are to be ascertained and the claim amount has to be proportionately distributed accordingly. In the present case, whole responsibility fixed on Tata Truck insurer (with the appellant) only.

[15] This Court has gone through the deposition of PW 2, Jhomakanta Khatiwada who was eye-witness of the incident. PW 2 states that when he was standing on the roadside, he saw the deceased Hari Prasad Khatiwada driving from Imphal side to Kanglatombi at a moderate speed by his 2(two) wheeler, TVS Jupiter (scooter) and another Tata Truck bearing Redg. No.NL01K-4166 was also driving at the back of the offending Tata Truck. At that time, the offending Tata Truck bearing Regd. No.NL-01K-0763 coming from the same direction suddenly knocked down the TVS Jupiter (scooter) Regd. No.MN01AC 7041 in front of him. Relevant portion of his deposition is reproduced below:

“2. That, on 06-06-2017 at about 5.25 p.m. I awaited by standing road side at the point of opposite of the waiting shed of Sekmai Koujengleima to come any passenger vehicle for returning my resident at Kanglatongbi Shantipur after meeting one of my friend of Sekmai New Market, while I see the deceased Hari Prasad Khatiwada driven his TVS Jupiter Scooter (Pink in colour) bearing regd. No. MNO1AC 7041 from Imphal side to Kanglatongbi side at his moderate speed just passed over from me the above said Tata Truck (ten wheeler) also driving from Imphal side towards Dimapur side (same direction) and one another Tata Truck bearing Regd. No. NLO1K 4166 also driving at same direction as a back moving vehicle of the aforesaid involved Tata Truck (ten wheeler). This is true to the best of my knowledge.

3. That, suddenly knock down the above said TVS Jupiter Scooter by the Tata Truck (ten wheeler) bearing Regd. No. NLO1K 0763 it was occurred in front of me about 60/70 feet as | immediately ran to the spot of the accident. I found and seen on the spot the said deceased Hart Prasad Khatiwada felt down on the road side with unconscious situation and he was very seriously injured on his person. At that time 7/8 persons of the locality also arrived on the spot and stopped to drive the said involved Tata Truck. And the above said one another Tata Truck bearing Regd. No. NLO1K 4166 which is driving very near as a back moving vehicle of the said involved Tata Truck (Ten

wheeler) also stopped to drive. This is true to the best of my knowledge.”

In the cross-examination by the learned counsel for the appellant, deposition in examination-in-chief could not be shaken.

[16] PW 4, I/O of the case also stated in examination-in-chief that the driver of the Tata Truck bearing registration No.NL-01K-0763 knocked down the TVS Jupiter 2(two) wheeler. He also stated that in the Mechanical Inspection Report, the brake pipe was found leakaged and the victim was wearing his helmet at the time of accident and the accident was due to rash and negligent driving on the part of the driver of the Truck bearing Regd. No.NL-01K-0763 and the other Tata Truck bearing Regd. No. NLO1K 4166 was not found negligent and not involved in the accident. During the investigation, from analysis of the deposition of PW 2 and PW 4, it is seen that the deceased was driving his 2(two) wheeler TVS Jupiter at a moderate speed and the offending Truck bearing Regd. No.NL-01K-0763 knocked down him from behind due to rash and negligent driving on the part of the driver also. Accordingly, this Court does not find any infirmities in the finding of the Ld. MACT, Manipur for the accident which was occurred due to negligent driving on the part of the driver of the offending Truck bearing Regd. No.NL-01K-0763 alone.

[17] Shri H. Dijen, learned counsel for the claimant/respondent Nos.1 to 4 fairly admits that the appropriate multiplier would be 16, not 17 as recorded in the impugned award.

[18] Regarding the amount awarded as compensation, towards loss of consortium, Mr. H. Dijen, learned counsel for the respondents/claimants relies upon the judgment of Hon'ble Supreme Court in the case of ***Param Pal Sharda and others v. Dhani Ram and others, AIR 2022 SC 4620*** in Para 10 wherein the amount of Rs.40,000/- (Rupees forty thousand) only was awarded to each of the claimants.

[19] Mr. A. Deni, learned counsel for the appellant also submits that one forth deduction regarding the item at serial No.(iii) of the award should be one third. He submits that the Ld. Tribunal has wrongly calculated the standard deduction of one forth towards personal expenses of the deceased. It is submitted that in absence of any evidence to the effect that father of the deceased was depending upon the deceased, the father will not be considered as a dependent of the deceased. He refers to Para Nos.30 and 31 of the judgement in ***Sarla Verma (supra)*** in Para 30 and 31 which is reproduced as under:

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra⁴, the general practice is to apply

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

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

He submits that there are 4(four) dependants as per the claim petition including the father of the deceased. In absence of any evidence regarding the dependants of the father who is claimant No.3, he will not be considered as a dependent of the deceased. Hence, there are only 3(three) dependants of the deceased and 2 to 3 persons as per Para 30 of the **Sarla Verma’s Case (supra)**, one-third has to be deducted towards personal and living

expenses. He submits that the item No.(iii) in the award have to be modified accordingly.

[20] Mr. H. Dijen, learned counsel for respondent Nos.1 to 4 also refers to the judgment of Hon'ble Supreme Court in the case of ***Raj Bala and others v. Rakeja Begam and others, AIR 2022 SC 5145***. In this case, he points out relying upon the case of ***Pranay Sethi (supra)***, loss of consortium at the rate of Rs.40,000/- (Rupees forty thousand) only was granted to the spouse and Rs.40,000/- (Rupees forty thousand) only each to the minor children of the deceased and he prays that items at serial Nos.(v) and (vi) for loss of consortium and loss of care and guidance for minor children, be modified.

[21] Mr. H. Chandrakumar, who appears on behalf of respondent No.7 has not made any submission as no liability is fixed on respondent No.7.

[22] Mr. H. Dijen, learned counsel for respondent Nos.1 to 4 has fairly admitted that the appropriate multiplier for the age of 35 years should be 16 inspite of 17 as applied by the Ld. Tribunal in the award.

[23] In view of the decision of the Hon'ble Supreme Court in the cases of ***Sarla Verma (supra)*** and ***Pranay Sethi (supra)***, it is held that appropriate multiplier for deceased, aged 35 years should be 16 in place of

17. Accordingly, item at Sl. No. (iv) head of award the appropriate of multiplier should be "16".

[24] Admittedly, there are 4 (four) claimants in the claim petition including the wife of the deceased, minor daughter, father of the deceased and mother of the deceased. On perusal of the materials on record including the deposition of the claimants specially claimant No.1, there is no document/statement to the effect that the father of the deceased was dependent on him. In view of the decision in the case of **Sarla Verma (supra)** in Para 30 and 31, claimant No.3/respondent No.3 herein is not a dependant on the deceased and he will not be entitled to any claim/compensation. Accordingly, there would be only 3(three) dependants of the deceased. As per Para 30 of the **Sarla Verma Case (supra)**, $\frac{1}{3}^{\text{rd}}$ (one third) has to be deducted as personal expenses from the income of the deceased in place of $\frac{1}{4}^{\text{th}}$ (one forth) as applied in Sl.No.(iii) of the Sub Head of the award passed by the Ld. Tribunal. With respect to loss of consortium given as Rs.1,00,000/- (Rupees one lakh) only at Sl.No.(v), it is held that it should be Rs.40,000/- (Rupees forty thousand) only as held in the judgment of **Pranay Sethi (supra)** and this excessive amount of Rs.60,000/- (Rupees sixty thousand) only have to be deducted. Regarding the award of Rs.1,00,000/- (Rupees one lakh) only towards loss of care and guidance for the minor children at Sl.No.(vi) of the award, it is held that minor children will be entitled to Rs.40,000/- (Rupees

forty thousand) only each as held in ***Raj Bala and others v. Rakeja Begam and others, AIR 2022 SC 5145*** in Para 21. In the present case, there is only one minor children of the deceased as such, she would be entitled to a sum of Rs.40,000/- (Rupees forty thousand) only towards loss of care and guidance for minor children. So, excessive amount of 60,000/- (Rupees sixty thousand) only has to be deducted. Regarding the funeral expenses, a sum of Rs.25,000/- (Rupees twenty five thousand) only is given at Sl.No.(vii) in the award. As per the judgment of ***Pranay Sethi*** (supra) in Para 59.8, the amount of funeral expenses is Rs.15,000/- (Rupees fifteen thousand) only. Accordingly, this excessive amount of Rs.10,000/- have to be deducted towards funeral expenses.

[25] In view of the above findings, the award is re-calculated as below:

Sl. No.	Heads	Calculations
(i)	Salary	Rs.15,000/- per month
(ii)	50% of (i) to be added as future prospect	Rs.15,000/- + Rs.7500/- = Rs.22,500/-
(iii)	$\frac{1}{3}^{rd}$ of (ii) to be deducted as personal expenses of the deceased	Rs.22,500/- - Rs.7500/- = Rs.15,000/-
(iv)	Compensation after applying age multiplier of 16	15,000/- X 12 X 16 = 28,80,000/-
(v)	Loss of consortium	Rs.40,000/-
(vi)	Loss of care and guidance for minor children	Rs.40,000/-
(vii)	Funeral expenses	Rs.15,000/-
(viii)	Total (i+ii+iii+iv+v+vi+vii+viii)	Rs.29,75,000/-

[26] Accordingly, the appellant is directed to pay a sum of Rs.29,75,000/- (Rupees twenty nine lakhs and seventy five thousand) only to respondent Nos.1, 2 and 4 along with interest @ 6% from the date of filing the claim case. Since the appellant/the insurer has failed to prove the negligence on the part of the claimants/respondents 1, 2 and 4 in pursuing their case before the Ld. Tribunal, the date of effecting interests is not altered. Respondent Nos.1, 2 & 4 are entitled to the amount of award of Rs.29,75,000/- in equal shares. The share of the minor respondent No.2 shall be kept as fixed deposit in a scheduled bank till she attains the age of minority. No withdrawal shall be made from the fixed deposit amount made in favour of the minor respondent No.2 without leave of the Ld. Tribunal.

[27] The appeal is partly allowed and disposed of in terms of the above findings. The parties are to bear their own costs.

JUDGE

FR/NFR

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