

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.22 of 2022

1. Tripura State Electricity Corporation Ltd.

Represented by the Chairman-cum-Managing Director,
Bidyut Bhavan, Banamalipur,
P.S. East Agartala, District West Tripura.

2. The Deputy General Manager (DGM),

Amarpur Electrical Division, P.S. Birganj,
District Gomati, Tripura.

3. The Senior Manager,

Tripura State Electricity Corporation Ltd.
Dalak Electric Call center,
P.S. Birganj, District Gomati, Tripura.

.....Appellant- Defendants

Versus

1. Shri Ananta Pada Jamatia,

Son of late Bimoni Jamatia,
Village- Dalak (Jamatia Para),
Amarpur, P.S. Birganj, District :-Gomati, Tripura.

2. Smti. Nibas Kumari Jamatia,

Wife of Shri Ananta Pada Jamatia,
Village- Dalak (Jamatia Para),
Amarpur, P.S. Birganj, District Gomati, Tripura.

.....Respondent-Plaintiffs

3. Shri Surjya Hari Jamatia,

S/o. Late Deb Sadhan Jamatia,
Resident of East Para Burruria,
P.S. Birganj, District Gomati, Tripura.

4. Shri Sarba Sadhan Jamatia,

S/o. Late Dwijahari Jamatia,
Resident of East Para Burruria,
P.S. Birganj, District Gomati, Tripura.

5. Shri Hadaram Reang,

S/o. Shri Abhoyram Reang,
Resident Chandrasingpara,
South Karbook, P.S. Karbook,
District Gomati, Tripura

.....Proforma- Respondents.

For Appellant(s) : Mr. N. Majumder, Adv.

For Respondent(s) : Mr. S. Lodh, Adv.
Mr. Samarjit Bhattacharjee, Adv.
Mr. A. Sengupta, Adv.

Date of Hearing : 09.01.2024

Date of delivery of
Judgment and Order : 25.01.2024

Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is directed under Section 100 of CPC against the judgment dated 19.02.2021 and decree dated 04.03.2021 passed by Learned Addl. District Judge, West Tripura, Agartala in Money Appeal No.01 of 2019 modifying the judgment dated 30.11.2018 and decree dated 15.12.2018 passed in Money Suit No.31 of 2014 by Learned Civil Judge, Senior Division, West Tripura, Agartala.

02. The brief fact relates to this appeal are as follows:

The respondent-plaintiffs filed one suit for compensation under the Fatal Accidents Act 1855 before the Learned Trial Court below against the Tripura State Electricity Corporation Limited and Ors. alleging inter-alia that the respondent-plaintiffs are the parents of the deceased Dharma Bhakta Jamatia, who had died on 13.05.2013 due to electrocution. It was the case of the respondent-plaintiffs that due to severe

cyclone in the first week of May, 2013 several electric lines were damaged and disconnected due to falling of trees at Dalak area situated within the territorial limits of Amarpur Sub-division and after 5/6 days of cyclone and tornado, the deceased and one Rabindra Hari Jamatia were engaged by pro-respondents for cutting/removing the trees and the tree branches from the electricity lines on payment of wages on the reason that the pro-respondent No.5, Hadaram Reang, one of the staffs under the respondent-plaintiff Nos.1 and 2 of the Original Suit were unable to climb the trees due to backache.

03. On 13.05.2011, around 04.15 p.m the pro-respondent Nos.3 to 5 accompanied with the deceased and one Rabindra Hari Jamatia went to Jamatia Para near Thalchara Bazar on call to repair as well as to restore electricity connection at Jamatia Para. On reaching there, as per direction and under compelling circumstances on the pressure being created by the pro-respondent Nos.3 to 5, the deceased and said Rabindra Hari Jamatia had climbed the electric pole for repairing. Although they have/had no previous experience in this matter i.e. to climb the electric pole, so, they denied climbing of the electric pole. Before proceeding to that area for the said purpose, electricity line of that area was shut down by the pro-respondent Nos.3 and

4 but during working suddenly the respondent Nos.3 and 4 continued the supply of electricity resulting which the deceased and Rabindra Hari Jamatia fell down from the electric pole due to electric shock and received severe injury. Immediately, thereafter, both of them were shifted to Amarpur hospital where the deceased succumbed to his injuries on 13.05.2013. In this connection a police case vide Birganj P.S case No.65 of 2013, under Section 338/304 of IPC was registered against the pro-respondent Nos.3 to 5. After that the respondent-plaintiffs No.1 and 2 having claimed that the deceased being their son was 19 years old at that time and was unmarried and also used to earn Rs. 300/- (Rupees three hundred only) per day and contributed the whole amount to maintain the family, filed the case claiming compensation of Rs.7,00,000/-(Rupees seven lakhs only) for the premature death of their son due to negligence on the part of the respondents before the Learned Court below. All the defendants in the original suit contested the case by filing their separate written statements and denied the assertions of the respondent-plaintiffs in their plaint rather the respondent-defendant Nos.1 and 2 contended that the branch line of Dalak Jamatia Para was made isolated from the main line due to storm on 07.05.2013. On 12.05.2013 the staff of Electric Sub-Division as well as call center made some repairing removing the branches of trees

fallen on the electric line and the electric line was charged on 12.05.2013 up to Duluma(Daluma) T.S.R camp after isolating the faulty branch line. It was the further case of the respondent-appellant Nos.1 and 2 that on the day of alleged incident some people of Dalak Jamatia Para tried to remove the trees of that branch line at their own interest for having electricity supply and thereby they tried to connect the branch line and therefore the accident occurred. It was further asserted that there was no negligence or actionable wrong on their part and the respondent Nos.3 to 5 even have/had no authority to engage any labour and that the suit was not maintainable in absence of the provisions of the Employees Compensation Act. It was further asserted that the answering defendants were not liable for such death and also not liable for making any payment of compensation as claimed by the respondent-plaintiffs.

04. Upon the pleadings of the parties the Learned Trial Court below framed the following issues:

“(1)Whether the suit is maintainable in its present form and nature?

(2)Whether there is any cause of action for filing the suit by the plaintiff?

(3)Whether the deceased Dharma Bhakta Jamatia died on 13.05.2015 (sic.)(actually it should be 13.05.2013) caused by electrocution due to actionable wrong/ negligence/ carelessness on the part of the defendants No. 1 and 2?

(4)Whether defendant No.6 has(sic) compelled the deceased Dharma Bhakta Jamatia to climb on the electric post for purpose of repairing though the deceased Dharma Bhakta Jamatia has(sic) declined initially to climb the electric post as he was not acquainted or conversant with the electric repairing work?

(5)Whether the defendants No.1 & 2 are liable for making any payment of compensation as claimed

by the plaintiffs if so what be the quantum of compensation?

(6)Whether the plaintiffs are entitled to get any other relief or reliefs?"

05. Before the Learned Trial Court the respondent-plaintiffs have adduced two witnesses and relied upon some documentary evidences which were marked as exhibits and the appellant-defendants have also adduced three witnesses and finally after hearing both the sides Learned Trial Court below passed the judgment and order on 30.11.2018. The operative portion of the judgment/order of the Learned Court below is reproduced below:

"In the result, the instant suit preferred by the Plaintiffs namely Sri Ananta Pada Jamatia and Smt. Nibas Kumari Jamatia is decreed on contest with costs and it is ordered that Defendant No. 1 namely Tripura State Electricity Corporation Ltd., represented by its Chairman-cum-Managing Director shall pay Rs. 5,00,000/- (Rupees five lakhs) only as damages to the Plaintiffs with interest @ 8.5% per annum from the date of institution of the suit to the date of realization of the said amount and on realization of the said amount of Rs. 5,00,000/- with requisite interest, the entire amount shall be apportioned equally among the two Plaintiffs. The entire amount shall be paid by Defendant No.1 to the Plaintiffs within three months from the date of this Judgment."

06. Challenging that judgment, the defendants Nos.1 and 2 of the original suit preferred an appeal before the Court of Learned District Judge, West Tripura, Agartala and the case was consigned to the Court of Learned Addl. District Judge, Court No.2, West Tripura, Agartala for disposal according to law and the Learned First Appellate Court after hearing both the sides modified the said judgment of the Learned Trial Court below by judgment and order dated

19.02.2021. The operative portion of the order of the Learned First Appellate Court is reproduced below:

"In the result, the appeal fails, but the decree so passed by the trial court stands modified. The respondent Nos. 1 and 2 (plaintiff Nos. 1 and 2 in original suit) are entitled to get amount of compensation to the tune of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousands only) along with 6% interest per annum thereon from the date of filing the original suit on 02.09.2014 till the date of realization. The appellants shall make payment of the amount so awarded within a period of three months failing which the awarded amount shall carry 9% interest per annum from the date of filing the original suit on 02.09.2014 till the date of realization. The judgment and decree of the Trial Court stands modified to the extent as indicated above. To feel contrive for their (parties) reproachable conduct there is no order as to costs."

07. Challenging that Judgment, the defendant Nos.1 and 2 of the original suit as appellants have preferred this Second Appeal before the High Court. At the time of admission of appeal by order dated 23.05.2022 following substantial question of law was framed:

"Whether the Ld. Court below committed error in deciding the issue involved here in?"

08. Thereafter, on 09.01.2024 again after hearing the contesting parties further another following substantial question of law was framed:

"Whether the judgment of the Learned appellate Court is perverse?"

09. At the time of hearing, Learned Counsel, Mr. N. Majumder representing the appellants drawn the attention of the Court that the present appellants have preferred this appeal only on the ground that the Learned Trial Court at the time of delivering the judgment wrongly made improper

calculation of compensation and came to a wrong finding. Learned Counsel further submitted that Learned Trial Court determined the amount of compensation/damage to Rs.2,00,000/- (Rupees two lakhs only) but at the time of delivering judgments/order determined the same to Rs.5,00,000/- (Rupees five lakhs only) without any reasoning which was not legally permissible. Learned Counsel further referring the judgment of Learned First Appellate Court drawn the attention of this Court that Learned First Appellate Court also wrongly calculated/decided the amount of compensation/damage which prompted the present appellants to challenge the same by this Second Appeal. No other arguments were advanced by the Learned Counsel for the present appellants.

10. On the other hand, Learned Counsel Mr. Samarjit Bhattacharjee for the respondent-plaintiffs No.1 and 2 submitted that there was no error in the judgment of the Learned First Appellate Court and the Learned First Appellate Court after considering all the legal aspects based on the findings of Hon'ble the Apex Court has rightly delivered the judgment which needs no interference. Rather Learned Counsel submitted that the Learned First Appellate Court did not consider any amount as consortium which may be taken into consideration by this Appellate Court and urged before the Court to consider the same in the light of judgment of

the Hon'ble Apex Court. Learned Counsel in course of hearing also referred some citations. Learned Counsel, Mr. S. Lodh for the pro-respondent No.5 did not submit anything challenging the judgment of the First Appellate Court and Learned Counsel, Mr. A. Sengupta representing the proforma-respondent Nos.3 and 4 also refused to say anything against the judgment of the Learned First Appellate Court, rather the Learned Counsels of the proforma-respondents submitted that Learned First Appellate Court considering all the aspects delivered the judgment and they also defended the judgment of the First Appellate Court.

11. As I have already stated that the Learned Counsel for the appellant, at the time of hearing did not submit anything regarding the findings of the Learned Courts below, rather he confined his arguments only to the extent of determination of compensation by the Learned Trial Court as well as Learned First Appellate Court and also urged before the Court to intervene the same.

12. There is no dispute on record regarding the fact of accident on the alleged day i.e. on 13.05.2013 and the death of victim Dharma Bhakta Jamatia due to electrocution. Now, we are to see as to whether the Learned First Appellate Court has committed any error in determining the amount of compensation modifying the judgment of the Learned Trial Court below. As already submitted, Learned Counsel, Mr.

Samarjit Bhattacharjee, in course of hearing referred some citations.

13. In **Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another** dated 15.04.2009 reported in **(2009) 6 SCC 121**, Hon'ble the Supreme Court in Para 34 to 38 have observed as under:

"34. The Motor Vehicles Act, 1988 was amended by Act 54 of 1994, inter alia, inserting Section 163-A and the Second Schedule with effect from 14-11-1994. Section 163-A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3000 to Rs.40,000. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000, by applying the formula: $(\frac{2}{3} \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under section 163-A of MV Act.

35. There are however discrepancies/errors in the multiplier scale given in the Second Schedule table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the 'multiplier' figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 & 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5.

36. Another noticeable incongruity is, having prescribed the notional minimum income of non-earning persons as Rs.15,000/- per annum, the

table prescribes the compensation payable even in cases where the annual income ranges between Rs.3000 and Rs.12,000. This leads to an anomalous position in regard to applications under Section 163-A of the MV Act, as the compensation will be higher in cases where the deceased was idle and not having any income, than in cases where the deceased was honestly earning an income ranging between Rs.3000 and Rs.12,000 per annum. Be that as it may.

37. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the MV Act and claims under Section 166 of the MV Act. (See *Oriental Insurance Co. Ltd. vs. Meena Variyal*): 2007 (5) SCC 428). Section 163-A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In *Trilok Chandra*: 4 (1996) 4 SCC 362, this Court, after reiterating the principles stated in *Susamma Thomas*: (1994) 2 SCC 176, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in *Susamma Thomas*): (1994) 2 SCC 176, even in cases under Section 166 of the MV Act, by borrowing the principle underlying Section 163-A and the Second Schedule.

38. This Court observed in *Trilok Chandra* 4 (1996) 4 SCC 362:

"17. Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas* case: (1994) 2 SCC 176."

"18. ...Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.....What we

propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16..."

Referring the same, Learned Counsel, Mr. S. Bhattacharjee representing the respondent plaintiffs submitted that at the time of calculation, Learned Trial Court below determined the multiplier 17 but the Learned First Appellate Court after hearing both the sides in view of the principles of the aforesaid judgment determined the multiplier as 18 and accordingly, rightly and reasonably determined the amount of compensation and furthermore, the Learned First Appellate Court also in exercise of the power provided under Order XLI, Rule 33 of CPC modified the quantum of compensation awarded by Learned Trial Court and rightly delivered the judgment.

14. Further in **V. Mekala vs. M. Malathi and Another** dated 25.04.2014 reported in **(2014) 11 SCC 178**, Hon'ble the Supreme Court in Para 20 observed as under:

"20. Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take 10,000 as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and we hold that the appellant claimant is entitled to 50% increase under this head as per the principle laid down by this Court in *Santosh Devi: (2012) 6*

SCC 421. The relevant paragraph reads as under:
(SCC pp. 426-27, para 13)

"13. In *Sarla Verma* case: (2009) 6 SCC 121, another two-Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in *U.P. SRTC v. Trilok Chandra*: (1996) 4 SCC 362, *Nance v. British Columbia Electric Railway Co. Ltd.*: 1951 AC 601, *Davies v. Powell Duffryn Associated Collieries Ltd. (No. 2)*: 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straightjacket formula under different headings, some of which are enumerated below: (*Sarla Verma* Case: (2009) 6 SCC 121, SCC pp. 133-34, para 24)

Question (i)-Addition to income for future prospects

24. In *Susamma Thomas*: (1994) 2 SCC 121 this Court increased the income by nearly 100%, in *Sarla Dixit*: (1996) 3 SCC 179 the income was increased only by 50% and in *Abati Bezbaruah*: (2003) 3 SCC 148 the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax".) The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Therefore, taking both the aspects into account, the total amount of compensation under this head

is calculated as Rs 22,68,000 [(Rs 10,000 x 70/100 + Rs 10,000 x 70/100 x 50/100) x 12 x 18]"

15. In **National Insurance Company Limited vs. Pranay Sethi and Others** dated 31.10.2017 reported in **(2017) 16 SCC 680**, Hon'ble the Apex Court relying upon the earlier judgment **Sarla Verma(supra)** in Para 10 and 11 have observed as under:

"10. The three-Judge Bench further apprised itself that in *Sarla Verma*: (2009) 6 SCC 121 the Court had undertaken the exercise of comparing the multiplier indicated in *Susamma Thomas*: (1994) 2 SCC 176, *Trilok Chandra* (1996) 4 SCC 362, and *New India Assurance Co. Ltd v. Charlie*: (2005) 10 SCC 720 for claims under Section 166 of the Act with the multiplier mentioned in the Second Schedule for claims under Section 163-A and compared the formula and held that the multiplier shall be used in a given case in the following manner:(*Reshma Kumari Case*: (2013) 9 SCC 65, SCC p.86, para 29)

"29. ...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 Thomas* (1994) 2 SCC 176, *Trilok Chandra* (1996) 4 SCC362 and *Charlie*: (2005) 10 SCC 720, 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." *Sarla Verma Case*: (2009) 6 SCC 121, SCC p. 140, para 42)".

11. After elaborately analysing what has been stated in *Sarla Verma*: (2009) 6 SCC 121, the three-Judge Bench referred to the language employed in Section 168 of the Act which uses the expression "just". Elucidating the said term, the Court held that it conveys that the amount so determined is fair, reasonable and equitable by accepted legal standard and not on forensic lottery. The Court observed "just compensation" does not mean "perfect" or "absolute compensation" and the concept of just compensation principle requires examination of the particular situation obtaining uniquely in an individual case. In that context, it referred to *Taff*

Vale Railway Co. v. Jenkins: 1913 AC 1 and held: (Reshma Kumari case: (2013) 9 SCC 65, SCC p. 88, para 36.

"36. In *Sarla Verma*: (2009) 6 SCC 121, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma*: (2009) 6 SCC 121 that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. *We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma*: (2009) 6 SCC 121."

(emphasis supplied)

Referring the aforesaid citations Learned Counsel, Mr. S Bhattacharjee further submitted that the Learned First Appellate Court after taking into consideration all the aspects determined the monthly notional income of the deceased as Rs. 15,000/- (Rupees fifteen thousand only) per month considering the inflation of money in India in the year 2013 as the accident took place in that year and determined the compensation accordingly and urged this Court to uphold the judgment of the Learned First Appellate Court. Further, it was asserted by the Learned Counsel for the respondent-plaintiffs that at the time of alleged accident, the deceased was at his 20 years of age as per exhibit-2 relied upon by the respondent-plaintiffs before the Learned Court below and

accordingly, Learned Court below rightly determined the multiplier as 18.

16. In **Kurvan Ansari Alias Kurvan Ali and Another vs. Shyam Kishore Murmu and Another** dated 16.11.2021 reported in **(2022) 1 SCC 317**, Hon'ble the Supreme Court in Para 16 and 17 observed as under:

"16. In view of the above, we deem it appropriate to take notional income of the deceased at Rs 25,000 (Rupees twenty-five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier 15, as prescribed in Schedule II for the claims under Section 163-A of the Motor Vehicles Act, 1988, it comes to Rs 3,75,000 (Rs.25,000 x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs. 40,000 each towards filial consortium and Rs.15,000 towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation:

(a) Loss of Dependency	:	Rs. 3,75,000-00
(b) Filial Consortium (Rs.40,000 x 2)	:	Rs.80,000-00
(c) Funeral Expenses	:	Rs. 15,000-00

Total	:	Rs. 4,70,000-00

17. Accordingly, the appellants are entitled for a sum of Rs.4,70,000 (Rupees four lakhs seventy thousand only) towards total compensation with interest @ 6% p.a. from the date of claim petition till the date of realisation. The enhanced compensation shall be apportioned between the appellants as ordered by the Tribunal. The entire compensation shall be paid to the appellants by Respondent No 2 insurance company, and we keep it open to the insurance company to recover the same from Respondent 1 owner of the motorcycle by initiating appropriate proceedings as the motorcycle was driven by the driver who was not possessing valid driving licence on the date of the accident."

17. In **Roop Lal and Another vs. Suresh Kumar Yadav and Others** dated 04.01.2022 reported in **(2022) SCC OnLine All 25**, Hon'ble the Apex Court in Para 12 and 13 observed as under:

"12. Recently, the Hon'ble Apex Court has decided the controversy ans(sic.) settled the law regarding the death of a child in *Kurvan Ansari @*

Kurvan Ali v. Shyam Kishore Murmu, (2021) 4 TAC 673 (Supreme Court). In this case, the Hon'ble Apex Court has stated that in spite of repeated directions, Scheduled-II of Motor Vehicles Act, 1988 is not yet amended. Therefore, fixing notional income of Rs.15,000/- per annum for non earning members is not just and reasonable. It is further stated by the Apex Court that in view of the judgments in the cases of **Puttamma v. K.L. Narayana Reddy (2014) (1) TAC 926** and **Kishan Gopal v. Lala, (2013) 4 TAC 5**. It is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupees and cost of living.

13. With the aforesaid observations, the Hon'ble Apex Court took the notional income of the deceased at Rs. 25,000/- per annum, hence we are of the considered view that notional income of the deceased must be assumed Rs. 25,000/- per annum as he was non-earning member. Accordingly, when the notional income is multiplied with applicable multiplier '15' as prescribed in Scheduled-II for the claims under Section 163-A of the Motor Vehicles Act, 1988, it comes to Rs. 3,75,000/- towards loss of dependency. The appellant nos. 1 and 2 are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- funeral expense. Hence, the appellant nos. 1 and 2 are entitled to the following amount towards compensation;

- (i) Loss of Dependency : 25,000/- X 15 = Rs.3,75,000/-
- (ii) Filial consortium : 40,000/- X 2 = Rs.80,000/-
- (iii) Funeral expenses : Rs.15,000/-
- (iv) Total compensation : Rs.4,70,000/-"

Referring the said judgments, Learned Counsel Mr. Bhattacharjee further submitted that in view of the principles of the aforesaid judgment, Learned First Appellate Court ought to have considered the filial consortium of Rs. 80,000/-(Rs.40,000X2), but the Learned First Appellate Court erred in considering the filial consortium at the time of determination of the amount of compensation, which may kindly be awarded in favour of respondent-plaintiffs.

18. Finally, Learned Counsel urged before the Court that there is no scope to interfere with the judgment passed by Learned First Appellate Court and submitted before the

Court to uphold the judgment of the Learned First Appellate Court.

19. I have heard arguments of both the sides at length and gone through the records of the Learned Court below. As I have already stated that the Learned Counsel for the appellants at the time of hearing only confined his arguments regarding calculation/determination of compensation by the Learned Trial Court as well as the Learned First Appellate Court. Excepting that no further arguments were raised by Learned Counsel for the appellants. After going through the records of the Learned Court below, it appears that there is no dispute on record in respect of death of the deceased, Dharma Bhakta Jamatia on the alleged day i.e. on 13.05.2013. Now here in the Second Appeal, the main question for consideration is as to whether the Learned First Appellate Court rightly determined the amount of compensation at the time of delivering the judgment. After hearing the Learned Counsel for the contesting parties and also after going through the judgment of the Learned Trial Court as well as the Learned First Appellate Court, it appears that the Learned Trial Court in determining the amount of compensation relied upon the Second Schedule of M.V. Act and determined the amount compensation in view of the provision under Section 163-A of M.V. Act on structured formula basis. But the Learned First

Appellate Court, at the time of delivering the judgment and in view of the principles laid down by the Hon'ble Supreme Court of India as stated above, determined the compensation amount/damage taking multiplier 18 instead of 17 as taken up for consideration by the Learned Trial Court. Since on the date of accident the age of deceased was 20 years, so, in view of the judgment of National Insurance Company Limited Vs. Pranay Sethi and Ors.(supra) which confirmed the judgment of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another(supra), in my considered view, Learned First Appellate Court rightly determined the amount of compensation and furthermore, taking into consideration, the multiplier as 18, the Learned First Appellate Court in exercise of the power conferred under Order XLI, Rule 33 of CPC modified the amount of compensation determined by the Learned Trial Court. Furthermore, Learned First Appellate Court determined the notional income of the deceased at the rate of Rs. 15,000/- (Rupees fifteen thousand only) per month and thereafter deducted 50% towards personal and living expenses of the deceased, and after deducting personal expenses he calculated the amount of compensation as Rs. 16,20,000/- (Rupees sixteen lakhs and twenty thousand only) and along with that amount, Learned First Appellate Court added Rs. 30,000/- (Rs. 15,000 as funeral expenses+ Rs. 15,000 as

loss of estate), in view of the judgment of **National Insurance Company Limited Vs. Pranay Sethi and Ors.(supra)**. In Para 52 of the said judgment the Hon'ble Apex Court observed as under:

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

20. Further, in Para 11, of the judgment of Pranay Sethi(supra) as referred above, certain observations were also made.

21. In course of hearing none of the Learned Lawyers of either of the parties could satisfy the Court as to whether

Section 163-A of M.V Act read with the Second Schedule of M.V Act or Section 166 of M.V Act would be applied for determination of compensation in the given case or not. Learned Trial Court below determined the amount of compensation under Section 163-A of M.V Act following the Second Schedule and on the other hand, Learned First Appellate Court determined the amount of compensation under Section 166 of M.V Act. But nowhere in the judgment, Learned First Appellate Court made any observation as to why he has considered to determine the compensation under Section 166 of M.V Act. Learned First Appellate Court observed that in view of the power conferred under Order XLI Rule 33 of CPC he has modified the award but that power cannot be exercised for determination of compensation in upper limit, as he applied.

22. In this regard, I would like to refer herein below the Para Nos. 31 to 34 of the judgment of Hon'ble Supreme Court of India reported in **(2013) 9 SCC 65** in **Reshma Kumari And Others vs. Madan Mohan and Another** dated 02.04.2013, wherein the Hon'ble Apex Court has observed as under:

"31. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the Claims Tribunal which appears to it to be just. The expression, "just" means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously "just compensation" does not mean "perfect" or "absolute" compensation. The just compensation principle

requires examination of the particular situation obtaining uniquely in an individual case.

32. Almost a century back in *Taff Vale Railway Co. v. Jenkins* (1913) AC 1 the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the dependants of the deceased, who had been breadwinner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.

33. This Court in *C.K. Subramania Iyer v. T. Kunhikuttan Nair* (1969) 3 SCC 64, reiterated the legal philosophy highlighted in *Taff Vale Railway* (1913) AC 1 for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor.

34. In *Susamma Thomas* (1994) 2 SCC 176, this Court, though with reference to Section 110-B of the Motor Vehicles Act, 1939, stated that the multiplier method was the accepted norm of ensuring the just compensation which will make for uniformity and certainty of the awards. We are of the opinion that this statement in *Susamma Thomas* (1994) 2 SCC 176 is equally applicable to the fatal accident claims made under Section 166 of the 1988 Act. In our view, the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the tribunals and courts."

So, after going through the principle of the aforesaid citation, we can safely come to the conclusion that the award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefits by the deceased family and further it appears that in

fatal accident claim cases it would be prudent if the claims are made under Section 166 of the MV Act. So, in my considered view, the Learned First Appellate Court after taking into consideration all aspects has rightly and reasonably had delivered the judgment modifying the judgment of the Learned Trial Court although nothing was expressed by the First Appellate Court as to why he opted to determine compensation under Section 166 of M.V Act.

23. Thus, after considering the factual and legal aspects and after hearing both the sides and also after going through the compensation determined by the Learned First Appellate Court it appears that in view of the principles of the aforesaid judgment as referred above, the Learned First Appellate Court at the time of delivering the judgment has rightly and reasonably after taking into consideration all aspects had delivered the judgment and there was no infirmity in the judgment delivered by the Learned First Appellate Court modifying the judgment of Learned Trial Court. So, this Court does not find any merit in appeal to interfere the judgment of the Learned First Appellate Court. For want of evidence nothing is considered to be granted/awarded as consortium as prayed for.

24. Thus, this present appeal stands bereft of merit and accordingly, it is dismissed. The substantial question of

law accordingly answered in negative against the present appellants of this case.

25. In the result, the appeal filed by the appellants is hereby dismissed on contest with costs. Pending application, if any, also stands disposed of. The judgment dated 19.02.2021 and decree dated 04.03.2021 delivered by Learned Addl. District Judge, West Tripura, Agartala in Money Appeal No.01 of 2019 is hereby upheld and accordingly it is affirmed.

Prepare decree accordingly and send down the LCRs.

JUDGE



**MOUMITA
DATTA**

Purnita

Digitally signed by MOUMITA DATTA
Date: 2024.01.29 14:29:12 +05'30'