



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Principal Seat at Guwahati

MAC Appeal No. 221/2020.

Miss. Samina Kalita,
D/o Bhabataran Kalita,
R/o New Dudhnoi,
P.O. – Dudhnoi,
P.S. – Dudhnoi,
Dist. – Goalpara.

..... Appellant.

-Versus-

The Branch Manager,
National Insurance Company Limited, Goalpara Branch,
P.O. – Goalpara,
P.S. – Goalpara,
Dist. – Goalpara,
PIN - 783103.

..... Respondent.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the appellant

:- Mr. H. Das.

Advocate for the respondent No. 1	:-	Ms. S. Roy.
Date of Hearing	:-	03.10.2024.
Date of Judgment & Order	:-	25.10.2024.

JUDGEMENT & ORDER (CAV)

Heard Mr. H. Das, learned counsel for the appellant and Ms. S. Roy, learned counsel for the respondent No. 1.

2. In this appeal, under Section 173 of the M.V. Act, 1988, the appellant, Samina Kalita has put to challenge the correctness or otherwise of the Judgment and Award dated 23.03.2020, passed by the learned Member, M.A.C.T., Goalpara, in M.A.C. Case No. 269/2017.

3. It is to be noted here that vide impugned Judgment and Award dated 23.03.2020, the learned Member, M.A.C.T., Goalpara has awarded a sum of Rs. 50,000/- only, being the compensation (no fault liability) on account of death of the father of the appellant, in a motor vehicle accident.

Background Facts:-

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“On 10.11.2014, at about 5:20 pm, Bhabataran Kalita, the father of the appellant, was travelling in a TATA Nano vehicle, driven by one Mahendra Kalita (owner/driver of the vehicle) bearing registration No. AS-18-B-4173, from Dudhnoi to Goalpara. On the

way, at Solmari, the vehicle met with an accident at NH 37, as one cow suddenly ran towards the road. As a result of the accident, Bhabataran Kalita sustained severe injuries on the backside of his head and he was taken to Solace Hospital, Goalpara and from there, he was referred to GNRC, Guwahati and during the course of treatment, after 5 days of the accident, on 15.11.2014, Bhabataran Kalita succumbed in his injuries at GNRC, Guwahati.

Thereafter, the present appellant had preferred one claim petition before the learned Member, M.A.C.T., Goalpara, claiming compensation on account of death of her father.

Thereafter, the learned Tribunal after hearing both the parties had disposed of the said claim petition, vide impugned judgment and award, directed the respondent No. 1, the National Insurance Company Limited, to pay a sum of Rs. 50,000/- only, being no fault liability, with interest @ 9% per annum, from the date of filing of the claim petition, till realization."

Grounds:-

5. Being highly aggrieved and dissatisfied, the present appellant has preferred the present appeal, under Section 173 of the M.V. Act, 1988 for quashing and setting aside the impugned judgment and award dated 23.03.2020, on the following grounds :-

- (I) That, the learned counsel for the claimant had conducted mistakenly by bringing the A.S.I. (P.W. No.2) to the witness box on the plea that the driver had committed no fault in driving the vehicle and that he had failed to bring on record the actual plea that the said car was driven in rash and

negligent manner by the driver as a result of which the father of the claimant had sustained injury and ultimately suffered demise.

- (II) That, there was clear and specific plea of the claimant that her father was expired due to the accident caused by Opp. party No.3 i.e. the driver of the offending vehicle because of his rash & negligent driving of the vehicle AS 18 B-4173 (Tata Nano). But, the learned Tribunal had wrongly held that there was no rashness or negligence on the part of the said opposite party No.3.
- (III) That, the Learned Member erred in law and the facts on determining the quantum of compensation on correct Principle/standard and the same is based on speculation only.
- (IV) That, the evidence on record was misread by the learned Tribunal below and came to a perverse finding being based on no evidence or against the evidence on record.
- (V) That, it is well settled that the claimant need not to establish her case beyond doubt that there was any negligence of the driver of the vehicle. Hence the learned Member ought not to discard this legal aspect of the case.
- (VI) That, the deceased had sustained injuries sustained due to blunt force impact, as is evident from the PM report (Ext.-6) the learned member had failed to consider the said relevant aspect.
- (VII) That, in view of clear and specific plea in respect of the rash and negligent driving on the part of the driver that caused

the death of the deceased and there being no denial, the learned Member ought to have accepted the said contention of the case of the appellant. But, the learned member had misinterpreted the judgments of the Hon'ble Supreme Court and of this Court and has perfunctorily passed the judgment and award.

(VIII) That, the learned Member contrary to the evidence on the record of the case and based on the wrong statement of P.W. No. 2 in the cross-examination had passed the judgment and award and directed the Insurance Company to pay only no fault liability.

(IX) That, admittedly when the driver of the vehicle (opposite party No. 3) specifically quoted in the Ejahar that he wanted to save a stray cow on the road, which caused accidental death to the deceased which is a clear case of negligence, and therefore, the Insurance Company is liable to pay all kinds of compensation payable to the appellant due to the said accidental death.

(X) That, the learned Member wrongly held that the claimant is entitled to receive only just compensation of no fault.

Submissions:-

6. Mr. Das, learned counsel for the appellant submits that the learned Tribunal has committed manifest illegality in rejecting the claim petition, filed by the appellant, on the ground that there was no rash and negligent driving on the part of the driver. Mr. Das further submits that in fact there was rash and negligent driving on the part of the respondent/opposite party No. 3, the driver of the vehicle and the

learned member had discussed and relied upon the evidence of P.W.2, who is a police official, who in his evidence deposed that there was no rash and negligent driving on the part of the driver of the vehicle and that in fact P.W.2 had not investigated the case also. Mr. Das further submits that in the said accident, though one F.I.R. was lodged by the respondent/opposite party No. 3, before the Agia Police Station, on 26.11.2014, yet, the I.O. has not registered regular case instead registered one unnatural death case, being U.D. Case No. 11/2014 and endorsed S.I. Ali Hussain to investigate the same. Mr. Das further submits that the learned Tribunal has failed to consider the pleading and the evidence of P.W.1, who had categorically stated that the accident took place on account of rash and negligent driving on the part of the respondent/opposite party No. 3, and on such count the claim petition was filed under Section 166 of the M.V. Act. But, the learned Tribunal has failed to assess the compensation which the claimant is entitled to, on account of death of her father. Therefore, Mr. Das has contended to allow this appeal.

6.1. Mr. Das has referred following case laws in support of her submission :-

- (i) **New India Assurance Company Limited vs. Yadu Sambhaji More and Others**, reported in **(2011) 2 SCC 416**;
- (ii) **National Insurance Company Limited vs. Tarulata Gogoi**, reported in **(2022) 4 GLR 555**;
- (iii) **Bimla Devi and Others vs. Himachal Road Transport Corporation and Others**, reported in **(2009) 13 SCC 530**;

- (iv) **Sunita and Others vs. Rajasthan State Road Transport Corporation and Another**, reported in **AIR 2019 SC 994**;
- (v) **Shivaji Dayanu Patil and Another vs. Smt. Vatschala Uttam More**, reported in **1991 (3) SCC 530**; and
- (vi) **Anita Sharma and Others, vs. New India Assurance Company Limited and Another**, reported in **(2021) 1 SCC 171**.

7. On the other hand, Ms. Roy, learned counsel for the respondent No. 1 submits that the learned Tribunal has not committed any illegality in awarding only the no fault liability. Ms. Roy referring to the evidence of P.W.2 submits that there was no rash and negligent driving on the part of the respondent/opposite party No. 3, who was driving the TATA Nano vehicle and in order to maintain a claim under Section 166 of the M.V. Act, the claimant has to establish rash and negligent driving on the part of the driver of the offending vehicle, but, in the case in hand, the claimant had failed to establish the rash and negligent driving on the part of the driver of the vehicle and on such count the learned Tribunal has rightly rejected the claim. Ms. Roy further submits that the case ought to have been filed under Section 163(A) of the M.V. Act. But, having not done so, the claimant has opted to prefer the claim petition under Section 166 of the M.V. Act, which is not at all maintainable and therefore, Ms. Roy has contended to dismiss the petition.

7.1. Ms. Roy has referred following case laws in support of her submission :-

- (i) **Oriental Insurance Company Limited vs. Meena Veriyal and Others**, reported in **(2007) 5 SCC 428**.

(ii) **Surender Kumar Arora and Another vs. Manoj Bisla and Others**, reported in **(2012) 4 SCC 552** and

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also gone through the impugned judgment and award dated 23.03.2020, passed by the learned Member, M.A.C.T., Goalpara, in M.A.C. Case No. 269/2017, and case record of the same also gone through the case laws referred by learned counsel for both the parties.

9. In view of the pleading of the parties and the submissions of learned Advocates of both sides the issue that has to be addressed by this court are :-

(i) Whether the evidence on the record are sufficient to establish rash and negligent driving on the part of the driver of the offending vehicle that caused the accident that caused death of the father of the claimant?

(ii) If so, whether the learned Tribunal is justified in rejecting the claim of the appellant on the basis of the final report submitted by police ?

10. There is no quarrel at the bar that in order to sustain a claim petition, under Section 166 of the M.V. Act, the claimant has to establish the rash and negligent driving on the part of the driver of the offending vehicle. It is well settled in catena of decision of Hon'ble Supreme Court. Ms. Roy, the learned counsel for the respondent No.1 has rightly pointed this out at the time of hearing. It is also well settled that the standard of proof is not beyond all reasonable doubt, but preponderance of probability only. Reference, in this context, can be made to the decision

of Hon'ble Supreme Court in **Mathew Alexander vs. Mohammed Shafi and Anr.**, reported in **2023 LiveLaw (SC) 531**.

11. In order to address the aforesaid issues, this court deems it necessary to have a look at the claim petition and also to peruse the evidence of P.W.1 and P.W.2 and the other documents, so exhibited by the claimant.

12. That a careful perusal of the claim petition, i.e. the Form No. 54 indicates that on 10.11.2014, at about 5.20 pm, the deceased, namely Bhabataran Kalita was travelling from Dudhnoi towards Goalpara, in a Tata Nano vehicle, bearing registration No. AS-18-B-4173. The vehicle was driven by Shri Mahendra Kalita, the respondent/opposite party No.3. It is also stated that on the way, the vehicle met with an accident on N.H. 37, near Solmari by hitting a cow. As a result of the said accident, her father Bhabataran Kalita sustained severe injuries on the backside of neck and he was taken to Solace Hospital, Goalpara and from there he was referred to GNRC, Guwahati and after five days of treatment, her father succumbed to his injuries at GNRC, Guwahati, on 15.11.2014.

12.1. In support of the aforesaid averments in the claim petition, the claimant, as P.W.1, by submitting her evidence- -in-affidavit. A careful perusal of the same reveals that on 10.11.2014, at about 5.20 pm, her father, Bhabataran Kalita was travelling from Dudhnoi towards Goalpara, in a Tata Nano vehicle, bearing registration No. AS-18-B-4173. The vehicle was driven by one person namely, Mahendra Kalita at a very high speed and in negligent manner. Then on reaching Solmari Sutradharpara, at N.H. 37, suddenly one cow ran towards the road and then Mahendra Kalita could not control the vehicle and suddenly applied the brake and stopped the vehicle at the left side of the road. As a result, her father could not control himself and dashed against the dash board of the

vehicle and sustained severe injuries on the back side of his neck and became unconscious. Thereafter, her father was sent to Solace Hospital, Goalpara and from there he was referred to GNRC, Guwahati. After five days of treatment, her father suffered demise at GNRC, Guwahati, on 15.11.2014.

12.2. Her evidence further reveals that in connection with the said accident, Mahendra Kalita, the driver of the offending vehicle, lodged an F.I.R. with Agia Police Station on 26.11.2014, and upon the said FIR one U.D. Case, No. 11/2014, was registered and subsequently, Final Report was submitted in the same.

12.3. The evidence of P.W.1 also reveals that she had spent at-least Rs. 2,00,000/- in treatment of her father and also in performing last rights. Her father was a business man and he dealt with rubber business and other businesses also and his monthly income was Rs. 12,000/-.

12.4. It also appears that P.W.1 has exhibited the Accident Information Report as Exhibit - 1; certified copy of F.I.R. as Exhibit - 2; certified copy of extract copy of F.I.R. as Exhibit - 3; certified copy of Agia Police Station U.D. case No. 11/2014 as Exhibit – 4; certified copy of Final Report as Exhibit – 5; certified copy of Post-mortem Report as Exhibit – 6; certificate of Chamber of Commerce, Dudhnoi as Exhibits - 7 to 9; prescriptions and reports as Exhibits - 10 to 38; cash memos as Exhibits - 39 to 83; and x-ray plate as Exhibits - 84 to 87. Her evidence also reveals that she claimed a sum of Rs. 15,00,000/-, being the compensation of death of her father.

12.5. The respondent Insurance Company had cross-examined the P.W. 1, but, nothing tangible could be elicited in her cross-examination. The factum of rash and negligent driving on the part of the driver of the vehicle, namely, Mahendra Kalita, remained un-rebutted throughout her

cross-examination. The age, income and the avocation of her father also remained un-disputed throughout her cross-examination.

13. The evidence of P.W.2, namely, Kabir Uddin Ahmed, reveals that on 26.11.2014, he was serving as A.S.I. at Agia Police Station. On that day, one Mahendra Kalita had lodged an F.I.R. regarding an accident that took place on 10.11.2014, at about 05:20 pm, involving one Tata Nano, bearing registration No. AS-18-B-4173, wherein it was stated that one Bhabataran Kalita had died in an accident. Upon the said F.I.R. a case, being Agia Police Station U.D. Case No. 11/2014, was registered. The said case was investigated by S.I. Ali Hussain, who had already retired from service. His evidence also reveals that during investigation, the I.O. had collected the Post Mortem Report from G.M.C.H., Guwahati. His evidence also reveals that he had produced the Register of Agia P.S. U.D. and also the General Diary. Exhibit No. 88 is the U.D. Case Register, wherein the entry of the Case No. 11/2014, has been made at Sl. No. 11/2014 and Exhibit No. 89 is the General Diary Entry. His evidence also reveals that as per the facts of the case, the then Officer In-Charge should have registered a G.R. case instead of registering an U.D. case. His evidence further reveals that the informant, Mahendra Kalita was the driver of the offending vehicle.

13.1. The respondent Insurance Company had cross-examined this witness and it is elicited that in the Final Report, the I.O. has opined that the driver had no fault in driving the vehicle at the time of the accident. However, he denied the suggestion that the driver had not driven the vehicle at a high speed.

14. Thus, a careful perusal of the evidence of the claimant/P.W.1, as well as the claim petition reveals that the accident took place on account of rash and negligent driving on the part of the driver of the vehicle. The evidence of P.W.1 remained un-rebutted throughout her cross-

examination and the averments made in the claim petition also fully corroborated her evidence, that the accident took place on account of rush and negligent driving on the part of the driver of the vehicle, namely, Mahendra Kalita.

15. However, a careful perusal of the impugned judgment and award indicates that the learned Tribunal had failed to consider the evidence of P.W.1/the claimant in its proper perspective, which is sufficient to establish the rash and negligent driving on the part of the driver of the Tata Nano vehicle. Instead it had misdirected and placed reliance upon the evidence of P.W. 2 who had even not investigated the case. He had appeared on behalf of the actual I.O. namely S.I. Ali Hussain, who had already retired from service, and exhibited the U.D. Case Register and the General Diary of Agia P.S. That being so, the learned Tribunal ought not to have place reliance upon the evidence of P.W.2, to negate the claim of the claimant, ignoring the object and reason behind enacting the M.V. Act. The approach, so adopted by the learned Tribunal had frustrated the legislative intent behind enacting such a benevolent piece of legislation.

16. What would be the bearing of Final Report in the criminal investigation connected to the accident in the claim petition was dealt with by Hon'ble Supreme Court in the case of **Mathew Alexander (supra)**, wherein it has been held as under:-

“9. Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them

to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.

In this context, we could refer to judgments of this Court in the case of N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal reported in AIR 1980 SC 1354, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case of Bimla Devi vs. Himachal Road Transport Corporation ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.

10. In that view of the matter, it is for the Appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of

death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the Appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law.”

17. This being the factual and legal position, the impugned judgment and award, so passed by the learned Tribunal had failed to withstand the legal scrutiny and on such count the same requires interference of this court. Accordingly, the same is interfered with. Keeping in mind the legislative intent and the evidence of P.W.1 and her exhibits, this court is of the view that the claimant is entitled to compensation here in this case on account of death of her father in a motor accident, that took place on 10.11.2014, at about 05:20 pm, on account of rash and negligent driving of a Tata Nano, bearing registration No. AS-18-B-4173, on the part of the driver, namely, Mahendra Kalita, respondent/opposite party No.3.

18. I have considered the submission of Ms. Roy, learned counsel for the respondent No.1, and also gone through the decisions referred by her. There is no quarrel at the bar about the proposition of laid down in the case of **Meena Veriyal** (supra) and in **Surender Kumar Arora** (supra). But, in view of the discussion and finding herein above, this court is unable agree with her submission. In view of tell-tale evidence on record, this court is of the considered view that the petition under section 166 M.V. Act is very much maintainable here in this case. That being so, the decisions referred by Mr. Roy, would not advance her case.

18.1. I have also considered the submissions of Mr. Das, the learned counsel for the claimant, and also gone through the decisions referred by him and I find substance in the same. And the decisions referred by him also lend credence to the same. In the case of **Sunita and Ors. (supra)**, while dealing with a claim petition in terms of Section 166 of the M.V. Act it has been held that the Tribunal in *strictu sensu* is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In the given fact situation, reference to other decisions, relied upon by Mr. Das, is found to be not necessary herein this case.

19. In the case in hand, the accident took place in the year 2014 and the impugned judgment and award was passed in the year 2020, in the meantime almost ten years elapsed. Therefore, instead of remanding the matter to the learned Tribunal, to assess the just compensation, which the claimant will entitled to, deemed it appropriate to assess the same, on the basis of the materials available on the record. Else, it would cause further delay and also cause prejudice to the claimant and as a result the entire scheme of the Act would be frustrated.

20. That, it appears from the record that at the relevant time of accident the deceased, Late Bhabataran Kalita was 48 years old and the same has categorically been stated by the P.W.1 in her evidence. Besides, in the Post-mortem Report, Exhibit-6, also and in other medical documents the age of the deceased has been mentioned as 48 years. It is to be noted here that the respondent had not disputed the age of the deceased. Therefore, the age of the deceased, at the time of accident has to be accepted as 48 years, on the basis of the documents mentioned herein above.

21. It further appears from the claim petition that and also from the evidence of P.W.1 and from the documents exhibited by her that the deceased was a businessman and he had the rubber business and other businesses also and his monthly income was about Rs. 12,000/- per month. The factum of avocation of the deceased, is supported by the Exhibit Nos. 7 - 9, issued by the Chambers of Commerce, Dudhnoi, Goalpara, which indicates that the deceased had a rubber shop at Dudhnoi Market and he was a member of Dudhnoi Chambers of Commerce. Notably, the avocation and income of the deceased has not been disputed by the respondent side. And as such, the income of the deceased, at the time of the accident, has to be taken as Rs.12,000/ per month.

22. Further, it appears from the evidence of the claimant/P.W.1, that she had spent around Rs. 2,00,000/- in the treatment of her deceased father. In support of such claim, she has also exhibited several medical documents and vouchers as Exhibits 39 – 83. A careful perusal of the same indicates that the claimant has submitted vouchers for a sum of Rs. **Rs 1,45,927/-**. The amount so spent and the date and number of the vouchers/receipts are shown in the table below:-

Sl. No.	Receipt/Serial/Invoice/Memo/MR Number	Amount
1.	PR/141110/001031 dated 10.11.2014	Rs. 4120/-
2.	228 dated 10.11.2014	Rs. 3300/-
3.	19204 dated 10.11.2014	Rs. 200/-
4.	SH-40596 dated 10.11.2014	Rs. 1588/-
5.	SH-40595 dated 10.11.2014	Rs. 496/-
6.	IS/141111/000002 dated 11.11.2014	Rs. 9412/-
7.	IS/141111/000047 dated 11.11.2014	Rs. 4948/-
8.	IS/141111/000112 dated 11.11.2014	Rs. 506/-

9.	IS/141111/000193 dated 11.11.2014	Rs. 9656/-
10.	PR/141111/000983 dated 11.11.2014	Rs. 1180/-
11.	SB/A-01234 dated 11.11.2014	Rs. 2000/-
12.	21771 dated 12.11.2014	Rs. 690/-
13.	IS/141111/000006 dated 11.11.2014	Rs. 159/-
14.	PR/141111/000006 dated 11.11.2014	Rs. 1220/-
15.	PR/141112/000944 dated 12.11.2014	Rs. 1460/-
16.	PR/141112/000694 dated 12.11.2014	Rs. 6630/-
17.	RI/141112/000051 dated 12.11.2014	Rs. 3660/-
18.	RI/141112/000052 dated 12.11.2014	Rs. 185/-
19.	2963 dated 12.11.2014	Rs. 2377/-
20.	IS/141112/000181 dated 12.11.2014	Rs. 185/-
21.	IO/141112/000100 dated 12.11.2014	Rs. 3026/-
22.	IS/141112/000237 dated 12.11.2014	Rs. 2858/-
23.	PR/141113/000306 dated 13.11.2014	Rs. 390/-
24.	PR/141113/001014 dated 13.11.2014	Rs. 390/-
25.	2967 dated 13.11.2014	Rs. 1320/-
26.	2966 dated 13.11.2014	Rs. 4369/-
27.	PR/141113/000208 dated 13.11.2014	Rs. 480/-
28.	IS/141113/000056 dated 13.11.2014	Rs. 1558/-
29.	2899 dated 14.11.2014	Rs. 1093/-
30.	PR/141114/000013 dated 14.11.2014	Rs. 1180/-
31.	PR/141114/000388 dated 14.11.2014	Rs. 260/-
32.	IS/141114/000079 dated 14.11.2014	Rs. 1558/-
33.	IS/141114/000126 dated 14.11.2014	Rs. 1710/-
34.	PR/141115/000367 dated 15.11.2014	Rs. 260/-
35.	3159 dated 15.11.2014	Rs. 1544/-
36.	RI/141115/000 dated 15.11.2014	Rs. 467/-
37.	RI/141115/000034 dated 15.11.2014	Rs. 328/-
38.	RI/141115/000031 dated 15.11.2014	Rs. 91/-
39.	RI/141115/000035 dated 15.11.2014	Rs. 1096/-
40.	RI/141115/000032 dated 15.11.2014	Rs. 503/-
41.	IO/141115/000078 dated 15.11.2014	Rs. 443/-

42.	PR/141115/000597 dated 15.11.2014	Rs. 30,830/-
43.	DS/141110/000079 dated 15.11.2014	Rs. 34,643/-
44.	IS/141115/000077 dated 15.11.2014	Rs. 1558/-
	Total Amount	Rs 1,45,927/-

23. Though the respondent side has disputed that a sum of Rs. 2,00,000/- was not spent by the claimant, during the treatment of her deceased father, yet, it appears that it had not disputed the vouchers, exhibited by the P.W.1 that a sum of **Rs 1,45,927/-** were spent by the claimant during the course of treatment of her deceased father. That being so, she is entitled to the aforesaid amount.

24. Thus, having accepted the income of the deceased at Rs.12,000/- per month, 25% of the same has to be added as future prospect, as at the time of accident the deceased 48 years old and he was self-employed, in view of decision of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and Others**, reported in **(2017) 16 SCC 680**. After addition of 25% to Rs. 12,000/ the amount would be **Rs. 15,000/** (Rs.12,000+Rs.3000=15,000).

25. Thereafter, in view of the decision of Hon'ble Supreme Court in the case of **Sarla Verma and Others vs. Delhi Transport Corporation and Another**, reported in **(2009) 6 SCC 121**, 1/3 of the aforesaid amount has to be deducted as personal expenses since he left behind his wife and the present claimant as dependent family members. After deducting 1/3 of the above, the amount would be Rs. 10,000/ (Rs.15,000 – Rs.5,000=10,000).

26. The multiplier applicable herein this would be 13, in view of decision of Hon'ble Supreme Court in the case of **Sarla Verma (supra)** since the age of the deceased, at the time of the accident was 48 years. After

application of multiplier, the amount would be Rs.15,60,000/ (Rs.10,000 x 12 x 13= 15,60,000).

27. Besides, under the conventional heads, a sum of Rs. 15,000/- has to be awarded under head loss of estate, a sum of Rs. 40,000/-, being the loss of consortium, and a sum of Rs. 15,000/- under head funeral expenses, and the aforesaid amounts should be enhanced by 10% in every 3 years, in view of the decision of Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**. It is to be noted here that after the accident almost 10 years elapsed. That being so the aforesaid amounts have to be increased three times.

28. The whole calculation, after application of the principle laid down in the case of **Sarla Verma (Supra)** and also in the case of **Pranay Sethi (Supra)**, would be as under:-

Sl. No.	Heads	Calculation
I	Monthly income Rs.12,000/	
II	25% of (i) to be added as future prospect=(Rs.12,000+Rs.3000).	Rs. 15,000
III	1/3 rd of the (ii) deducted as personal expenses of the deceased=(Rs.15,000 - Rs.5000/).	Rs. 10,000/-
IV	Compensation after multiplier of 13 is applied=(Rs.10,000x12x 13).	Rs. 15,60,000/-
V	Loss Estate Rs.15,000/ which has to be increased by 10% in every three years (15,000/100 x10=1500) x 3=4500/	Rs. 15,000/ + Rs.4500/= 19,500/
VI	Loss of Consortium =Rs.40,000/, which has to be increased by 10% in each three years	Rs. 40,000/ + Rs.12,000/ = 52,000/-
VII	Funeral expenses Rs.15,000/, which has to be increased by 10% in each three years	Rs. 15,000/ + Rs.4500/= 19,500

S1. No.	Heads	Calculation
VIII	Expenses prior to death of the deceased	Rs.1,45,927/
Total compensation awarded =		Rs. 18,21,927/-

29. Now, coming to the last point, I finds that at the relevant time, the TATA Nano vehicle was insured with the respondent No. 1, herein this appeal, vide Policy No. 55270031126100083568 and renewal Policy No. 55270031136100199348 and the same was valid up to 18.03.2015, and the accident took place on 11.11.2014. It also appears that at the relevant time of accident, the policy was in force.

30. It also appears that the driver of the vehicle had a valid driving license, being DL No. 8839/GLP/PVT and the same was valid up to 31.01.2016.

30.1. Notably, these facts have never been disputed by the respondent No. 1. That being so the respondent No. 1 is liable to pay the aforesaid amount of compensation to the claimant.

31. In the result, I find sufficient merit in this appeal and accordingly the same stands **allowed**. The impugned Judgment and Award, dated 23.03.2020, stands set aside and quashed.

32. The respondent No. 1, i.e. the National Insurance Company Limited is directed to pay a sum of **Rs. 18,21,927/- (Rupees eighteen lacs twenty one thousand nine hundred and twenty seven)** only, being the compensation, which according to this court is just compensation, here in this case. The amount, if already paid to the claimant has to be deducted from the aforesaid amount.

34. It is further provided that the amount will carry interest @ 9% per annum, from the date of filing of the claim petition, i.e. 11.10.2017, till realization of the amount. The respondent No. 1 shall deposit the aforesaid amount before the learned Tribunal within a period of 30 days from the date of the judgment and award.

33. In terms of above, this MAC appeal stands disposed of. The Registry shall send down the record of the learned Tribunal with a copy of this judgment and order forthwith. The parties have to bear their own cost.

JUDGE

Comparing Assistant