

Neutral Citation No. - 2024:AHC-LKO:82171

AFR

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 42 of 2016

Appellant :- Uttar Pradesh State Road Transport Corp.Lko.Thru R.M.

Respondent :- Bhawani Prasad Manjhi

Counsel for Appellant :- Akhter Abbas,Ambika Prasad

Counsel for Respondent :- Raj Kumar Pandey,Bhavya

Upadhyay,Desh Deepak Singh,Kulbhushan Singh,Vidya Dhar

Upadhyay,Vikas Sharma,Yashovardhan Swarup

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Ambika Prasad, learned counsel for the appellant and Shri Yashovardhan Swarup Assisted by Ms. Bhavya Upadhyay, learned counsel for the respondent.

2. This first appeal from order under Section 173 of the Motor Vehicles Act, 1988 (here-in-after referred as the Act of 1988) has been filed for setting aside the judgment and award dated 29.10.2015 passed in Motor Accident Claim Petition No.150 of 2012; Bhawani Prasad Manjhi and Another Vs. U.P. State Road Transport Corporation, by means of which the claim petition has been partly allowed and an amount of Rs.35,42,823/- has been awarded alongwith simple interest at the rate of 7% from the date of filing of the claim petition.

3. The claim petition was filed alleging therein that the daughter of the claimant-respondent Dr. Tandra Manjhi was traveling on 18.05.2011 by Bus No.U.P.-30A-8092 of Hardoi Depot of the appellant U.P.S.R.T.C. She was a bona fide passenger of the bus from Anand Vihar Bus Terminal, Delhi to Lucknow. The bus was being driven by its driver Valeel Ahamad at a high speed and in negligent manner. When it reached about 8 km. ahead of Sandila on Kachauna-Sandila road within P.S. Kachauna, District- Hardoi at about 02:30 in

the morning, a blue cow (Neelgai) crossed the road and due to high speed and rash and negligent driving, the driver of the bus lost his control over the steering and the bus fell into a trench, consequently the deceased and other passengers sustained fatal injuries. The deceased was taken to Community Health Centre, Sandila, Hardoi by the Police, where she was declared dead. Her postmortem was conducted in mortuary Hardoi. The deceased died due to fatal injuries sustained by her in the said accident. A first information report was lodged by the conductor of the bus at Police Station Kachauna, District, Hardoi at G.D. No.15/10.15 on 18.05.2011. Had the deceased not met with the fatal injuries, she would have survived up to age of 80 years. On account of sudden demise of deceased the family structure of the entire family has been shattered and claimants are virtually on dearth and have suffered irreparable loss of love and affection as well as financial help. The deceased was working on the post of Lecturer in Bio-Chemistry, Mental Health Department of Chhatrapati Sahji Maharaj Medical University, Lucknow. The claim petition was filed claiming that the claimant father and mother were dependent on the deceased. During pendency of the claim petition, the claimant no.2 Smt. Archana Manjhi i.e. mother of the deceased died. Accordingly, the claim petition was amended writing dead against her.

4. The claim petition was contested by the appellant by filing written statement denying the averments made in the claim petition mostly for want of knowledge. In the additional statement in the written statement, it has been admitted that the Bus No.U.P.-30A-8092 (Hardoi Depot) of the appellant corporation was operating on 18.05.2011 on Delhi-Hardoi route to Lucknow. It was further stated that the vehicle was being driven by a competent driver Valeel Ahmad, having a valid driving license and conductor Rajesh Singh Somvanshi. The vehicle was being driven with the required speed and carefully. While the vehicle reached eight kilo meters ahead of Sandila

near Dabur Plant at about 02:00 in the night, suddenly a blue cow came running in front of bus, therefore, the driver of the bus turned on the right side of the road to save the animal, on account of which the bus was uncontrolled and fell in a three feet ditch, accordingly the accident had occurred. The bus was also damaged in the accident. The said accident had occurred on account of sudden coming of blue cow in front of bus, therefore, there was no fault of the driver. The information of the accident was given by the conductor to the concerned police station. The compensation has been demanded on the higher side, which is not acceptable. The claim petition has been filed on misconceived and baseless grounds, which is liable to be dismissed with cost.

5. On the basis of pleadings of the parties, two issues were framed, which are extracted here-in-below:-

"1. क्या दिनांक 18.05.2011 को समय 2-30 ए०एम० पर स्थान कचौना सण्डीला रोड, थाना कचौना जिला हरदोई में यू०पी० एस०आर०टी० की बस संख्या यू०पी० 30 ए / 8092 के चालक द्वारा वाहन को तेजी व लापरवाहीपूर्वक चलाने एवं उसके आगे नीलगाय आ जाने पर वाहन पर नियंत्रण खो देने के कारण बस पलट गयी जिससे उस पर सवार डा० तन्द्रा माझी को गंभीर चोटें आने के कारण उसकी मृत्यु हुई?

2. क्या याचीगण कोई प्रतिकर पाने के अधिकारी हैं? यदि हां तो कितना?"

6. The claimant-respondent got himself examined as PW-1 and one Shri Suresh Chandra Pandey an eye witness as PW-2. Shri Lal Ji Upadhyay was produced to prove the income of the deceased as PW-3. They were cross-examined. On behalf of the claimant-respondent several documents were filed. On behalf of the respondent-appellant the conductor of the bus Rajesh Singh Somvanshi was examined as DW-1. No documentary evidence was filed by the respondent-appellant. After hearing learned counsel for the parties and considering the pleadings, evidence and material on record, the tribunal allowed the claim petition and awarded the aforesaid amount.

7. Learned counsel for the respondent-appellant submitted that the father can not be a dependent in absence of evidence, therefore, the

claim petition by him was not maintainable. Mother could have been treated dependent on the deceased, however, she died during pendency of the claim petition, therefore no compensation could have been awarded. It was further alleged that there was no fault of driver in the accident because the accident had occurred as a blue cow had suddenly come in front of the bus. It was also submitted that even if the claim petition could have been allowed, the multiplier of 17 has wrongly been applied in place of 16 because the deceased was aged about 33 years at the time of accident. Thus, the submission is that the impugned judgment and award is not sustainable in the eyes of law and liable to be set-aside. Learned counsel for the appellant relied on **National Insurance Company Limited Vs. Pranay Sethi and Others; (2017) 16 SCC 680, Sarla Verma (Smt.) And Others Vs. Delhi Transport Corporation and Another; (2009) 6 SCC 121 and Manjuri Bera (Smt.) Vs. Oriental Insurance Company Ltd and Another; (2007) 10 SCC 643.**

8. Per contra, learned counsel for the claimant-respondent submitted that the claimant-respondent i.e. the father of the deceased had retired from service on 21.12.2000 and his service was not pensionable, therefore, after retirement he and his wife i.e. the mother of the deceased were dependent on the deceased and residing with her. The deceased daughter was supporting her father and mother for the last 11 years before the accident on 18.05.2011. The mother died during pendency of the claim petition. The plea of dependency in the claim petition has not been denied in the written statement. He also submitted that the claimant-respondent was dependent on her daughter and no evidence contrary to it has been adduced by the respondent-appellant. Even in the cross-examination, no question was put about the dependency of father. Thus, the submission of learned counsel for the respondent-appellant in regard to dependency is misconceived and not tenable. He further submitted that the accident with blue cow has

not been proved. Even the driver has not been produced to prove the accident, whereas the accident on account of rash and negligent driving of the driver of the respondent-appellant corporation has been proved by the evidence of eye witness.

9. He further, pressing his cross-objection, submitted that the learned tribunal has failed to award the future prospects and awarded lesser amount towards conventional heads, whereas 50% of the salary should have been awarded towards the future prospects in view of the judgment of Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others** and the interest has also been awarded towards the lower side. However he could not dispute submission of learned counsel for the appellant about multiplier. Thus, the submission is that the appeal is liable to be dismissed accordingly and cross-objection is liable to be allowed and award is liable to be modified accordingly. He relied on **National Insurance Company Limited Vs. Pranay Sethi and Others; (2017) 16 SCC 680** and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others; (2018) 18 SCC 130**.

10. Opposing the submissions of learned counsel for the claimant-respondent in regard to enhancement of compensation and award of the future prospects, learned counsel for the respondent-appellants submitted that since the impugned judgment and award is not sustainable and liable to be set-aside, therefore, the question of award of future prospects does not arise. However, even if, the impugned judgment and award is sustained and cross-objection is to be allowed awarding future prospects, the interest can not be awarded on the future prospects as the same is for income in future. He relied on a coordinate bench judgment and order dated 24.06.2024 passed in **ICICI Lombard General Insurance Co. Ltd. Vs. Smt. Seema Devi and 6 Others; First Appeal From Order No.3325 of 2016**.

11. I have considered the submissions of learned counsel for the parties and perused the records.

12. The learned tribunal while considering the issue no.1, after considering the pleadings of the parties and the evidence before it, came to the conclusion that it has been admitted by DW-1 in his cross-examination that the bus takes 14-15 hours in reaching Lucknow from Delhi, whereas on the date of accident it had taken about 15 hours in reaching Hardoi, therefore, it is apparent that the bus had stopped at several places for long period and for reaching on time, the driver of the bus must have driven the bus rashly and negligently, on account of which the accident had occurred. The PW-2, who is an eye witness and his statement has also been considered by the tribunal, has stated that he was traveling in the bus No.U.P.-30A-8092 of Hardoi Depot, which was coming from Anand Vihar Bus Terminal to Lucknow on 17.05.2011. The accident occurred on 18.05.2011 at 02.15 in the night. The deceased Tandra Manjhi was traveling in the bus. The bus was being driven rashly and negligently by its driver at a very high speed, on account of which the passengers sitting on the back seat had fallen twice and the seat had also fallen. The driver and conductor had taken more than half an hour in having tea at several places. At about 06:45 on 17.05.2011, when it reached Farrukhabad, the driver said that we will start after taking the dinner and the passengers may also take the dinner, tea etc., thereafter, the driver and conductor disappeared and they came back at about 08:30. Thereafter the bus started at about 09:00. The driver had again driven the bus rashly and negligently, on account of which the luggage of the passengers had also fallen. The bus had started at about 01:00 on 18.05.2011 from Hardoi and the accident had occurred at 02:15. In cross-examination he reiterated the evidence given in the affidavit of examination-in-chief. He also stated that he had not seen that the accident had occurred on account of any collision with any body. He also said that

the bus had fallen in a ditch on the right side. The Police had come about 03:30, who had taken Tandara Manjhi to the Community Health Centre, Sandila, Hardoi. Thus, it is apparent that nothing could be extracted from PW-2, who is an eye witness and an employee working in the office of the Deputy Transport Commissioner, which may create any doubt about his veracity

13. The DW-1 is the conductor of the bus. The driver of the bus has not been produced by the appellant. The DW-1 has stated in his evidence that the blue cow had come in front of bus, which was running with a high speed, therefore, the driver had taken emergency breaks and tried to save the animal by turning to the right, therefore, it is not disputed that the bus was being driven by the driver with a very high speed, whereas at 02:00 in the intervening night, a driver should have driven the bus at the proper speed and carefully so that he may control in case of any exigency but it is apparent that the driver was not cautious enough and driving bus rashly and negligently at a very high speed to cover the time and on account of rash and negligent driving by the driver, the accident had occurred. Though the coming of a blue cow suddenly before the bus has been stated by him but it could not be proved by any cogent evidence as it has been denied by the eye-witness PW-2. PW-1 has stated that he had come to know about blue cow through news paper. The driver has not been produced to prove it, who could have been the best witness. Even otherwise, even if it has come before the bus, the accident had occurred on account of rash and negligent driving of the vehicle of the driver at a very high speed. Thus, the contention of learned counsel for the appellant that there was no fault of the driver in the accident is misconceived and not tenable and is accordingly repelled.

14. Learned counsel for the respondent-appellant had also submitted that the father can not be treated a dependent without any proof, while the mother can be treated and the mother had died during

pendency of the claim petition, therefore, the claim petition could not have been allowed by the tribunal. The claimant-respondent i.e. father and mother Smt. Archana Manjhi filed the claim petition as dependent of the deceased Dr. Tandra Manjhi, stating in paragraph-2 that the deceased was the earning member of the family, who was maintaining the family consisting of old father and mother as the father of the deceased was not keeping good health. The father and mother have been shown as dependant in paragraph-7 of the claim petition also, which is name and ages of the dependents of the dead persons indicating relationship with him and also monthly income and the source of such income but no income has been shown. The written statement was filed denying the averments of paragraphs-1 to 8 for want of knowledge and any documentary evidence. It was further stated in paragraph-22 (sub-paragraph-2) of the claim-petition that the deceased was the earning member of her family who was maintaining the entire family consisting of old father and mother of the deceased not keeping good health. The contents of paragraph-22 have also been denied stating that the proof of the same is on the claimants and the compensation has been demanded on the higher side. Thus, the dependency of the claimant-respondent father on the deceased has specifically not been denied.

15. The claimant-respondent appeared as PW-1 and stated in his evidence that on account of death of daughter he and his family has suffered irreparable loss. In his cross-examination he stated that he retired from the post of Senior Production Engineer in TSL, Naini, Allahabad on 31.12.2000 and he is not getting any pension after his retirement. He has also stated that he has two sons and wife. The elder son is deaf and dumb and married and residing with him. The younger son is unmarried and has been appointed on the post of Assistant Cashier in Medical College, Lucknow on compassionate ground in place of his deceased daughter Tandra Manjhi. His younger

son is residing separately in Lucknow. Thus they does not seem to be able to maintain the father and mother i.e the claimants. The cross-examination indicates that no question has been put in regard to the dependency of the claimant-respondent, who is the father of the deceased. It is also not in dispute that he alongwith his deceased wife was residing with his deceased daughter Dr. Tandra Manjhi. Therefore, it can not be said that he was not dependent on the deceased.

16. The Hon'ble Supreme Court, in the case of **Sarla Verma (Smt) And Others Vs. Delhi Transport Corporation and Another (Supra)**, has observed that subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. Therefore, if the father proves that he has no independent income then he has to be considered as dependent and in the present case it has been proved. In the present case the claimant-father has proved it. Paragraph 30 to 32 are extracted here-in-below:-

"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 Chandra [(1996) 4 SCC 362] , 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.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is

large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

17. The Hon'ble Supreme Court, in the case of **Manjuri Bera (Smt.) Vs. Oriental Insurance Company Ltd and Another**, has held that if a legal representative, who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. However, this case is not applicable on the facts and circumstances of the present case because the claimant-respondent has proved his dependency and nothing could be extracted from him or no contrary evidence has been adduced on account of which, it may be said that the claimant-respondent i.e. the father alongwith his wife was not dependent on the deceased. Therefore, the appellant is not entitled for the benefit of aforesaid cases. The Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others (Supra)**, has held in paragraph 59.5 that for determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma. The paragraph 59.5 is extracted here-in-below:-

"59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which we have reproduced hereinbefore."

18. One of the ground for challenge by learned counsel for the appellant is that the multiplier of 17 has wrongly been applied in place of 16 because age of the deceased was 33 years, at the time of accident, in view of Constitution Bench judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Vs. Pranay Sethi and Others (Supra)**. In the said judgment, it has been

held that as far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step-2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. The relevant paragraph 42 is extracted here-in-below:-

"42. As far as the multiplier is concerned, the Claims Tribunal and the courts shall be guided by Step 2 that finds place in para 19 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of the said judgment. For the sake of completeness, para 42 is extracted below : (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , SCC p. 140)

"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 [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] and Charlie [New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), 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."

19. In view of above, the multiplier of 16 is applicable for the age group of 31-35 years. The tribunal has considered the age of the deceased 33 years on the date of accident, which has not been disputed by the claimant-respondent, therefore, this Court is of the view that the learned tribunal has erred in allowing the multiplier of 17 in place of 16. Thus, the appeal is liable to be partly allowed and the multiplier of 16 is to be applied in place of 17 and impugned award is liable to be modified accordingly.

20. Now the Court proceeds to consider the cross-objection. The claim petition was filed under Section 166 of the Act of 1988. Section 166 of the Act of 1988 provides for application for compensation. Section 168 of the Act of 1988 provides for award of claims tribunal. It provides that on receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties an opportunity of being heard, hold an inquiry to the claim and subject to the provisions of section 162, which provides refund in certain cases of

compensation paid under section 161, may make an award determining the amount of compensation which appears to it to be "just". Thus, the duty has been cast upon the claims tribunal to award the "just compensation" after an enquiry.

21. The Hon'ble Supreme Court, in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others(supra)**, has held that the Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the Claimant. It has further been observed that a Constitution Bench of the Hon'ble Supreme Court, in the case of 'Pranay Sethi(supra)' has dealt with various heads under which compensation is to be awarded in a death case and one of these heads is loss of consortium thus the consortium is one of the components of consortiums. The relevant paragraphs 20 to 21 are extracted here-in-below:-

"20. MACT as well as the High Court have not awarded any compensation with respect to loss of consortium and loss of estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognised by the Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant. In exercise of our power under Article 142, and in the interests of justice, we deem it appropriate to award an amount of Rs 15,000 towards loss of estate to Respondents 1 and 2.

21. A Constitution Bench of this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse : [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]"

22. The Hon'ble Supreme Court, in the case of **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others(supra)** has held that one of heads of compensation is 'loss

of consortium' and the kinds of consortium have been given in paragraphs 21.1 to 21.3. The relevant paragraphs 21 to 24 are extracted here-in-below:-

"21. A Constitution Bench of this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation"

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts

have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium."

23. In view of above, once a claim petition has been filed claiming compensation, it is the duty of the tribunal or court to make an enquiry into the matter in accordance with law and the rules and thereafter award "just compensation" as admissible in accordance with law, irrespective of whether any claim has been made or not, therefore, when an appeal has been filed before this Court, this Court has to consider as to whether the "just compensation" has been awarded by the tribunal or not and in case it has not been awarded, this court can award the same, if it is "just" and in accordance with law. In this case, a cross-objection has also been filed for enhancement of compensation alleging that "just compensation" has not been awarded because the learned tribunal has failed to award the future prospects in accordance with law and the aforesaid judgment of Hon'ble Supreme Court in the case of 'Pranay Sethi'(supra), therefore, the same may be allowed and 50% of salary of deceased may be enhanced. It has been alleged that the deceased was an energetic doctor of about 33 years old and she was very actively performing the duties towards the service as well as her domestic affairs of her family and if she would have not met with the fatal accident, she would have survived till the age of 80 years.

24. The Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others (Supra)**, has recorded his conclusions in paragraph 59 and paragraph 59.3 provides that an addition of 50% of actual salary to the income of the deceased

towards future prospects, where the deceased had a permanent job and was below 40 years, should be made. The relevant paragraph 59.3 is extracted here-in-below:-

"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

25. Admittedly, the deceased was aged about 33 years at the time of accident, therefore, applying the aforesaid, this Court is of the view that the 50% of the actual salary of the deceased is to be awarded towards the future prospects. However, the learned tribunal has failed to consider it and has not awarded any amount towards future prospects. It is also noticed that in Rule 220-A of the Uttar Pradesh Motor Vehicles Rules, 1998, it has been provided that the future prospects of a deceased, shall be added in the actual salary or minimum wages as 50% of the salary below the 40 years of age. Thus, this Court is of the view that the claimant-respondent is entitled for enhancement of compensation by adding 50% of salary of deceased towards future prospects in her income.

26. Learned counsel for the claimant-respondent also submitted that the interest has been awarded on the lower side, therefore, it should be enhanced to 12%, relying on the judgment of the Hon'ble Supreme Court, in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others (Supra)**, whereas it has been submitted by the appellant that the interest has rightly been awarded and no interest can be awarded on the future prospects as the same is given for the future income, which was yet to be paid. He relied on a coordinate bench order of this court, in the case of **ICICI Lombard General Insurance Co. Ltd. Vs. Smt. Seema Devi and 6 Others (Supra)**. The said judgment has been passed by a coordinate bench, relying on the judgments of Guahati High Court, Bombay

High Court and Jammu & Kashmir and Laddakh High Court, stating that I am in agreement with the decisions of said court that no interest can be awarded on the future prospects, as interest can not be awarded for income, which is due in future.

27. The compensation on account of accident is awarded under the Motor Vehicles Act. The legislative intent is that the claim should be settled within the least possible time. Section 149 of the Act of 1988, as amended, casts liability on the insurance company to designate an officer to settle the claim relating to accident immediately upon receiving information of the accident either from the claimant or through accident information report or otherwise. But despite the provisions for settlement of claim at the earliest, it is taking years for settlement of claims and it is not being paid without an order of the tribunal or court, even before the amendment and the interest is awarded only for the period from the date of filing of the claim petition and up to the date of payment on the amount of compensation, which had become due on the date of accident, which should have been paid including the future prospects which are calculated after deducting the personal expenses at the earliest to avoid penury and sufferance to the family on account of death of an earning member in an accident as held by a constitution bench of Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others (Supra)**. The future prospects is a component of compensation. However, in the present case the payment of compensation was to be made by the U.P.S.R.T.C. It can not be disputed that accident had occurred by a bus of U.P.S.R.T.C., therefore, the U.P.S.R.T.C. was in the knowledge of the accident and it could have settled the matter and paid the compensation after calculating as per law, but no effort was made, therefore, the claimant-respondent had to approach the tribunal and file the claim petition, which was contested by the tribunal and even after disposal of the

claim petition, the appeal was filed, which has been contested by the claimant-respondent.

28. The Hon'ble Supreme Court, in the case of **Gohar Mohammed versus Uttar Pradesh State Road Transport Corporation and Others; (2023) 4 SCC 381**, after considering the provisions of Section 149 of the M.V. Act observed as under in paragraph 46:-"

46.As per Section 149, on receiving the information of the accident from claimant or from the Accident Information Report (AIR), the insurance company shall appoint a 'Designated Officer' to settle the claim. The said officer is required to make an offer to the claimant(s), specifying its detail within 30 days by following such procedure, as prescribed by the Central Government. Subsection (3) of Section 149 makes it clear that the offer made by the Designated Officer may either be accepted or rejected by the injured/victim or legal heirs of the deceased. In case, the offer is accepted, the Claims Tribunal shall record the settlement and treat such a claim as settled by consent. On such settlement, the payment has to be made by insurance company within 30 days. But, in the latter situation of rejection of such offer, the Claims Tribunals shall fix a date of hearing for adjudication of such claim on merits."

29. Section 171 of the Act of 1988 provides award of interest, where any claim is allowed, which is extracted here-in-below:-

"171. Award of interest where any claim is allowed.—Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

30. The aforesaid Section 171 does not draw any distinction in regard to award of interest and it is to be awarded on the amount of "just compensation" awarded by the tribunal, which had become due on the date of accident. It only provides that the interest shall be paid in addition to amount of compensation. Future prospects is a component of the compensation as held by the Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others (Supra)**. It is also a component of compensation under Rule-220-A (3) of the U.P. Motor Vehicles Rules, 1998. Sub-rule (6) of the said rules also provides for the rate of interest on the compensation, where also no distinction has been made in this regard.

31. A division bench of the High Court of Karnataka at Bengaluru, in the case of **The Reliance General Insurance Company Limited Vs. Supreeth S. @ Supreeth Sathyendra since dead by his LRs; M.F.A. No.511 of 2020 (MV-D)**, has held that in all motor vehicles claims, if the dependents are denied with the interest over the amount awarded under the head 'loss of future prospects', it would be most unjustifiable. The relevant paragraphs 33 to 38 are extracted here-in-below:-

"33. Despite of the aforementioned facts, in this case, the insurance company has raised a plea that it is not liable to pay any interest on the amount awarded towards loss of future prospects. The justification in such a plea can be verified through the following illustration:

"X' met with an accident and succumbed to injuries in the year 2014. 'Y' his wife, A and B, their children, files a petition claiming compensation in the light of the death of their bread winner. The insurance company enters into appearance. On contest, the Tribunal allows the claim petition in the year 2018 and awards a sum of Rs.50,00,000/- as compensation. The insurance company prefers appeal and the appeal gets dismissed in the year 2022 upholding the award of the Tribunal. The insurance company approaches the Hon'ble Apex Court and the Hon'ble Apex Court passes judgment in the year 2024 negating the pleas taken by the insurance company. Thus, the award attains finality in the year 2024.

'Y' the wife, A and B the children of the deceased 'X' would be bearing legal expenses for the entire period of ten years i.e. from 2014 to 2024. That apart, 'Y' would be at liability to provide education to her children either by begging or by borrowing. For all the three to survive, food, shelter and clothing are required. Therefore, 'Y' might have incurred debts, would have sold out any valuable property, or would have mortgaged the said property or might have pledged the valuable articles like gold. Thus, for all the expenditure incurred for the ten years, 'Y' and her children A and B would be liable to pay interest.

On the other hand, the insurance company would be reaping the profit in the form of interest on the amount that fell due to the claimants for all the said ten years period."

34. In the circumstances aforementioned which would be present in almost all motor vehicles claims, if the dependents are denied with the interest over the amount awarded under the head 'loss of future prospects', it would be most unjustifiable. The reasons are two fold.

(i) Despite making stringent provisions for settlement of claims at the earliest date, it is taking years and decades for settlement of claims. In the interregnum period, the survival of claimants would be based on the available resources and the capability of getting debts.

(ii) The insurance companies who are liable to pay the compensation as soon as possible as indicated under the Motor Vehicles Act, 1988 would be enjoying the principle amount and the fruits that accrued through the investment of the principle amount.

35. *The amount payable to the claimants which lies with the insurance companies for years together is one way the debt the insurance companies have to make good to the claimants. When the insurance companies are enjoying the fruits of the said amount and the accrued interest for years together, they cannot take plea that they are not liable to pay interest to the claimants over the amount which they are liable.*

36. *In the case on hand, the accident occurred in the year 2014 and the claim is not settled till this day. Thus, the amount which the claimants are legally entitled to is being enjoyed by the insurance company for a long period of ten years. Now the insurance company has taken a plea that it is not liable to pay the interest on future prospects.*

37. *The plea taken by the insurance company that it is not liable to pay interest on the future prospects, as the amount awarded under that head would be the future earnings of the deceased is not justifiable due to the reason that the claimants are not being paid the entire earnings of the deceased which he would have earned had he been alive. Cases where there is no proof in certainty regarding exact income, the Courts are taking notional income into consideration. Either applying appropriate multiplier as per the decision in Sarala Verma's case or taking percentage of the said income towards future prospects as per the decision in Pranay Sethi's case is on probabilities but not on exact figures. In no case, the claimants get the exact amount which the deceased would have earned had he been alive. In all cases the amount which the claimants would get for their livelihood through the deceased would be many times more than the actual amount awarded. That apart, the insurance companies are depositing the compensation years after the date of accident which is in clear violation of Section 149 of the Motor Vehicles Act, 1988.*

38. *Further more, award of amount as compensation is a one time procedure. Even if in the future course it is found that the deceased would have earned much more amount in the light of hike in his position and global opportunities, the Tribunals will not order payment of any further amount and insurance companies will not be made liable on that count. Such being the case, this Court is of the view that the insurance companies are liable to pay the awarded amount including the amount awarded under the head future prospects together with banking rate of interest which is prevalent during relevant time. Thus, we ultimately hold that, the insurance company cannot escape from the liability to pay interest on the future prospects."*

32. A coordinate bench of the Madhya Pradesh High Court at Jabalpur, in the case of **Bindu Mishra and Others Vs. Uday Yadav and Others; Misc. Appeal No.2526 of 2018**, by means of the judgment and order dated 06.08.2024 held that in this Court's opinion, there is an underlying object for grant/award of interest on compensation that a person is entitled for compensation immediately/ within a reasonable period after death/injury/damage in an accident arising out of use of motor vehicle. But if such compensation is not paid and he is compelled to file a claim petition for the same, only

then the interest is awarded on compensation for delay in payment of compensation. Similarly, in case of death, a claimant/person becomes entitled for "future prospects" and also alongwith other amounts immediately after the accident, therefore, he is entitled for interest of future prospects from the date of filing of the claim petition. The relevant paragraphs- 31 to 33 are extracted here-in-below:-

"31. In the instant case, accident occurred on 12.02.2016. Award has been passed on 27.02.2018 and present appeal is pending since 2018. Learned counsel for the respondent/ Insurance company has not drawn this Court's attention to any statutory provision of law or pronouncements of Hon'ble Apex Court or co-ordinate Bench of this Court so to show that interest on future prospects should be awarded from the date of award and not from the date of filing of claim petition.

32. In this Court's opinion, there is an underlying object for grant/award of interest on compensation. A person is entitled for compensation immediately/within a reasonable period/after/ death/ injury/damage in an accident arising out of use of motor vehicle. But if such compensation is not paid immediately after the accident/within reasonable period of accident, and a person etc. is compelled to file a claim petition for the same, only then in such a situation a Court/Tribunal grants/award interest on compensation for delay in payment of compensation. Thus, interest is granted/awarded for delayed/deferred payment of compensation.

33. Similarly, in case of death, a claimant/person becomes entitled for "Future Prospects" also along with other amount, immediately after the accident and the same is required to be paid to claimant immediately after the accident/within reasonable period of accident, along with other amount. Hence, there is no justification for not awarding interest on "Future Prospects" from the date of filing of claim petition. This Court does not agree with principle laid down in Mst. Aisha Bano (Supra). Therefore, submissions of learned counsel for the respondent with respect to above are also rejected. In this Court's opinion, interest on future prospects is also to be awarded from the date of filing of claim petition.

33. A Constitution Bench of the Hon'ble Supreme Court, in the case of **Central Bank of India Vs. Ravindra and Others; (2002) 1 SCC 367**, has held that interest pendente lite and future interest shall be awarded on such principal sum i.e. the principal sum adjudged on the date of the suit. It is settled law that the interest can be claimed, decreed or awarded for the period during which the money was due and yet remain unpaid to the claimants and right to claim compensation accrues on the date of accident. Thus, the interest is essentially a compensation payable on account of denial of the right to utilize the money due, which has been, in fact, utilized by the person withholding the same. Thus, in case the amount due on the date of

accident would have been paid immediately thereafter, the person in need must have utilized it for his personal use or could have invested and earned interest on the same.

34. The Hon'ble Supreme Court, in the case of **Thazhathe Purayil Sarabi and Others Vs. Union of India and Another; (2009) 7 SCC 372**, has held that there is no denying the fact that the right to claim compensation accrued on the date of the incident and the interest is payable from the date, the claim for the principal sum is made, namely, the date of institution of the proceedings in the recovery. Though this case is in regard to the claims under the Railways Act but the principle applicable on the claims of compensation can not be denied.

35. The Hon'ble Supreme Court, in the case of **Panjab and Sind Bank Vs. Allied Beverage Company Private Limited and Others; (2010) 10 SCC 640**, while considering the provisions of Section 34 of C.P.C. considered the meaning of 'interest' and its definitions given in the various dictionaries in paragraph-18, which is extracted here-in-below:-

"18. While considering the above issue, the Constitution Bench has also considered "interest", "penal interest", several "usury laws" and finally made certain observations which are binding on the banking institutions as well as all others dealing with money transactions with them : (Ravindra case [(2002) 1 SCC 367] , SCC pp. 393-95, paras 37-39)

"Interest and its classes

37. Black's Law Dictionary (7th Edn.) defines 'interest' inter alia as:

'3. The compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of [the] borrowed money.'

According to Stroud's Judicial Dictionary of Words And Phrases (5th Edn.) interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In Irrigation Deptt., Govt. of Orissa v. G.C. Roy [(1992) 1 SCC 508] the Constitution Bench opined that : (SCC pp. 532-33, para 43)

'(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. ... This is the principle of Section 34 of the Civil Procedure Code....'

In Sham Lal Narula (Dr.) v. CIT [AIR 1964 SC 1878] this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd. [1947 AC 390 : (1947) 1 All ER 469 (HL)] (AC at p. 400 : All ER at p. 472 E-F) is that:

‘... it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation’;

the money due to the creditor was not paid, or, in other words,

‘was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute’.

A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in CIT v. Dr. Sham Lal Narula [AIR 1963 Punj 411] thus articulated the concept of interest : (AIR p. 414, para 8)

‘8. The words “interest” and “compensation” are sometimes used interchangeably and on other occasions they have distinct connotation. “Interest” in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, “interest” is understood to mean the amount which one has contracted to pay for use of borrowed money. ...

In whatever category “interest” in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.’

It is the appeal against this decision of the Punjab High Court which was dismissed by the Supreme Court in Sham Lal Narula (Dr.) case [AIR 1964 SC 1878].

38. However ‘penal interest’ has to be distinguished from ‘interest’. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrongdoer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and, therefore, cannot be permitted to be capitalised.

39. Mulla on the Code of Civil Procedure (1995 Edn.) sets out three divisions of interest as dealt in Section 34 CPC. The division is according to the period for which interest is allowed by the court, namely,—(1) interest accrued due prior to the institution of the suit on the principal sum adjudged; (2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the court deems reasonable; (3) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the court thinks fit, at a rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post-decree or future interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of

substantive law (see Irrigation Deptt., Govt. of Orissa v. G.C. Roy [(1992) 1 SCC 508], SCC para 43-(v)).”

36. The Hon'ble Supreme Court, in the case **Union of India Vs. Rina Devi; (2019) 3 SCC 572**, considered the issue of interest on the compensation in case of untowered incident under the Railways Act. However, held that legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988 and conflicting views stand resolved in this manner. It has been held in this case that the law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Thus, the Hon'ble Supreme Court concluded that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases.

37. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the contention of the learned counsel for the appellant is misconceived and not tenable and this Court is of the view that the claimant-respondent is entitled for the future prospects and interest thereon also.

38. So far as the enhancement of interest awarded to the claimant-respondent is concerned, a three judge bench of Hon'ble Supreme Court, in the case **Nutan Rani and Another Vs. Gurmail Singh and Others; (2018) 17 SCC 109**, has enhanced the interest from 6% to 9% and the same is on the future prospects also. Accordingly, this Court is of the view that looking to the fall in the interest rate and the period from which the interest is to be awarded and the aforesaid judgment of Hon'ble Supreme Court, the interest can be enhanced

from 6% to 9% per annum instead of 12% as claimed and it is accordingly enhanced to 9% per annum w.e.f the date of application till the date of actual payment. Accordingly the cross-objection is also liable to be partly allowed.

39. The appeal and the cross-objection are, accordingly, **partly allowed**. Thus, the total compensation payable to the claimant-respondent/ objector in terms of *National Insurance Company Limited Vs. Pranay Sethi and Others(supra)* is calculated as under:-

Yearly Income after deduction of income tax on the basis of proof of pay slip of April, 2011 (A):	Rs.4,15,038/-
Increase towards future prospects (B): (50% of income)	Rs.2,07,519/-
A+B	Rs.6,22,557/-
Deductions towards personal expenses (1/2): (C)	Rs.3,11,278.50
Multiplier applied:	16 (since age of deceased was 33 years)
Loss of Dependency: (C X 16):	Rs.49,80,456/-
Loss of consortium:	Rs.40,000/-
Loss of estate:	Rs.10,000/-
Funeral expenses:	Rs.5000/-
Total Compensation:	Rs.50,35,456/-
Interest:	@ 9% per annum

40. The impugned judgment and award is,accordingly,modified in the aforesaid terms. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 09.12.2024
Haseen U./Akanksha