NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 19.09.2019

Order pronounced on 19.12.2019

MAC No. 950 of 2013

1. Smt. Rekha Sinha, Wd/o Late Rakesh Sinha, aged about 35 Years
2. Aaditya Sinha S/o Late Rakesh Sinha aged about 14 Years, Minor, Through his Mother Smt. Rekha Sinha,

   Both are R/o Mayapur, Thana- Ambikapur, Distt. Surguja C.G., At Present R/o Baniya Para, Juna Bilaspur, Thana- City Kotwali, Revenue/Civil District Bilaspur C.G.

---- Appellants/claimants

Versus

1. Gurmit Singh @ Billu, S/o Late Baba Darshan Singh, aged about 45 Years R/o Gurunanak Ward, Near Joda Pipal, Thana- Ambikapur, Distt. Surguja C.G. ----(**Driver/ Owner of Truck)**
2. Gopal Shrivas, S/o Bharatlal Shrivas, Aged About 35 Years R/o Hatri Chauk, Kila Ward, Juna Bilaspur, Thana- City Kotwali, Distt. Bilaspur C.G. **---- (Owner of Bolero)**
3. Branch Manager, IFFCO -Tokio General Insu.Co.Ltd., Regional Office- 3rd Floor, Shop No. 345-347, Lalganga Shopping Mall, F.E. Road, Distt. Raipur C.G. **------ (Insurance Company of Bolero)**

---- Respondents

WITH

MAC No. 951 of 2013

- Smt. Rekha Sinha, Wd/o Late Rakesh Sinha, aged about 35 Years, R/o Mayapur, Thana- Ambikapur, Distt. Surguja C.G., At Present R/o Baniya Para, Juna Bilaspur, Thana- City Kotwali, Revenue/Civil District Bilaspur C.G. **---- Appellant/Claimant**

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3. Branch Manager, IFFCO -Tokio General Insu.Co.Ltd., Regional Office- 3rd Floor, Shop No. 345-347, Lalganga Shopping Mall, F.E. Road, Distt. Raipur C.G. **------ (Insurance Company of Bolero)**

---- Respondents

WITH

MAC No. 952 of 2013

1. Smt.Ratna Tamboli, Wd/o Late Ashwani Kumar Tamboli, Aged About 28 Years,
2. Ku. Simran Tamboli D/o Late Ashwani Kumar Tamboli, Aged About 8 Years,

3. Ku. Mansi Tamboli D/o Late Ashwani Kumar Tamboli, Aged About 6 Years,

   Appellant No. 2 and 3 are Minor, Through Guardian Mother of Smt. Ratna Tamboli. All R/o Village, Takhatpur, Thana/Tahsil - Takhatpur, Revenue/Civil District Bilaspur C.G.

---- Appellants/claimants

Versus

1. Gurmit Singh @ Billu, S/o Late Baba Darshan Singh, aged about 45 Years R/o Gurunanak Ward, Near Joda Pipal, Thana- Ambikapur, Distt. Surguja C.G. ----(**Driver/ Owner of Truck)**
2. Gopal Shrivas, S/o Bharatlal Shrivas, Aged About 35 Years R/o Hatri Chauk, Kila Ward, Juna Bilaspur, Thana- City Kotwali, Distt. Bilaspur C.G. **---- (Owner of Bolero)**
3. Branch Manager, IFFCO -Tokio General Insu.Co.Ltd., Regional Office- 3rd Floor, Shop No. 345-347, Lalganga Shopping Mall, F.E. Road, Distt. Raipur C.G. **------ (Insurance Company of Bolero)**

---- Respondents

WITH

<u>MAC No. 953 of 2013</u>

Smt. Rekha Sinha, Wd/o Late Rakesh Sinha, aged about 35 Years, R/o Mayapur, Thana- Ambikapur, Distt. Surguja C.G., At Present R/o Baniya Para, Juna Bilaspur, Thana- City Kotwali, Revenue/Civil District Bilaspur C.G. **---- Appellant/Claimant**

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3. Branch Manager, IFFCO -Tokio General Insu.Co.Ltd., Regional Office- 3rd Floor, Shop No. 345-347, Lalganga Shopping Mall, F.E. Road, Distt. Raipur C.G. **------ (Insurance Company of Bolero)**

---- Respondents

For Appellant/s	: Mr. Sameer Singh, Advocate.
For respondents	:Ms. Pratibha Das on behalf of Mr. Amrtio Das and Mr. Rishi Sahu on behalf of Mr. Surfaraj Khan, Advocates for respective respondent/s.

Hon'ble (Smt.) Justice Vimla Singh Kapoor.

C.A.V. Order

MAC No.950/2013, MAC No.951/2013, MAC No.952/2013 and MAC No.953/2013 are being disposed of by this common judgment as all these appeals arise out of the same accident.

2. The claimant/appellants have preferred these appeals for enhancement of compensation awarded by the Tribunal.

3. It is undisputed that the respondent No.1– Gurmit Singh @ Billu is the driver/owner of offending Truck vehicle bearing registration No. CG-15/ ZC-0920 and respondent No.2 – Gopal Shrivas is owner of the Bolero bearing registration No.CG-10/FA-0660 and respondent No.3 is the Insurance Company of the said Bolero Car. It is relevant to mention here that driver of the said Bolero Car namely Ashwani Kumar Tamboli has also died in accident.

4. Facts of the case, in brief, are that on 04.06.2010 at about 11:30 AM the deceased namely Rakesh Kumar Sinha was going to Ambikapur on his Bolero Car along with his family members namely Rekha, Amit and Aditya and at that time the respondent No.1 – Gurmit Singh – driver of the offending vehicle Truck being CG-15/ZC 0620 in rashly and negligently manner dashed his vehicle to Bolero due to which passengers traveling in the Bolero car suffered injuries and some of them succumbed to death. Thereafter, the accident was reported and FIR 59/2010 was registered at Police Station, Prem Nagar and after investigation, charge-sheet was filed against the respondent No.1.

5. The Tribunal considering the facts and circumstances of the case, the evidence available on record by the impugned award granted compensation of Rs.4,17,500/- in Claim Case No.99/2013; Rs.25,000/- in Claim Case No.97/2013; Rs.15,08,876/- in Claim Case No.100/2013 and Rs.2,93,000/- in Claim Case No.101/2013 with interest of 6% per annum from the date of claim application till realization fastening liability on non-applicant No.1 – the Truck driver/owner while exonerating non-applicant No.3 – Insurance Compnay.

6. Being aggrieved by the impugned award the claimants have filed their respective appeals seeking enhancement of compensation as also challenging exoneration of the Insurance Company of its liability.

7. No counter appeal has been filed by the respondents.

8. Heard counsel for the parties and perused the material available on record in all the appeals.

9. Since the question of liability of Insurance Company is common in all the cases, therefore I would first deal with this aspect of the matter and only thereafter consider the quantum of compensation as the same would have to be worked out individually in all the cases.

10. It is evident from the records that respondent No.2 – Gopal Shrivas - owner of the said Bolero car has filed a copy of the RC book, Insurance and driving licence of driver of the vehicle in seizure memo (Ex.P-10).

11. The instant case is not of contributory negligence. It was the driver of the offending vehicle (Truck) who dashed the vehicle of deceased Ashwani.

12. The Insurance Company has not adduced any oral or documentary evidence to establish that the driver of the offending vehicle was driving the vehicles rashly and negligently or has was not having valid driving licence, therefore, the Insurance Company cannot be exonerated from its liability to pay the compensation.

13. It is settled law that the Insurance Company cannot be absolved of its liability to pay compensation of the policy. It has failed to prove that the owner of the vehicle had committed any negligence or had not taken reasonable care in the matter of fulfilling the condition of the policy regarding used of vehicles by a duly licenced driver while employing the driver of the vehicle. The observation of the Supreme Court in paragraphs 110 (iii) and (vi) in **National Insurance Company Ltd Vs. Swaran Singh and others** reported in **(2004) 3 SCC 297** : 2006 (4) ACCD 240 (SC) relevant for the purpose and reproduced below :-

> **"(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.**

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(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act."

In view of the aforesaid the argument of the learned counsel for the appellant/Insurance Company relating to driving licence unfounded and stands rejected.

14. The principles laid down by the Supreme Court in the matter of Manger, National Insurance Company Limited Vs. Sanju P. Paul and another reported in (2013) 2 SCC 41 are to be noted where, at paragraphs 20 and 26 it has been observed as under :-

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the insurance company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle.

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur (*National Insurance Company Ltd Vs. Baljit Kaur, (2004) 2 SCC 1*) and Challa Bharathamma *(National Insurance Company Ltd Vs. Challa Bharathamma, (2004) 8 SCC 517)* should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered

permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant may be allowed to withdraw the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company thereafter may recover the amount so paid from the owner. The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of Challa Bharathamma."

15. The relevant paragraphs in the judgment of the Apex Court in Manuara Khatun and others Vs. Rajesh Kumar Singh and others, passed on 21.02.2017 reported in (2017) 4 SCC 796, is observed as under :-

"13) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submission of the learned counsel for the appellants (claimants).

14) The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.

15) The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd.

> **vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, [Order dated 19.1.2007 in SLPÂ© No. 5699 of 2006], and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.**
>
> **16) This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover"**

16. Therefore, the Insurance Company is directed to pay the awarded sum to claimants and then to recover the said sum from the insured in the same proceedings applying the principle of "pay and recover".

17. Applying the principles regarding assessment of annual income as laid down by the Apex Court in **Laxmi Devi and others Vs. Mohammad Tabbar and another** reported in **(2008) 12 SCC 165**, the Tribunal ought to have considered Rs. 100/- per day or 3,000/- per month in the absence of any evidence, taking the deceased to be an unskilled labourer. Computing on the basis of this the annual income figures out to be Rs. 36,000/-.

18. I find the assumption of income by Tribunal as 36,000/- of the deceased is in accordance with the principle of Law laid down in Laxmi Devi (Supra) in which Apex Court has up held the decision of the High Court to take monthly Income of Rs. 3,000/- per month, considering the escalation of prices etc. Thus, in my opinion, the in present case also the monthly income should be taken as Rs. 3,000/- even though there was no evidence led to prove actual monthly income.

19. The Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (**2017) 16 SCC 680** : 2017 (4) ACCD 2106 (SC):-

Para 59.

Now coming to the aspect of future prospects and claim of compensation in that head for those who are self employed. This issue is no more *res integra*. The Apex Court in Pranay Sethi (Supra) vide paras 56 and 57 has held thus:-

> **"56. The seminal issue is the fixation of future prospects in cases of deceased who is self employed or on a fixed salary. Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. reported in 2009 (6) SCC 121 has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not per se allowed any future prospects in respect of said category.**
>
> **57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual**

income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance ones income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative.

Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

Ultimately, the Court vide para 59 concluded thus:-

"59. In view of the aforesaid analysis, we proceed to record our conclusion:-

"59.1. The two judge Bench in Santosh Devi Vs. National Insurance Co. Ltd. (2012) 6 SCC 421 : 2012 (a) ACCD 973 (SC) should have been well advised to refer to matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma a judgment by a co-ordinate Bench. It is because a co-ordinate Bench of the same strength cannot take a contrary view than what has been held by another co-ordinate Bench.

"59.2. As Rajesh Vs. Rajbir Singh (2013) 9 SCC 54 2013 (2) ACCD 969 (SC) has not taken note of the decision in Reshma Kumari which was delivered at earlier point of time, the decision of Rajesh (Supra) is not a binding precedent.

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 has a permanent job and was below of age of 40 years, should be made. The addition should be 30 % of 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.

59.4 In case the deceased was self-employed or on a fixed salary an addition of 40 % of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 % where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of

computation. The established income means the income minus the tax component.

59.5 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 which we have reproduced hereinabove.

59.6 The selection of multiplies shall be as indicated in the table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

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

20. The above legal position has not been disputed and the compensation therefore, is to be awarded after its computation in terms of the judgment in S**arla Verma and others Vs. Delhi Transport Corporation and another**, **(2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC)** and **Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65 : 2013 (2) ACCD 977 (SC)** in the light of observations made and directions issued by the Apex Court in constitution Bench. Judgment in Pranay Sethi (Supra).

21. In Pranay Sethi (Supra) the constitution Bench vide para 52 held thus :-

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. *[(2013) 9 SCC 54]* It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards 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 *[(2012) 6 SCC 421]* 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 criteria on unlike quantification 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 obvious 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 or 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 year 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."

22. On the point of deduction from income towards personal expense also the law is almost settled by the constitution Bench vide para 59.5 the Bench has approved paras 30 to 32 of judgment in Sarla Verma (supra). Paras 30, 31 and 32 of the judgment in Sarla Verma (supra) runs as under:-

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra (2003) 3 SLR (R) 601, the general practice is to apply standardized deduction. 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(1/3 rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where of number of defendant 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 expense, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of this 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 dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brother and sister will not be considered as dependents 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 dependent, and 50% would be treated as 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 to 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 takes as two third."

As regards MAC No.952/2013

(Smt. Ratna Tamboli and others Vs. Gurmit Singh and others)

23. As regards income of deceased, though the claimants have pleaded that the deceased was earning Rs.3,300/- per month but no documentary evidence in support, thereof has been adduced. In the light of the decisions in Govind Yadav Vs. New India Insurance Co.

Ltd., (2011) 10 SCC 683, Bonder Vs. Rewaram and others, 2009 AC J 2435; Laxmi Devi and others Vs. Mohammad Tabbar and another, (2008) 12 SCC 165, has rightly presumed that Rs.3000/- monthly income looking to the education of deceased children and his family background and this finding is just and proper and calls for no interference.

24. In postmortem report, the age of the deceased Ashwani Kumar is mentioned as 32 years, nothing else has been produced before the Tribunal to prove the age of the deceased at the time of accident. The deceased was 32 years of the age at the time of accident, therefore, the appellants are entitled to get future prospects as observed in National Insurance Co. Ltd. Vs. Pranay Sethi (Supra).

25. Thus, taking reliance in view of decisions of Hon'ble Supreme in Smt. Sarla Verma and others (Supra), National Insurance Co. Ltd. Vs. Pranay Sethi (Supra) and Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others, (2018) SCC online (SC) 1546, the claimants are held entitled for compensation in the following manner:-

Age of deceased	-	32 years
Notional income	-	Rs.36,000/- PA (Rs.3000 x 12)
Future prospects (with 40% of the total income)	-	Rs.50,400/- (Rs.36,000+14,400)
Deduction towards personal expenses 1/3	-	Rs.16,800/-
dependency	-	Rs.33,600/- (Rs.50400-16,800)
Multiplier	-	16

Compensation	-	**Rs.5,37,600/-** (Rs.33,600/- x 16)
Loss of consortium	-	**Rs.40,000/-**
Loss of estate, love and affection and pain, suffering etc.	-	**Rs.15,000/-**
funeral expenses	-	**Rs.15,000/-**
Total compensation	**-**	**Rs.6,07,600/-**

As regards MAC No.950/2013.

(Smt. Rekha Sinha and another Vs. Gurmit Singh and others)

26. On the date of accident the deceased was 42 years old. The deceased was Government employee and was drawing a salary of Rs.20,382/- per month. It is also evident that after certain deduction the deceased was getting a take salary of Rs.17,732/- per month.

27. Thus, taking reliance in view of decisions of Hon'ble Supreme in Smt. Sarla Verma and others (Supra), National Insurance Co. Ltd. Vs. Pranay Sethi (Supra) and Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others, (2018) SCC online (SC) 1546, the claimants are held entitled for compensation in the following manner:-

Age of deceased	-	42 years
Notional income	-	Rs.2,12,784/- PA (Rs.17,732x 12)
Future prospects (with 30% of the total income)	-	Rs. 2,76,619/- (Rs.2,12,784+63,835)
Deduction towards personal expenses 1/3	-	Rs.92,206/-
dependency	-	Rs.1,84,413/- (Rs.2,76,619-92,206)
Multiplier	-	14
Compensation	-	**Rs.25,81,782/-** (Rs.1,84,413/- x 14)
Loss of consortium	-	**Rs.40,000/-**

Loss of estate, love and affection and pain, suffering etc.	-	**Rs.15,000/-**
funeral expenses	-	**Rs.15,000/-**
Total compensation	**-**	**Rs.26,51,782/-**

As regards MAC No.951/2013.

(Smt. Rekha Sinha Vs. Gurmit Singh and others)

28. Admittedly, in this case the deceased was minor aged 14 years, the Hon'ble Supreme Court in the matter of **Kishan Gopal and another Vs. Lala and others, (2014) 1 SCC 244,** wherein a child aged about 10 years died in the motor vehicle. In this case accident was occurred on 19.07.1992, and the claimants were young parents, considering its various earlier decisions awarded Rs. 5 lacs towards total loss of dependency and other conventional heads.

29. Thus in view of the aforesaid decision, looking to the age of the parents and that of the deceased, this Court is of the opinion that the appellant/claimant is entitled for a total sum of Rs.5 Lacs as compensation, since the Tribunal has already awarded Rs.2,93,000/- after deducting the same, the claimants are held entitled for additional compensation of **Rs. 2,07,000/- lacs with interest @ 6 % per annum** from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact. Order accordingly.

As regards MAC No. 953 /2013 (Injury case)

(Smt. Rekha Sinha Vs. Gurmit Singh and others)

30. The case where the claimants have sustained injuries it would first be necessary to advert to the principles with regard to the compensation for injuries. The law in this regard is well-settled and reference can conveniently be made to the decision of the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another, (2011) 1 SCC 343,** wherein it was held as under:-

> **"19. We may now summarise the principle discussed above.**
>
> **(i) All injuries for permanent disability arising from injuries, do not result in loss of earning capacity.**
>
> **(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).**
>
> **(iii) The doctor who treated an injured – claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.**
>
> **(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.**

In assessing the compensation payable the settled principles needs to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. This was so held in a recent decision by Three Hon'ble Judge Bench of the Hon'ble Supreme court in

Jagdish Vs. Mohan and others, AIR 2018 S.C. 1347 wherein it was observed as under:-

> “**8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:-**
>
> (i) **Pain, suffering and trauma resulting from the accident,**
>
> **(ii) Loss of income including future income,**
>
> **(iii) The inability of the victim to lead a normal life together with its amenities,**
>
> **(iv) Medical expenses including those that the victim may be required to undertake in future, and**
>
> **(v) Loss of expectation of life.**

31. It is not disputed that claimant remained admitted in Apollo Hospital Bilaspur w.e.f. 05.06.2010 to 09.06.2010 then obviously she would have incurred expenditure towards medication apart from other miscellaneous charges under which head, no amount has been awarded in favour of the claimant.

32. In view of the above, now the appellant/claimant will be entitled for an amount of Rs. 20,000/- towards medical expenses, Rs. 5,000/- towards special diet Rs. 15,000/- towards pain and suffering Rs. 1000/- towards conveyance expenses and Rs. 2000/- towards attendant. Thus the appellant/claimant is entitled for total compensation of **Rs. 43,000/-.** The other conditions imposed by the learned claims Tribunal shall remain intact.

33. In view of the above, appeals being MAC No.950/2013, MAC No.951/2013, MAC No.952/2013 and MAC No.953/2013 filed by the claimants stand **allowed**. The compensation awarded to the claimants/appellants under the order of Tribunal is accordingly enhanced and award stands modified to the extent indicated here-in-above.

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay/Pawan