

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**FAO No.3830 of 2017**

**Date of Decision: 23 .01.2019**

Renu and others

....  
Appellants

versus

Kuldeep @ Babloo and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH**

Present: Mr. Sanjeev Kodan, Advocate,  
for the appellants.

Mr. Ashwani Talwar, Advocate,  
for respondent no.3.

**AMOL RATTAN SINGH, J.**

This appeal arises out of the Award of the learned Motor Accident Claims Tribunal, Bhiwani, dated 12.09.2016, by which it awarded the appellants a compensation of Rs.43,90,500/-, on account of the death of Jarnail Singh (husband of the 1<sup>st</sup> appellant, father of the 2<sup>nd</sup> and 3<sup>rd</sup> appellant and son of the 4<sup>th</sup> appellant). Interest @ 7.5% per annum was also awarded on the aforesaid compensation, running from the date of filing of the claim petition, till the date of realisation thereof.

The appellants seek further enhancement of that compensation.

2. In the claim petition, the claimants had averred that Jarnail Singh @ Dinesh, alongwith his brother Karnail Singh @ Sunna, were going on their vehicle (detailed description not given in the claim petition), on 13.08.2014, when at about 10.00 p.m. the vehicle was parked near the bus stand of village Bhurtana, close to a country liquor vend. After getting down

from the vehicle, Jarnail Singh checked the air in the tyres of the vehicle and when he was crossing the road, a black coloured motorcycle came from the side of village Jamalpur, stated to be driven rashly and negligently by respondent no.1, i.e. by Kuldeep @ Babloo, which hit Jarnail Singh.

He is stated to have been taken to the Community Health Centre, Tosham, by Karnail Singh, where he was declared dead.

FIR no.287 was registered on 14.08.2014 at Police Station Bhawani Khera, alleging therein the commission of offences punishable under Sections 279/304-A of the IPC, on a statement made by Karnail Singh.

3. As per the claimants, the deceased was self-employed, earning about Rs.50,000/- per month from the transport business that he was running, with him owning two transport vehicles.

Compensation to the tune of Rs.70,00,000/- was therefore claimed by the claimants.

4. Notice of the claim petition (filed invoking jurisdiction under Sections 166 and 140 of the Motor Vehicles Act, 1988), having been issued to the respondents, i.e. the driver, owner and insurer of the motorcycle bearing registration no.HR-20Q-4056, the driver and owner filed a joint written statement taking preliminary objections with regard to maintainability etc., further stating that the petition had only been filed to extort money illegally from them, as actually no such accident had taken place.

In reply to the contents of the claim petition, other than denying all claims by the claimants, it had further been stated that a false FIR had been registered by the police.

5. The insurance company (respondent no.3 herein) filed a separate

written statement, also taking the usual pleas of non-maintainability, lack of cause of action and *locus standi*, again reiterating in its reply on the merits of the petition, that no such accident had taken place and that a false FIR had been registered, still further contending that the driver of the motorcycle insured by the company did not have an effective and valid driving licence and that no information about the accident had been conveyed to the company by the owner of the motorcycle and therefore the petition was filed by the claimants in collusion with the driver and owner.

6. On the aforesaid pleadings of the parties, the following issues were framed by the Tribunal:-

- “1. Whether the accident causing death of Jarnail Singh @ Dinesh son of Jagbir Singh took place on 13.08.2014 due to rash and negligent driving of motorcycle no.HR-20Q-4056 by respondent no.1, as alleged? OPP
2. If issue no.1 is proved whether claimants are entitled for compensation, if so, to what amount and from whom? OPP
3. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident, if so its effect? OPR
4. Relief.”

7. An application filed under Section 170 of the Motor Vehicles Act, 1988, by the insurance company, had also been allowed by the Tribunal after framing of the issues, with the insurance company thereby held free to contest the petition even against the insured.

8. The claimants examined the following witnesses:-

|                                  |     |
|----------------------------------|-----|
| Rajesh Kumar, Registration Clerk | PW1 |
| Renu (1 <sup>st</sup> claimant)  | PW2 |
| Naresh                           | PW3 |
| Karnail Singh                    | PW4 |

Kamal Kant

PW5

Sandeep Kumar

PW6

The respondents on the other hand examined the following witnesses:-

Anirudh

RW1

Dharampal Mann

RW2

(Owner of the vehicle)

Documentary evidence was also led by both parties.

9. On the issue of the deceased having died due to the negligent driving of respondent Kuldeep @ Babloo, the learned Tribunal first noticed that PW4 Karnail Singh, who claimed to be an eye witness to the accident, was also the author of the FIR (Ex.P6), with him having testified that as per the in-patient register of the hospital where the deceased was taken, even Kuldeep Singh, i.e the driver of the motorcycle, was admitted on account of injuries. The said register having been produced as Ex.P5, it was seen that Kuldeep Singhs' name was registered at Sr.no.886, with the name of the deceased registered at Sr. no.887 thereof.

PW6, HC Sandeep Kumar, also having testified that the motorcycle was in fact seized by the police, with the seizure memo having been exhibited as Ex.P8, and the mechanics' report on the motorcycle also having been proved as Ex.P10, it was held by the Tribunal that it was in fact the motorcycle driven by Kuldeep @ Babloo, and owned by Dharam Pal (respondents no.1 and 2 respectively), that was involved in the accident.

The *challan* submitted to the competent court by the police, pursuant to the completion of investigation, was also exhibited as Ex.P9 before the learned Tribunal.

10. Hence, essentially on the ground that even the driver had been *challaned* by the police, citing a judgment of this court in Lakhu v. Uday

Singh 2008 (1) RCR (Civil) 805, the Tribunal came to a conclusion that it was the driver of the motorcycle who was responsible in causing the accident.

11. On the issues of the amount of compensation that the claimants would be entitled to and the liability to pay such compensation, the Tribunal first referred to the testimony of the widow of the deceased, i.e. PW2 Renu, as also the registration certificates of the two trucks owned by the deceased, and held that he would be earning Rs.15,000/- per month from the income that the said vehicles brought him, and with him having been shown to be driving one of the vehicles himself, a sum of Rs.7000/- was also added to that income, thereby coming to the conclusion that the income of the deceased was Rs.22,000/- per month.

From that amount Rs.3000/- was deducted, on simply stating that it was a fair deduction (seemingly on miscellaneous expenses), with the net income of the deceased therefore held to be Rs.19,000/- per month.

It was also found by the Tribunal that due to the fact that the deceased had died, one of the trucks had to be sold by the claimants on 09.10.2015, as they were not able to look after the business.

1/4<sup>th</sup> of the income of the deceased was deducted towards his personal expenses and thereafter 50% added by way of loss of prospects of an increased income in the future, (with no figure given by the Tribunal as to what would be the loss of income to the claimants prior to addition of 50% after deduction of 1/4<sup>th</sup> from the net income of Rs.19,000/-).

Thereafter, the loss of income to the claimants is shown to be Rs.21,375/- per month.

12. Deceased Jarnail Singh was found to be 27 years of age at the

time when his ration card, Ex.P3, was prepared, from which his age was taken to be 30 years on the date of his death.

Consequently, to Rs.2,56,500/- (i.e.Rs.21375 x 12), a multiplier of 17 was applied, thereby bringing the total loss of income to the claimants to be Rs.43,60,500/-.

Rs.25,000/- was awarded towards funeral expenses and last rites, with Rs.5000/- added towards loss of estate, thereby bringing the total compensation to Rs.43,90,500/-.

As already noticed earlier, though interest @ 7.5% per annum was awarded, however, it was further held that if the amount was not deposited within 90 days, then interest would be applicable @ 9% per annum.

Break up of the amounts to be paid to each claimant were thereafter given, with that not necessary to be gone into, apportionment not being an issue in this appeal.

13. On the issue of liability to pay the compensation, the Tribunal recorded a finding that the insurance company had been able to prove that the licence carried by the driver of the motorcycle as had hit the deceased, i.e. respondent no.1 herein, Kuldeep @ Babloo, actually was a fake driving licence, though the owner of the vehicle, i.e. respondent no.2 herein, Dharampal, had also deposed (as RW2) and had tendered his affidavit to state that when he had employed the driver, i.e. Kuldeep, he had found his driving licence to be valid. Hence, it was recorded by the Tribunal as follows:-

“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 party.”

Consequently, it was held that the insurance company would pay the compensation and if it thereafter wished to recover it, it could do so from the insured and the owner of the vehicle, in terms of Section 174 of the Motor Vehicles Act, 1988.

It is further to be noticed that despite the liberty given to the respondent insurance company to recover the compensation amount from respondent no.2 herein, (after payment to the claimants), that finding has not been challenged by either respondent no.1 or 2, by way of any appeal brought to the notice of this court.

14. As regards issue no.1 before the Tribunal, it is seen that even in the grounds of appeal pleaded in the connected appeal filed by the insurance company (FAO no.6717 of 2016), the negligence of respondent no.1 herein, in causing the accident, has not been questioned; and consequently, that is not an issue argued by learned counsel for the parties.

15. It also needs specific mention at this stage that FAO no.6717 of 2016, filed by the respondent insurance company (bearing the title United India Insurance company Limited v. Renu and others), was heard alongwith this appeal and, naturally, common arguments were addressed by counsel for the parties, that appeal also having challenged the same Award as is impugned in the present one.

However, with the insurance company not having successfully established its challenge to the amount of compensation awarded, (in terms of what is recorded in paragraphs 19 to 23 *infra*) judgment had been reserved in both the appeals, essentially on two issues, one arising in the present appeal, i.e. whether even higher compensation than what would flow from

the ratio of the judgment of the Supreme Court in National Insurance Company Limited v. Pranay Sethi and others 2017 (4) RCR (Civil) 1009 is payable; and secondly, as to whether the insurance company was entitled to recover compensation from the owner of the motorcycle only as arrears of land revenue in terms of Section 174 of the Motor Vehicles Act, 1988, as has been directed by the Tribunal, or whether the Tribunal itself, in execution proceedings, could recover it from the owner in the same manner that a decree in a civil case is executed. (This second question arises in FAO no.6717 of 2016, filed by the insurance company).

16. However, when the judgment was being dictated after it had been reserved, it was seen that as regards the second issue, even notice of motion had not been issued in FAO no.6717 of 2016, to the owner and driver of the vehicle insured by the insurance company, and since both the appeals were being heard together, 'formal notice' was actually never issued to the respondents even in this appeal, i.e. FAO no.3830 of 2017, though on the issue of adequacy/inadequacy of compensation, arguments were addressed by both sides, notice having been issued to the present appellants (claimants), in FAO no.6717 of 2016. Thus, neither this court, nor learned counsel for the parties appearing, had noticed that the driver and owner of the "offending vehicle", went unrepresented at the time of hearing. Consequently, that appeal has been put up for rehearing, for notice to be issued to the driver and owner aforesaid, i.e. respondents no.1 and 2 herein.

The only issue in this appeal, therefore, is the adequacy or inadequacy of the compensation awarded.

17. Though Mr. Ashwani Talwar, learned counsel for the respondent insurance company had argued that at the outset that Rs.19,000/- assessed by

the Tribunal as the income of the deceased is excessive, even at that stage that contention had been rejected by this court vide the order by which notice of motion was issued to the respondents in the appeal filed by the insurance company, i.e. FAO no.6717 of 2016, on November 18, 2016, with it having been held as follows, on that question:-

“Though learned counsel for the appellant submits that the income of Rs.19,000/- per month assessed by the Tribunal, as the income of the deceased is also excessive, I am not in agreement with the contention because in addition to driving one of his trucks, the deceased was also managing the business of running two trucks and therefore, keeping in view the loss of managerial skills, as also his skills as a driver which he was utilizing in his business, the total amount of Rs.19,000/- is not considered to be excessive. This is especially so in view of the fact that as a driver he would be earning Rs.7000/- as assessed by the Tribunal, which is not considered excessive in any manner in the year 2014 for a skilled labourer. Further, in the opinion of this Court, Rs.12,000/- per month by way of managerial skills is not an excessive amount.”

18. It had next been argued by Mr. Talwar at that stage that 50% added by the Tribunal to the income of the deceased, by way of loss of an increased income in the future, was not actually payable, because at that stage the matter had been referred to a larger Bench of the Supreme Court in National Insurance Co. Ltd. v. Pushpa and others 2015 (6) RCR (Civil) 844.

This court even while expressing its opinion at that stage that even by sheer inflation alone, normally the income of the person would increase in the future, however, had admitted the appeal to regular hearing on that issue, with liberty granted to the parties to file an application for

disposal of the appeal upon the Supreme Court pronouncing judgment in the aforesaid matter.

19. Consequently, upon the Apex Court having adjudicated upon the matter in **National Insurance Company Limited v. Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, CM no.10670-CII of 2018 had been filed by the claimants, i.e. the appellants in the present appeal, for disposal of the appeal in terms of the aforesaid judgment.

20. When the appeal had been taken up for hearing on 23.10.2018, the following order had been passed by this Court:-

**“FAO No. 3830 of 2017**

Pursuant to the order dated 09.10.2018, learned counsel for the State has produced in Court today two notifications issued on 14.08.2014 and 21.10.2015 by the Government of Haryana in the Department of Labour, wherein the category of a Driver is shown to be a separate category, i.e. other than unskilled, semi-skilled, skilled and highly skilled, with the minimum wages of a Driver of a heavy vehicle shown to be Rs. 9,450/- as on 14.08.2014, i.e. one date after the accident in question took place on 13.08.2014.

That being so, Mr. Kodan, learned counsel for the appellants (in FAO No. 3830 of 2017), i.e. the claimants before the MACT, has pointed to paragraph 14 of the impugned Award, wherein though appellant no. 1, i.e. Renu, had deposed that her husband, deceased Jarnail Singh, was earning Rs.50,000/- per month from the business of running transport vehicles carried out by him. However, the Tribunal took his earnings to be Rs. 22,000/- per month on the ground that as per sub-section (2) of Section 44 AE of the Income Tax Act, 1961, the profits and gain from each goods carriage would equal an amount of Rs. 7,500/- per month and therefore, the deceased having proved to have possessed two such vehicles, the earnings

from the vehicles could be taken to be Rs. 15,000/- per month.

Mr. Kodan submits that he does not dispute that part of the finding of the Tribunal but has an issue with what has been held thereafter, to the effect that though it was proved that the deceased was driving one of the vehicles himself as a driver thereof (thereby saving money of hiring a driver), his income as such driver could (*sic* not) be taken to be Rs. 7,000/- per month.

The contention obviously therefore is that even with the notification of the Haryana Government dated 14.08.2018 showing the minimum wages of a driver of a heavy vehicle to be Rs. 9,450/- per month, the Tribunal has erred in only assigning Rs. 7,000/- on that account towards the income of the deceased.

Thereafter, a deduction of Rs. 3,000/- has been made by the Tribunal even from the total income of Rs. 22,000/- so assessed, without assigning any reason thereto and has finally held the income of the deceased to be about Rs. 19,000/-, from which again a standard deduction of 1/4<sup>th</sup> of the income was made in terms of the ratio of the judgment in **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another**, (2009) 6 SCC 121.

In the opinion of this Court, Mr. Kodans' contention to the effect that the income of the deceased as a Driver of a heavy vehicle could not have been taken to be less than the notified amount by the State Government is absolutely correct and therefore, the income of the deceased on that account is to be increased to Rs. 9,450/- per month in addition to Rs.15,000/-, with the deduction of Rs. 3,000/- also found to be without any reasoning or logic.

Though learned counsel for the respondent-insurance company (in FAO No. 3830 of 2017 and for the appellant in FAO No. 6717 of 2018), has tried to justify the finding of the Tribunal, she actually could not logically explain as to why what has been observed hereinabove by this Court is not to be accepted as the income of the deceased.

Consequently, adjourned to 01.11.2018.

Both counsel for the parties would calculate the amount that would be eventually payable to the appellants in FAO No. 3830 of 2017, i.e. the claimants, in terms of the judgment of the Supreme Court **National Insurance Company Limited** vs. **Pranay Sethi and others** 2017 (4) RCR (Civil) 1009 and **Magma General Insurance Co. Ltd** vs. **Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), read with **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another**, (2009) 6 SCC 121.

The said calculations as made by both sides would be placed on record by way of appropriate applications.

To be shown in the urgent motion list.

A photocopy of this order be placed on the file of the other connected case.”

21. Hence, this court had held that in terms of the notification of the Haryana Government dated 14.08.2014, the income of the deceased in his capacity as the driver of his own heavy vehicle, should be taken to be Rs.9,450/-, to be added to the income from the business of two trucks that he owned.

Consequently, directions had been given to learned counsel to submit their calculations accordingly, as regards the compensation payable in terms of the ratio of the judgment of the Supreme Court.

Learned counsel for the claimants had thereafter placed on record the following table:-

|                                             |                                |
|---------------------------------------------|--------------------------------|
| Age of the deceased                         | 30 years                       |
| Number of dependents and their relationship | Wife, son, daughter and mother |
| Income                                      | 24,450/-                       |
| Future prospects (40%)                      | 9,780/-                        |
| The income+future prospects                 | 24,450/-+9,780/-=34,230/-      |
| Deduction for personal expenses             | 1/4 <sup>th</sup>              |
| Income after deduction                      | 34,230/- - 8,558/- = 25,672/-  |

|                    |                                       |
|--------------------|---------------------------------------|
| Multiplier         | 17                                    |
| Dependency         | 25,672/- x 12 x 17 = 52,37,088/-      |
| Loss of consortium | 40,000/-                              |
| Funeral expenses   | 15,000/-                              |
| Loss of estate     | 15,000/-                              |
| Loss of filial     | 80,000/- (40,000/- each for children) |
| Total compensation | 53,87,088/-                           |

22. It is to be again noticed here that the total income of the deceased had been taken to be Rs.24,450/- per month, in terms of what had been observed by this court in the order dated August 23, 2018, by adding Rs.9,450/- to Rs.15,000/-, the amount of Rs.15,000/- having been arrived at by the Tribunal on the 'basis of' Section 44 AE (2) of the Income Tax Act, 1961, which amount has not been actually found fault with by learned counsel for the insurance company.

Still, a perusal of the amendment made in Section 44AE (2) of the Income Tax Act, vide the Finance Act, 2014, is considered necessary, which is reproduced as follows:-

16. In section 44AE of the Income-tax Act, with effect from the 1<sup>st</sup> day of April, 2015,-

“(i) for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) For the purpose of sub-section (1), the profits and gains from each goods carriage shall be an amount equal to seven thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from the vehicle, whichever is higher.”;

(ii) in the *Explanation*, for clause (a), the following clause shall be substituted, namely:-

‘(a) the expression “goods carriage” shall have the meaning assigned to it in section 2 of the Motor Vehicles Act, 1988;’.

Hence, it is obvious that as regards the income accruing from the

business of plying heavy vehicles, is to be determined in terms of the aforesaid provision and consequently the learned Tribunal did not err in doing so.

Learned counsel for the insurance company, has not been able to show that the finding of the Tribunal that the deceased was actually deriving income from two trucks, is a perverse finding.

Hence, that finding is upheld.

23. Mr. Talwar, learned counsel for the insurance company, had thereafter submitted that the income claimed by the claimants under the head “Loss of Filial”, to the extent of Rs.40,000/- for each child of the deceased (thereby totalling Rs.80,000/-), was not payable in terms of the ratio of the judgment in *Pranay Sethis'* case (supra).

Mr. Talwar also relied upon a judgment of a co-ordinate Bench of this Court in **Bala @ Rajbala and others v. Sumer Singh and others** (FAO No.5570 of 2014, decided on 11.10.2018), to submit that it would be the judgment of the larger Bench of the Supreme Court that would hold the field, even if the subsequent judgment granted some additional compensation.

These appeals were therefore adjourned for further hearing on that issue, even while directing that since even learned counsel for the insurance company fairly could not dispute that Rs.52,29,721/- would be payable to the claimants in terms of the judgment in *Pranay Sethis'* case, the said amount be disbursed to the claimants. This court had recorded to the following effect, in its order dated 02.11.2018:-

“In the meanwhile, compensation to the tune of Rs.52,29,721/-, as is now fairly not disputed to be payable to the claimants even in terms of the ratio of the judgment in Pranay Sethis' case

(supra), would be disbursed immediately to the claimants, the said amount having been arrived at on a calculation made even by Mr. Talwar, learned counsel for the insurance company, who has done so after deducting income tax that would have been payable by the deceased on his income of Rs.24,450/- per month, the said amount of Rs.24,450/- already accepted by this Court to be his correct income, (as discussed in the order passed on 23.10.2018, as has been reproduced herein above).

The contention of Mr. Kodan, learned counsel for the claimants on the other hand, had been that in a subsequent judgment, in **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others** (Civil Appeal no.9581 of 2018, decided on 18.10.2018, even after noticing the judgment in *Pranay Sethis'* case, the Supreme Court had held that in the case of minor children, loss of love and affection should be granted.

24. On the next date of hearing, i.e. on 19.11.2018, Mr. Kodan had pointed out that though this court had directed disbursement of the aforesaid amount, interest on the said amount had not been awarded, even though the Tribunal awarded interest @ 7.5% per annum, running from the date of filing of the claim petition till the date of its realisation.

That being factually correct, this court had directed that on the enhanced amount of compensation of Rs.8,39,221/-, interest @ 6% per annum would also be payable to the claimants, running from the date of the filing of the claim petition till the date of realisation of the amount.

25. However, on the issue of whether compensation for loss of love and affection/under the head of "loss of filial", can be awarded in terms of what was held by their Lordships in *Magma General Insurances'* case (supra), judgment had been reserved.

Consequently, that is the issue that remains to be still

adjudicated upon in this appeal, the other issue, as already noticed, of whether the insurance company (appellant in FAO no.6717 of 2016), can seek recovery of the compensation awarded only by way of arrears of land revenue, after applying to the Collector for the same, through the executing court, in terms of what is stipulated in Section 174 of the Motor Vehicles Act, 1988, or whether the executing court itself can order recovery in the execution proceedings, without referring the matter to the Collector in terms of the said provision, being an issue to be decided in that appeal, after hearing the owner and driver of the insured vehicle, (i.e. respondents no.1 & 2 herein).

26. On the question of compensation under the head “loss of filial (love)”, it is to be noticed by this court that the judgment in *Pranay Sethis'* is one delivered by a Constitution Bench consisting of 5 hon'ble Judges, the matter having been referred to that Bench in view of the diversity of opinions expressed by different Benches, specifically in **Reshma Kumari v. Madan Mohan** 2013 (2) RCR (Civil) 660 and **Rajesh and others v. Rajbir Singh and others** 2013 (3) RCR (Civil) 170.

27. Their Lordships having gone through the entire history of litigation on the subject, finally held in *Pranay Sethis'* case as follows:-

“(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) 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.

(iv) 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.

(v) 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 hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

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

Thus, other than compensation to be awarded for loss of actual income + loss of future prospects of an increased income (depending upon the age of the deceased), the Supreme Court has held that under the “conventional heads”, a total amount of Rs.70,000/- only is to be awarded as compensation

to the legal heirs of the deceased, with that amount to be increased @ 10% every 3 years.

The three heads under which the total amount of Rs.70,000/- is to be awarded is as follows:-

- |      |                    |             |
|------|--------------------|-------------|
| i)   | Loss of estate     | Rs.15,000/- |
| ii)  | Loss of consortium | Rs.40,000/- |
| iii) | Funeral expenses   | Rs.15,000/- |

Hence, other than for loss of consortium, no other amount has been ordered to be paid for loss of love and affection.

Loss of consortium literally would mean compensation to be paid only to the remaining spouse, that word being derived from the word 'consort', which, as per its dictionary meaning, is a wife or a husband.

In *Magma General Insurances'* case (supra), however, the Supreme Court recorded as follows on what is meant by 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.”

Their Lordships further went on to explain in detail, what is meant by 'spousal consortium', 'parental consortium' and 'filial consortium', and eventually held as follows:-

“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* (supra).”

(Emphasis applied in the present judgment only)

Thereafter, it was further held as follows:-

“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.”

28. That being so, it is obvious that the amount of Rs.40,000/- each awarded to the father and sister of the deceased in that case, was in the specific circumstances of that case, and therefore would be deemed to be an exercise of jurisdiction by the Supreme Court in terms of the Article 142 of the Constitution.

This court would consequently be bound by the ratio of the Constitution Bench in *Pranay Sethis'* case, (even as held in *Magma's'* case), by which loss of consortium has been restricted to Rs.40,000/- (initially for a period of 3 years from the date of that judgment, after which it is to be increased every 3 years by 10%).

29. Though this court was initially of the opinion, as recorded in the earlier orders, that loss of consortium being a term pertaining loss of a spouse, the children or parents of a deceased would therefore remain uncompensated for their loss, however, with the judgment in *Magma General Insurance* having specifically defined consortium, in legal parlance, to include 'spousal consortium', 'parental consortium' and 'filial consortium', and *Pranay Sethis'* case having laid down that the upper limit of compensation to be awarded for loss of consortium is Rs.40,000/-, naturally, this Court is bound by the ratio of that judgment and therefore, spouses, parents and children of persons who are unfortunately killed in motor vehicles accidents, have to be apportioned compensation under that head appropriately, i.e. within a total of Rs.40,000/-, revisable upwards every three years, by 10%.

30. That being so, the contention of Mr. Kodan, learned counsel for the appellants, to the effect that this court would follow the ratio of the judgment in *Magma General Insurance Limited*, is absolutely correct, because even in that case, their Lordships have held that the law laid down in *Sethis'* case has to be followed.

However, Mr. Kodans' contention that therefore compensation for "loss of filial" is to be separately awarded to the children and mother of the deceased in the present case, i.e. to appellants no.2 to 4 in FAO no.3830 of 2017, is rejected, even in terms of what is held in *Magma General Insurance Limited*, to the effect that compensation under the head of loss of consortium would be paid as laid down in *Pranay Sethis'* case. To repeat, in fact Rs.40,000/- each awarded to the father and sister of the deceased in *Magmas'* case, for loss of 'filial consortium', in the circumstances of that case, where the spouse of the deceased was not a claimant at all, he having been a bachelor aged 24 years, the higher amount of Rs.10,000/- (i.e. Rs.80,000/- instead of Rs.70,000/-), was obviously awarded by their Lordships exercising jurisdiction under Article 142 of the Constitution, and therefore, that is not *ratio decidendi* to be followed by this court, it being a power conferred upon the Supreme Court alone, to do complete justice in any matter.

31. Consequently, as regards the issue of quantum of compensation to be paid to the claimants in the present case, it is directed that compensation for loss of consortium shall be restricted to Rs.40,000/-, with the ratio of apportionment made by the Tribunal in paragraph 21 of the impugned Award to be maintained, and with the additional amount of Rs.8,39,221/- as was already found to be payable by this court vide its order

dated 02.11.2018, to be equally distributed amongst the 4 claimants, i.e. the widow, the minor children and the mother of the deceased.

32. As higher compensation to the tune of Rs.8,39,221/- has already been awarded by this court vide its previous order, with the matter having been reserved only on the issue of whether still higher compensation is payable or not, and that issue having been now dealt with hereinabove, judgment is being pronounced only in this appeal filed by the claimants, with FAO no.6717 of 2016 having been put up for rehearing for notice to be issued to the driver and owner of the motorcycle bearing registration no.HR-20Q-4056, i.e. respondents no.1 and 2 in this appeal (respondents no.5 and 6 in FAO no.6717 of 2016).

33. Hence, the present appeal, instituted by the claimants before the Tribunal, is partly allowed to the extent that compensation has been enhanced to Rs.52,29,721/-, as held vide the orders dated 02.11.2018 and 19.11.2018 (discussed from paragraphs 19 to 24 hereinabove).

No order as to costs.

**January 23, 2019**

dinesh/vcgarg

**(AMOL RATTAN SINGH)  
JUDGE**

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
|---------------------------|-----|

|                    |     |
|--------------------|-----|
| Whether Reportable | Yes |
|--------------------|-----|