GAHC010039262017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./456/2017

MUSSTT ASIMUN NESSA and ANR
W/O AKABBAR ALI

2: MD. AKABBAR ALI

S/O LATE SEKNDAR ALI
BOTH ARE
R/O VILL. BHATIPARA JOGIGHOPA
P.O. and P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM

VERSUS

THE REGIONAL MANAGER UNIVERSAL SOMPO GENERAL INSURANCE COMPANY LIMITED and 2 ORS
UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD., HEAD OFFICE REGD. OFFICE 201-20B, CRYSTAL PLAZA, OPPOSITE INFRIT MAL, LINE ROAD, ANDHERI WEST, MUMBAI 400058, 7TH FLOOR, EXPRESS TOWERS 42A, SHAKESPEARE SARANI, KOLKATA 700017, WEST BENGAL

2:MD. SOFIAR RAHMAN
S/O LATE MOKSED ALI
R/O IVLL. SONAHARA
P.O. KHARMUZA
P.S. BAGUWAN
DIST. GOALPARA
ASSAM
PIN 783101
OWNER OF VEHICLE NO. AS-18/C-1302
TRUCK

3:DULAL ALI

S/O NASER ALI
R/O VILL. SOHAHARA
P.O. JOYPUR BAZAR
DIST. GOALPARA
PIN 783129
DRIVER OF VEHICLE NO. AS-18/C-1302
TRUC

Advocate for the Petitioner : MR J RAHMAN

Advocate for the Respondent : MR. A J SAIKIA

BEFORE
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

ORDER

Date : 04-12-2020

Heard Mr. M. Khan, learned counsel for the appellant and also heard Mr. A. J. Saikia, learned counsel appearing for the respondent No. 1.

2. This an appeal under section 173 of Motor Vehicles Act praying for enhancement of the award given in the judgment and award, dated 21.07.2015 in MAC Case No. 64/2010, passed by the MACT, Bongaigaon.

3. The factual matrix of the case briefly stated are as follows:
On 25.04.2010, at about 4:15 pm, while the deceased son of the appellants herein namely, Minarul Islam was standing and waiting for his bus on National Highway-37 at Bomung Hopa (Makri), under Goalpara Police Station, all of a sudden a truck bearing Registration No. AS-18/C/1303 coming from Goalpara towards Kharmuja which was rushly and negligently driven by the respondent No. 3-Dulal Ali knocked him down, thereby causing, sever injuries on his person. Immediately thereafter, he was taken to Goalpara Civil Hospital for treatment. But on reaching the hospital the doctor on duty declared him dead. A case was registered by the Goalpara Police Station as Goalpara P. S. Case No. 271/2010, under section 279/304(A) IPC on 26.04.2010. The appellants who are none other than father and mother of the deceased, filed a claim case under section 166 of Motor Vehicle Act in MACT Motor Accident Claims Tribunal at Bongaigaon, against the owner of the vehicle-respondent No. 2, driver of the vehicle-respondent No. 3 and the Insurance Company with whom the owner had a policy covering third party i.e., respondent No. 1.

4. After taking evidence and hearing the parties the Motor Accident Claims Tribunal passed the award. The relevant portion of the judgment and award is reproduced here below;

> "*12. Now let us decide the quantum of compensation. As per claim petition and evidence of PW 1 decease Minarul Islam was a labour by occupation and he was earning of Rs. 7,000/- per month but the claimant has not submitted any document in proof of income of Rs. 3,000/- per month is taken into consideration and thus the annual income of the deceased becomes Rs. 36,000/-. It appears from the evidence and materials on record that the deceased was bachelor at the time of accident and as such 50% deduction is require to be made from the annual income of the deceased towards his personnel and living expenses had he been alive and after 50% deduction multiplicand becomes Rs. 18,000/-. Now as per claim petition age of the deceased was 19 years at the time of accident but the claimant has not submitted any age proof certificate. As per P.M. report (Ext.2) age of the deceased was 19 years at the time of P.M. Examination. Having regard to the age of the deceased multiplier of 18 as laid down in the table of Sarla Verma's case (2009) 6 SCC121) is selected. After multiplying the multiplicand by multiplier of 18 of the amount becomes Rs. 3,24,000/- towards loss of dependency. In addition to this Rs. 5,000/- is awarded towards funeral expenses of the deceased. In total the claimant is entitled to get Rs. 3,29,000/- (Rupees three Lac twenty Nine Thousand) only from O.P No. 1 towards compensation.*
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> ***ORDER***
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> *Claim petition is allowed to the tune of Rs. 3,29,000/- (Rupees Three lac. Twenty Nine Thousand) only. O.P. No.1 is directed to make payment of the said amount before the tribunal within three months by an A/C payee cheque. In default of making payment within the stipulated period the amount will carry interest @ 6% per annum from the date of passing the judgment till realization. Issue notice to O.P No.1 accordingly.*
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> *Judgment is given on this 21th day July, 2015 under my hand and seal of this Tribunal."*

5. Not being satisfied with the award given above, the appellants are before this Court by filing the present appeal.

The learned counsel for the appellants submitted that the deceased was a coal labour working in Jogighopa Coal Depot and was earning Rs. 7,000/- per month and the fact that he was earning the same per month was proved sufficiently by oral evidence of the father (claimant No. 2) and another witness who happens to be a neighbor, but despite the evidence the learned Tribunal came to the conclusion that the income of the deceased should be taken as Rs. 3,000/- per month only. This conclusion/finding of the learned Tribunal is in contrary to the evidence given by the claimants. Therefore, the same needs to be set aside and accept the income as Rs. 7,000/- per month. The learned counsel referred to the evidence given by PW No. 1 and PW No. 2 of the claimants and submitted that though the two PWS at para-4 of their respective affidavits had stated that the income of the deceased was Rs. 7,000/- there was no

question asked by the respondents on that. Therefore, in the absence of any evidence contrary to the evidence given by the claimants the claim of the appellants must be accepted as true. The learned counsel for the respondent No. 1 i.e., Insurance Company, on the other hand submitted that no income certificate or any other document proving the income of the deceased as Rs. 7,000/- was produced or exhibited by the claimants. Therefore, the income of the deceased cannot be determined at Rs. 7,000/- based on the mere claim of the claimants.

The statements of the two PWS produced by the claimants given on oath shows that the two PWs had stated categorically that the deceased was a coal labour by profession and employed at Jogighopa Coal Depot during his lifetime and he was earning a sum of Rs. 7,000/- per month. However, in the cross examination of the two witnesses except for taking a denial nothing was extracted from them which will either contradict their statement or discredit the same. Further, no evidence was produced by the respondents to prove the income of the deceased during his lifetime otherwise. Therefore, this Court is of the view that the income of the deceased claimed by the claimants which is supported by the oral evidence of the two PWs has to be accepted. It must be remembered that the deceased was working in a private company dealing with coal and in normal practice, in that kind of employment no pay slips or certificates are given. Therefore, only for non-production of any written document one cannot come to such a conclusion that the claim of the appellants or claimants has no supporting evidence.

6. The second grievance of the appellants is that under conventional head, the appellants are entitled to a consortium of Rs. 40,000/- each, therefore, the same should have been given to them. In support of his submission, the learned counsel referred to the decision of the Hon'ble Supreme Court in the **Pranay Sethi** case, reported in **AIR 2017 Supreme Court 5157**. The learned counsel referred to para-48 and 61 of the judgment. Para 48 and Para 61 of the judgment reads as follows;

> "*48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-*

"*17. … In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non- pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."*

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(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".

The learned counsel further submitted that by following the judgment passed in the case of Pranay Sethi, a Division Bench of the Hon'ble Supreme Court had also granted consortium of Rs. 40,000/- each to the father and sister (claimants in that case) of the deceased in the case of **Magma General Insurance Co. Ltd.** -versus- **Nanu Ram Alias Chuhru Ram & Others**. Therefore, there is no reason why the claimants in this case also should not have been given consortium at the rate of Rs. 40,000/- each. The learned counsel referred to para-8.7 of the judgment passed in that case (Civil Appeal No. 9581/2018 (arising out of SLP Civil No. 3198/2018). The contents of the said paragraph are also reproduced herein below;

"*8.7 A Constitution Bench of this Court in Pranay Sethi (supra) 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.3

Spousal consortium is generally defined as rights pertaining to the relationship of a husbandwife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."4

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."

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.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized 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.

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.

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).

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".

The learned counsel appearing for the respondents submitted that consortium is granted only when the claim is made either by the husband or the wife of the deceased. In support of his submission the learned counsel referred to paragraph-48 of the same judgment passed in the case of Pranay Sethi's case reported in AIR 2017 Supreme Court 5157 which has already been reproduced herein above. The learned counsel also submitted that the Division Bench of the Hon'ble Supreme Court in Civil Appeal No. 9581/2018 referred to by the learned counsel of the appellant had erred in not following the judgment of the constitutional Bench passed in the case of Pranay Sethi. Therefore, the same should not be followed as precedence in this case.

On careful reading of paragraph 48 of the judgment of Pranay Sethi case wherein the judgment passed in the **Santosh Devi (AIR 2012 SC 2185**) was referred to, I am of the view that the Hon'ble Supreme Court did not barred the Courts from granting consortium to other legal heirs of the deceased. The Court at para-17 of Santosh Devi's case only said that major amount under the head consortium should not be granted as other legal heirs are otherwise adequately compensated for the pecuniary loss. In fact, after a thorough discussion on the subject the Court came to the conclusion at paragraph 61 that a sum of Rs. 40,000/- should be given for loss of consortium. It was only after going through the same judgment that the Division Bench of the Hpn'ble Supreme Court in the Civil Appeal No. 9581/2018 also came to the conclusion that father and sister of the deceased should also be given Rs. 40,000/- each for loss of filial consortium. Therefore, with due respect, I am unable to agree with the submission of the learned counsel of the respondents. Hence, a sum of Rs. 40,000/- each has to be awarded to the claimants/appellants in this case who are none other than the parents of the deceased.

7. The next grievance raised by the appellants is that the learned Tribunal while granting the award failed to grant any amount under the head-future prospect. The learned counsel for the appellants submitted that since the deceased was employed with established income of Rs. 7,000/- per month the claimants are entitled to 40% of his established income under the head-future prospect. The learned counsel further submitted that the deceased was 19 years old only, therefore he had a lot of future prospect. Hence, the award should include 40% of the established income of the deceased.

In support of his submission, the learned counsel referred to para- 61 of **Pranay Sethi's** case reported in **AIR 2017 Supreme Court 5157**. Para- 61 Clause (iv) is reproduced herein below;

> "*(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."*

The learned counsel for the respondents submitted that the deceased had no established income at the time of his death or during his life time, as such the claimants are not entitled to future prospect.

The judgment in Pranay Sethi's case, in my view, makes it very clear that when a deceased was self employed or on a fixed salary and was below 40 years of age an addition of 40% of the established income should be made to the award. In this case, as already stated the deceased son of the claimants was employed with a fixed pay of Rs. 7,000/- per month. Therefore, without much discussion I am of the view that the appellants/claimants in this case are entitled to 40% of the established income of the deceased which has been determined as Rs. 7,000/- per month.

8. In the judgment of learned Tribunal 50% of the income of the deceased was deducted for his personal expanses out of his net income while calculating the compensation or the award. The learned counsel for the appellants submitted that the learned Tribunal was erroneous in having made the deduction. According to him it should be 1/3rd of the income only since the claimants are parents and, therefore dependants of the deceased. The learned counsel in support of his submission referred to the judgment of Hon'ble Supreme Court in **Magma General Insurance Co. Ltd -**versus- **Nanu Ram Alias Chuhru Ram & Ors.** passed in (Civil Appeal No. 9581/2018 arising out of SLP Civil Appeal No. 3192/2018). The relevant portion of the judgment is at para-8.2 and the same is reproduced herein below;

> "*8.2. With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been ½, and not 1/3rd, since the deceased was a bachelor.*
>
> *This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that 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 nonearning sisters or brothers, his personal and living expenses may be restricted to one third, as contribution to the family will be taken as two third.
Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No. 2 an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count."
In the contra, the learned counsel for the respondents submitted that the learned Tribunal had rightly deducted 50% of the income for personal and living expense of the deceased, therefore, there is nothing wrong in the judgment. The learned counsel relied on the judgment of the Hon'ble Supreme Court passed in Sarla Verma's case reported in 2009. The relevant portion of the judgment is at para-15 and the same is reproduced herein below:

"*15. 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 dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. 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 family of the bachelor is large and dependant 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."*

Conjoined reading of the judgments referred to by the learned counsels reveals that the Division Bench in the case of Magma General Insurance Co. Ltd before coming to the conclusion had referred to the same paragraph of the judgment passed in Sarla Verma's case. Further on careful reading of paragraph-15 of Sarla Verma's case, it appears that when the deceased is a bachelor normally the deduction should be at the rate of 50%, however, exception can be made where family of the bachelor is large and are dependant on his income, as in a case where he has widow mother and large number of younger sisters and brothers. But in this case, the father i.e., the claimant No. 2 was 58 years of age and mother was 47 years of age only when their sone died. Going by the record it appears that the

deceased did not have a big family and the father was not that old so, not likely to be without any income of his own to support himself. Further, there has to be evidence to show that the father did not have any income and was dependant on the deceased. In the absence of such evidence it has to be assumed that a man of that age was not without any income of his own and was able to support himself. Taking into consideration all that has been stated and going by the judgment of the Hon'ble Supreme Court in Sarla Verma's case, I am of the view that the deduction of 50% from the income of the deceased made by the learned Tribunal is justified.

9. It is submitted by the learned counsel for the appellants that the learned Tribunal did not give any amount under the conventional head of loss of estate and gave a sum of Rs. 5,000/- only under the head of funeral expense which should be a sum of Rs. 15,000/- as per the judgment passed in the case of Pranay Sethi. On this claim of the appellants, the learned counsel for the respondents has nothing to submit.

It appears from paragrapgh-61(viii) of the judgment in Pranay Sethi's case that claimants under M.V Act are entitled to a sum of Rs. 15,000/- each under the head of loss of estate and funeral expense. Since the law has been settled by the Constitutional Bench of the Hon'ble Supreme Court, the learned Tribunal should have granted a sum of Rs. 15,000/- each under the two heads mentioned above. Since that has not been done, a sum of Rs. 15,000/- each should be added to the compensation under the two heads mentioned above.

10. The learned counsel for the appellants also submitted that the learned Tribunal has also failed to award adequate amount in the compensation for the loss of love and affection. According to the learned counsel, at least a sum of Rs. 1 lakh for both the claimants should have been added to the compensation. The learned counsel relied on the judgment of the Hon'ble Supreme Court passed in the case of **Magma General Insurance Co. Ltd.** -versus- **Nanu Ram Alias Chuhru Ram & Ors**., (Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018). The relevant paragraph-8.5 is as follows;

> "*8.5. The Insurance Company has contended that the High Court had wrongly awarded Rs. 1,00,000 towards loss of love and affection, and Rs. 25,000 towards funeral expenses. The judgment of this Court in Pranay Sethi (supra) has set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant extract of the judgment is reproduced herein below:*
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> > *"Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/, Rs. 40,000/and Rs. 15,000/respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be factcentric or quantumcentric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years." (Emphasis supplied).*
>
> *As per the aforesaid judgment, the compensation of Rs. 25,000*

towards funeral expenses is decreased to Rs.15,000.

The amount awarded by the High Court towards loss of love and affection is, however, maintained".

After referring to the above judgment, the learned counsel submitted that in that case the High Court had awarded a sum of Rs. 1 lakh towards loss of love and affection and the Hon'ble Supreme Court upheld the judgment of the High Court, therefore, in this case also, similar amount may be added to the compensation awarded to the claimants.

The learned counsel for the respondent, Mr. Saikia submitted that compensation under love and affection was not included in the judgment passed in Pranya Sethi's case, therefore such compensation amount cannot be awarded in this case also.

On perusal of the judgment referred to by the learned counsel of the appellants, it appears that the High Court had awarded a sum of Rs. 1 lakh towards loss of love and affection to the claimants in that case and the Hon'ble Supreme Court after hearing the parties had upheld the judgment of the High Court, on that point. Therefore, this Court, in following the decision of the Hon'ble Supreme Court also awards a sum of Rs. 1 lakh to the appellants/claimants in this case for loss of love and affection of their only son who unfortunately died in the accident.

11. Lastly, the learned counsel for the appellants submitted that while passing the award, the learned Tribunal had not granted interest to the award amount since the order of the Tribunal was only to the effect that interest @ 6% should be given only in case the respondents fail to pay the award within 3(three) months from the date the award was passed. The learned counsel further submitted that as per section 171 of the M.V Act a claimant is entitled to interest from the date of filing of the claim and the interest rate should be at the rate of 12% p.a. In support of his submission, the learned counsel once again referred to the judgment of the Division Bench of the Hon'ble Supreme Court passed in the case of **Magma General Insurance Co. Ltd.** -versus- **Nanu Ram Alias Chuhru Ram & Others**. In that case, the learned Tribunal granted interest at the rate of 7% p.a from the date the claim petition was filed till realisation of the award amount and the High Court in appeal enhanced the same to 9% from the date of filing of the claim petition till realisation of the amount and the Hon'ble Supreme Court further raised the same at the rate of 12% p.a

from the date of filing of the claim petition till the award amount is paid.

The learned counsel for the respondent submitted that interest rate depends on the rate of interest determined by the RBI from time to time and it does not remain constant at all the times. The learned counsel further submitted that at present the interest rate is at around 6%, therefore, the interest in this case ought to be fix at the same rate.

Taking into consideration the submissions of both the learned counsels and the judgment of the Hon'ble Supreme Court, I am of the considered view that the appellants are entitled to 12% interest from the date the claim petition was filed till Jan. 2020 and from Jan. 2020 till the amount is paid they shall be entitled at the rate of 6% p.a. in view of the declining rate of interest and the state of the economy in the Country.

12. In view of the discussions and conclusions drawn, the award of the learned Tribunal is modified as follows;

Heads	**Amount of Compensation**
1. Income	=Rs. 7000/- PM
2. Future Prospects	=Rs. 2800 (i.e.40% of the income) = (40x7000)/100
3. Deduction towards personal expenses	= Rs. 7000+2800=9800 = 9800x1/2= 4900/- (after deduction of 1/3)
4. Total net Income	= 7000+2800-4900 = 4900/-
5. Multiplier	=18
6. Total loss of Income	=4900x12x18=10,58,400/-
7. Loss of love & affection	=Rs. 1,00000/-
8. Funeral expanse	=Rs. 15000/-
9. Loss of Estate	=Rs. 15000/-
10. Loss of filial consortium	=Rs. 80,000/- (i.e 40, 000 each)

Total=Rs. 12,68,400/- along with interest @ 12% p.a from the date of filing of the claim petition i.e. 17.05.2010 till Jan. 2020 and thereafter at the rate of 6% p.a till the whole amount is paid.

Since the compensation has been pending for a long time, the respondents are hereby directed to pay the compensation amount with the interest awarded within a period of 2(two) months from the date of receipt of a copy of this order by depositing the same in the Office of MACT, Bongaigaon.

JUDGE

Comparing Assistant