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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1243 OF 2004

1. Smt. Nutan Milind Kulkarni
after remarriage Sou.Nutan Patwardhan, Age 40
years, Occupation : Household, R/o N-471
Jarapur Towers, Off.Link Road, Lokhandwala,
Andheri (W) Mumbai.
2. Ketaki Milind Kulkarni,
Age: 17 yrs., Occ: Education, being minor,
through her natural guardian, mother, Appellant
No.1, Smt. Nutan Milind Kulkarni, after
remarriage Sou. Nutan Patwardhan, Age: 40 yrs.,
Occ: Household, R/o.N471-Jarapur Towers, Off.
Link Road, Lokhandawala, Andheri(W), Mumbai.
3. Shri Dinkar Vinayak Kulkarni,
Age: 82 yrs., Occ: Nil (since deceased
through Legal Heirs)
 - 3A. Devadutt Dinkar Kulkarni
Age:- 57 years, Occu:- Service
R/at:- At Present U.S.A.
 - 3B. Sandip Dinkar Kulkarni
Age:- 49 years, Occu:- Service
R/at:- 66 Pratibha Nagar,
Kolhapur.
4. Mrs. Shobhana Dinkar
Kulkarni, Age: 71 yrs., Occ: Nil,
both Nos. 3 & 4 r/o. 66, Pratibha Nagar,
Kolhapur, Dist. Kolhapur. ..Appellants

....Versus....

1. Bajirao Dnyandeo Patil
Age adult, Occu : Business,
R/o Shirolu Dhumala, Tal. Karveer, District
Kolhapur.
2. The Oriental Insurance Co. Ltd.
Progress House, Pune-Mumbai Road, Opp.
Engineering College, Shivajinagar, Pune 411005. ...Respondents

Mr.Ashutosh M. Kulkarni with Ms.Akansha Helaskar and Mr.Sarthak Diwan for the Appellants.

Mr.A.S. Vidyarthi with Mr.S.S. Vidyarthi and Ms.Ruchika Dave for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27TH FEBRUARY, 2020
PRONOUNCED ON : 26TH JUNE, 2020

JUDGMENT :-

1. By this First Appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellants (original claimants) have impugned the judgment and award dated 5th April, 2004 partly rejecting the claims made by the appellants. Some of the relevant facts for the purpose of deciding this First Appeal are as under :

2. The appellant no.1 is the widow, the appellant no.2 is the daughter, the appellant nos.3-A and 3-B are legal heirs of the original appellant no.3, who was father of the deceased Milind Dinkar Kulkarni. The appellant no.4 is brother of the said Milind Dinkar Kulkarni. It was the case of the appellants herein (original claimants) that Milind Dinkar Kulkarni along with the appellant nos.1, 2, original appellant no.3 and the appellant no.4 left Kolhapur were going towards Pune by Car registration No.MH – 9 – E- 1265. The said Car was being driven by the said Milind Dinkar Kulkarni and was also owned by him. He was driving the said Car by left side of the road at moderate speed after observing rules and regulations of traffic on the road. When the said Car reached near the spot of accident, one Tanker bearing registration No.19 – A – 6565 came by opposite side in very fast speed.

3. The driver of the said Tanker was driving the said Tanker in rash and negligent manner without observing the rules and regulations of traffic on the road and could not control the said Tanker and came on the wrong side of the road and dashed the said Car driven by Milind Dinkar Kulkarni.

The said Milind Dinkar Kulkarni and daughter Ketki Milind Kulkarni were seriously injured. The driver of the offending vehicle was charge-sheeted by the concerned police station. The said Milind Dinkar Kulkarni (hereinafter referred to as “the said deceased”) sustained serious injuries in the said accident and subsequently died at Krishna Hospital, Karad where he was admitted for treatment.

4. It was the case of the appellants that the said deceased was a Chartered Accountant by profession and was practicing at Karad and Mumbai. He was very intelligent and clever and had good practice. He was earning Rs.40,000/- to Rs.45,000/- per month and was the sole earning member in the family. All the appellants were totally dependent upon his income. The said deceased used to give Rs.20,000/- to Rs.25,000/- to the appellant no.1 for managing the household expenses as well as personal expenses of the appellants. The appellant no.1 and the original appellant no.3 were provided with separate Cars for their personal use and enjoyment. The said deceased had allowed them to spend for the maintenance of the said cars out of the funds which he used to give to the appellant no.1.

5. It was the case of the appellants that the appellant no.1 was also managing the properties at Kolhapur and Pune out of the funds provided to her by the deceased for the household expenses. The servants were engaged for the household work. Their salaries used to be paid from the funds which the said deceased used to give for the salary and expenses. The original appellant no.3 and the appellant no.4 were aged and were not keeping good health. The said deceased used to look after the aged parents also. The appellant no.3 were subsequently expired.

6. The said deceased used to bear the expenses of the education of the appellant no.2. The said deceased used to invest his balance income in various shares and other investments with an intention to have the source of income in the old age of the appellant and for himself. The appellant nos.1, 2 and 4 and the original appellant no.3 claimed compensation of Rs.40,00,000/- against the respondents under various heads with interest. The respondent no.1 is the owner of the offending vehicle. The said offending vehicle was insured with the respondent no.2.

7. The claim filed by the appellants were resisted by the respondent no.1 by filing a written statement. He denied that he was liable to pay any compensation to the appellants on account of the death of the said deceased in the said motor accident. The respondent no.2 insurer filed a separate written statement and denied the claims made by the appellants. It was alleged by the respondent no.2 that the appellant no.1 gave dash to the offending vehicle and was solely responsible for his alleged rash and negligent driving of his Car. The respondent no.2 also denied the quantification of the claim made by the appellants.

8. The Tribunal framed four issues for determination. The appellants examined the appellant no.1 – herself, who was the eye witness to the said motor accident. She also produced various documents. Neither the respondent no.1 nor the respondent no.2 examined the driver of the offending vehicle nor adduced any other evidence. The Tribunal passed the judgment and award dated 5th April, 2004 thereby partly allowing the claims made by the appellant nos.1, 2 and 4 and the original appellant no.3 and directed both the opponents / respondents to pay jointly and severally total amount of Rs.5,80,400/- inclusive of NFL awarded under section 140 of the Motor Vehicles Act, 1988 as compensation to the appellants for the death of the said deceased in the said motor accident with interest at the rate of 9% p.a. from 7th September, 1996 till realization or till the date of the said judgment and award and thereafter at the rate of 7% p.a. from the date of the award till realization of all such remaining amount.

9. None of the respondents impugned the said judgment and award dated 5th April, 2004 passed by the M.A.C.T., Satara. The original appellants however filed this First Appeal *inter-alia* praying for enhancement of the amount awarded by the M.A.C.T, Satara on various grounds and for impugning the award partly rejecting the claims made by the appellants.

10. Mr.Ashutosh M. Kulkarni, learned counsel appearing for the appellants invited my attention to the claim application filed by his clients, written statement filled by the respondents, affidavits in lieu of the examination in chief by the appellant no.1 and her cross-examination.

Learned counsel also invited my attention to some of the findings rendered by the Tribunal. It is submitted by the learned counsel that the said deceased had died due to rash and negligent driving of the driver of the offending vehicle within the jurisdiction of Karad Taluka Police Station and that the respondents failed to prove any case of contributory negligence against the said deceased. None of the finding of the Tribunal has not been impugned by any of the respondents. These findings of facts thus rendered by the Tribunal have attained finality against the respondents.

11. It is submitted that the question only remains in this First Appeal is whether compensation awarded by the Tribunal is adequate, just and reasonable in the facts of this case and in accordance with law. He submits that issue no.3 framed by the Tribunal has been dealt with in paragraphs 13 to 23 of the impugned judgment and award. The appellant no.1 was examined to prove the income of the said deceased at the time of his death. He submits that the said witness had clearly deposed that the said deceased was educated upto B.Com., L.L.B., CA and was a Chartered Accountant by profession. He was running a private firm of the Chartered Accountant. She produced the certificate of practice of the said deceased to show that the said deceased had passed the said examination of the Chartered Accountancy in November, 1985 and had obtained certificate of practice on 13th November, 1991. He has passed the said examination even prior to the date of his marriage with the appellant. no.1.

12. Learned counsel invited my attention to some of the paragraphs of the oral evidence led by the appellant no.1 on this aspect and would submit that it was proved that the said deceased was having monthly income of Rs.50,000/- to Rs.55,000/- per month and that he used to pay Rs.25,000/- to Rs.30,000/- per month to the appellant no.1 for the household expenses. The appellant no.1 used to maintain one Maruti Car provided for her by the said deceased out of the said amount. They had also employed one driver with salary of Rs.1,500/- per month. Three servants for the household work with the salary of Rs.4,000/- per month were deployed by the said deceased. The appellant no.1 had deposed that the income of the said deceased from such practice of the Chartered Accountant was Rs.4,50,000/- in the year 1993-94 and increased to the extent of Rs.6,50,000/- at the time of his death.

13. It is submitted by the learned counsel for the appellants that the appellants had filed income tax returns of the said deceased for the assessment years 1991-92, 1992-93, 1993-94 and 1994-95. He submits that merely because the income tax returns were filed in the year 1994-95 post demise of the said deceased, Tribunal could not have ignored the said income tax returns while computing the loss of dependency. He submits that the said deceased during his life time has already paid advance income tax of Rs.60,000/- and thus on the basis of the said advance income tax, Tribunal ought to have considered the gross total income of the said deceased in the said assessment year on the date of his death.

14. It is submitted by the learned counsel that the Tribunal has applied the multiplier on the basis of the age of the claimants and not on the basis of age of the deceased on the date of his death. Tribunal ought to have applied multiplier of 15 considering the age of the said deceased as 35 years at the time of his death. Learned counsel for the appellants tendered a note showing calculations, which according to the learned counsel, the Tribunal ought to have granted in favour of the appellants i.e. in the sum of Rs.87,55,000/- plus interest.

15. Learned counsel invited my attention to various portions of the evidence led by his client before the Tribunal including her cross-examination. The appellant no.1 was remarried on 9th May 1998. Merely because the appellant no.1 was remarried, she did not cease to be dependent upon the said deceased and entitled to make a claim before the Tribunal arising out of the said fatal accident of the deceased husband.

16. It is submitted that there was no serious cross-examination on the aspect of income of the said deceased by the insurance company. The appellants had also examined income tax inspector before the Tribunal to prove the factum of filing income tax returns by the said deceased during his life time and thereafter some of the appellants on behalf of the said deceased. The said deceased was already paying income tax since 10 years prior to his death. The income tax returns were filed by father of the said deceased for the assessment years 1993-94, 1994-95 and 1995-96 on 31st

March 1995, 29th October 1996 and 31st March 1997 respectively. All these returns were filed after demise of the said deceased husband of the appellant no.1. He submits that the Tribunal has erroneously considered the average income of last 6 years of the said deceased for the purpose of arriving at an amount of Rs.1,10,552/- p.a.

17. In so far as the issue as to whether the appellant no.1 being widow of the said deceased was entitled to make any claim for compensation or not is concerned, learned counsel for the appellants placed reliance on an unreported judgment delivered by the Division Bench of this Court in the case of **Archana S Purandare & Ors. Vs. Dawoodsab Walikar & Ors.** in First Appeal No.872 of 2012 and in particular paragraph 26 thereof (ii) the judgment of this Court in the case of **Maharashtra State Road Transport Corporation Vs. Darabkhan Dafedarkhan & Ors., 2005 (1) MhLJ 51** and in particular paragraph 7 thereof (iii) on an unreported judgment of this Court delivered on 10th September 2009 in the case of **New India Assurance Company Ltd. Vs. Mona Chandak & Ors.** in First Appeal No.1541 of 2008 and in particular paragraph 7 thereof and on (iv) an unreported judgment of this Court delivered on 20th December 2019 in the case of **New India Assurance Company Ltd. Vs. Sushma Sonawane & Ors.** in First Appeal (St.) No.28929 of 2014 and in particular paragraphs 7, 10 to 12, 23 to 25 and 27 thereof.

18. Learned counsel for the appellants also placed reliance on the following judgments in support of the aforesaid submissions:-

- (i) Judgment of Delhi High Court in the case of Jammu & Kashmir in the case of **Seema Malik & Ors. Vs. Union of India, 2005 ACJ 1389;**
- (ii) Judgment of Delhi High Court in the case of **Delhi Transport Corporation & Ors. Vs.Meena Kumari & Ors., 2011 ACJ 1211;**
- (iii) Judgment of the Madhya Pradesh High Court in the case of **Vimla Vs.Dinesh Kumar Sharma & Ors., 2008 ACJ 816;**
- (iv) Judgment of the Rajasthan High Court in the case of **United India Insurance Co. Ltd. Vs. Babulal & Anr., 2007 ACJ 999;**
- (v) Judgment of the Karnataka High Court in the case of **New India Assurance Company Limited Vs.V.I. Mathews & Ors., 2009 (2) KCCR 1518;**

(vi) Judgment of the Madras High Court in the case of **National Insurance Co. Ltd. Vs. Nelfhona & Ors., 2014 ACJ 964;**

(vii) Judgment of the Madras High Court in the case of **Sarayu & Ors. Vs. Surendra Vithal Nazare & Ors., 2012 ACJ 1230.**

19. In support of the submission that the appellant no.1 continued to be legal representative of the said deceased, learned counsel placed reliance on the judgment of the Supreme Court in the case of **Manjuri Bera Vs. Oriental Insurance Company Ltd. & Anr., (2007) 10 SCC 643** and in particular paragraphs 2, 11 and 30 and an unreported judgment of this Court delivered on 1st August 2011 in the case of **Aparna Narendra Zambre & Anr. Vs. Assistant Superintendent Engineer and Ors.** in Writ Petition No.1284 of 2011 and in particular paragraph 9 thereof.

20. Learned counsel also placed reliance on an unreported judgment of this Court delivered on 6th December 2013 in the case of **Sou. Swara Sachin Kulkarni Vs. The Superintendent Engineer, Pune Irrigation Project Circle & Anr.** in Writ Petition No.11987 of 2012 in support his submission that in the said judgment, Division Bench of this Court has held that the petitioner being the only family member of the deceased, is entitled to claim for compassionate employment so as to enable the family to get over a financial crisis. He submits that the said principle shall be applied to the facts of this case.

21. In so far as the “loss of dependency” derived by the Tribunal is concerned, learned counsel for the appellants placed reliance on the judgment of the Supreme Court in the case of **Shashikala & Ors. Vs. Gangalakshamma & Anr., (2015) 9 SCC 150** and in particular paragraphs 4, 7, 15 and 34 and would submit that income of the deceased on the date of death has to be considered.

22. In so far as the issue as to whether the Tribunal ought to have considered the payment of the advance tax paid by the said deceased prior to the death of the deceased for considering the yearly income of the deceased is concerned, learned counsel placed reliance on the judgment of the Delhi High Court in the case of **Harpreet Kaur & Ors. Vs. Dharam Pal**

Singh & Ors., 184 (2011) DLT 759 and in particular paragraphs 3, 4, 7 and 8 thereof.

23. Learned counsel for the appellants submits that all the appellants were entitled to separate consortium @Rs.40,000/- each in accordance with the principles of law laid down by the Supreme Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram & Ors., 2018 ACJ 2782**. The appellants were also entitled to compensation in the sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of love and affection. The Tribunal however, has not granted any amount towards loss of estate and only awarded Rs.4,000/- as against Rs.15,000/- towards funeral expenses. The appellants are also entitled to claim for compensation in the sum of Rs.15,000/- each towards loss of love and affection in view of the principles of law laid down by the Supreme Court in the case of **Magma General Insurance Co. Ltd. (supra)**.

24. It is submitted that the Tribunal ought to have considered the income of Rs.82,500/- p.a. deduction of 1/4th amount towards personal expenses instead of deducting 1/3rd amount towards personal expenses ought to have been made. The appellants were also entitled to 40% of the income towards future prospects in view of the principles of law laid down by the Supreme Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 ACJ 2700**. He submits that after adding 40% amount towards future prospects in the sum of Rs.33,000/-, the total income for the purpose of calculation of loss of dependency will have to be considered as Rs.1,15,500/- p.a. After applying the multiplier of 15, gross income of the said deceased ought to have been Rs.17,32,500/-.

25. Mr.Vidyardhi, learned counsel for the respondent no.2, on the other hand, invited my attention to the depositions of Mr.Parashram Tulsiram Jadhav, Income Tax Inspector examined by the appellants and would submit that it was not the case of the witness that income considered by him according to the income tax returns filed by father of the said deceased was gross total income or net income. He submits that all income tax returns (Exhibits-51 to 53) were filed after the death of the said deceased. Tribunal has considered the average of net income reflected in

six years income tax returns in the impugned judgment.

26. It is submitted by the learned counsel that the advance tax paid prior to his death was only an estimate and cannot be considered as conclusive for determination of loss of dependency or yearly income. If the said deceased would have paid an extra amount as and by way of advance tax, there would have been refund of additional advance tax. Only income tax returns itself would be considered as proof of yearly income to derive the loss of dependency provided such returns filed by the deceased himself prior to the date of his death and not otherwise.

27. Learned counsel placed reliance on the judgment of the Supreme Court in the case of **V.Subbulakshmi & Ors. Vs.S. Lakshmi & Anr., (2008) 4 SCC 224** in support of the submission that income tax returns filed after the date of demise of the victim cannot be considered for the purpose of computation of compensation. He also placed reliance on the judgment of this Court in the case of **Oriental Insurance Company Ltd., Lalitpur Vs. Ramilaben w/o Jayantilal Patel & Ors., 2017(2) Mh.L.J. 822** and in particular paragraph 8 and also the judgment of the Madhya Pradesh High Court in the case of **Sutinder Pal Singh Arora & Ors. Vs. Ashok Kumar Jain & Ors., 2004 ACJ 782** and in particular paragraph 4 thereof.

28. It is submitted by the learned counsel for the respondent no.2 that since the appellant no.1 was already remarried after filing an application for compensation, she could not claim any compensation arising out the date of death of his ex-husband of the appellant no.1. In support of this submission, learned counsel placed on the judgment of the Supreme Court in the case of **Anju Mukhi & Ors. Vs. Satish K. Bhatia & Ors., (2010) 15 SCC 630** and in particular paragraph 4 thereof.

29. In so far as the submission of the learned counsel for the appellants that the appellants are entitled to compensation towards consortium in the sum of Rs.1,60,000/- in view of there being four legal heirs and representatives is concerned, it is submitted by the learned counsel that the appellants would be entitled to claim only total sum of

Rs.40,000/- towards consortium and not Rs.1,60,000/- as demanded by the appellants. He submits that the said claim for consortium can be awarded in the sum of Rs.40,000/- lump-sum and not on the basis of numbers of dependents. In support of this submission, he relied upon paragraph 54 of the judgment of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi (supra)**.

30. Learned counsel invited my attention to the findings of the Tribunal while considering gross income of the said deceased and would submit that income of the said deceased considered by the Tribunal for compensation towards loss of dependency is correct and does not warrant any interference. He submits that in so far as the multiplier of 15 applied by the Tribunal is concerned, there is no dispute about the same. Learned counsel submits that the Tribunal has rightly deducted 1/3rd amount towards personal expenses out of the yearly income derived by the Tribunal. Such deduction cannot be 1/4th of the total yearly income towards the personal expenses. He submits that income tax returns were not even signed by the appellant no.1 who was the widow of the said deceased prior to her remarriage. The appellant no.1 did not prove the contents of the income tax returns filed by father of the said deceased.

31. It is submitted by the learned counsel that the judgment of Madhya Pradesh High Court in the case of **Anju Mukhi & Ors.** (supra) has been upheld by the Supreme Court in the case of **Anju Mukhi & Ors. Vs. Satish K. Bhatia & Ors.(supra)**.

32. Mr.Kulkarni, learned counsel for the appellants in rejoinder strongly placed reliance on the judgment of **Shashikala & Ors. Vs. Gangalakshamma & Anr. (supra)** on the issue of income raised by the respondent no.2 and in particular paragraphs 4, 5 and 15 thereof. He submits that in the said judgment, Supreme Court has considered the last income tax returns of the deceased filed before the Tribunal for the purpose of claiming compensation.

33. Learned counsel for the appellants invited my attention to the judgment of this Court in the case of **New India Assurance Company**

Limited Vs. Smt.Alpa Rajesh Shah (2014) (2) Mah. LJ 17 which was relied upon learned counsel for the respondent no.2 and more particularly paragraph 9 thereof in support of the submission that Division Bench of this Court in the said judgment has considered the income of the deceased on the date of death after deducting income tax. The Tribunal has however, erroneously considered the average of 6 years income while computing “loss of dependency.”

34. Learned counsel for the appellants placed reliance on the judgment of the Supreme Court in the case of **Kalpana Raj and Others vs. Tamilnadu State Transport Corporation (2015) 2 SCC 764** and in particular paragraphs 8 and 9 in support of the submission that deductions have to be made from gross income of the deceased out of annual income earned from mentioned in income tax returns and not from net income.

35. On the issue that the appellant no.1 having been remarried and thus being not a dependent on the said deceased is concerned, learned counsel for the appellants placed reliance on the judgment of the Gujarat High Court in the case of **Jagruti S. Bhanugariya (Patel) Vs. R.K. Ahir** delivered on 17th March 2015 in First Appeal No.3828 of 2007 and in particularly paragraph 5 and 9 to 11 and would submit that judgment of the Supreme Court in the case of **Anju Mukhi & Ors. Vs. Satish K. Bhatia & Ors.(supra)** relied upon by the learned counsel for the respondent no.2 has been distinguished by the Gujarat High Court. He submits that Punjab and Haryana High Court in the case of **National Insurance Company Ltd. Vs. Nidhi Goel** delivered on 12th January 2018 has also distinguished in the judgment of Supreme Court in the case of **Anju Mukhi & Ors. Vs. Satish K. Bhatia & Ors. (supra)** in paragraphs 10 and 12 of the said judgment.

36. Learned counsel for the appellants also distinguished the judgment of the Madhya Pradesh High Court in the case of **Sutinder Pal Singh Arora & Ors. Vs. Ashok Kumar Jain & Ors. (supra)** and would submit that the facts before the Madhya Pradesh High Court were totally different. The Madhya Pradesh High Court has not considered as to whether

wife was happy after remarriage or not. No such evidence is recorded in this case.

37. Learned counsel for the appellants invited my attention to the income tax returns for the assessment year 1995-96 and more particularly profit and loss account of the said deceased for the said assessment year. He submits that the said deceased had received the fees of Rs.6,18,800/- in that assessment year and after adding the other source of professional income in that year assessment, gross total income derived was at Rs.6,85,442.15. After deducting the expenditure, the net profit derived by the said deceased was Rs.2,53,291.85. The Tribunal ought to have considered the gross income of the said deceased and not net income.

REASONS AND CONCLUSIONS

38. The deceased Milind Kulkarni who died in the motor accident on 19th March 1995, was the husband of the appellant no.1, father of the appellant no.2 and son of appellant nos.3 and 4. The Tribunal framed four issues for consideration. Insofar as the issue no.1 and 2 are concerned, the said issue were regarding proof of rash and negligent driving of offending vehicle and whether there was any contributory negligence on their part. The Tribunal has rendered a finding that the appellant has proved that the said deceased Milind Kulkarni died due to rash and negligent driving of the driver of the offending vehicle. It is held by the Tribunal that this is not the case of contributory negligence. The Tribunal has rendered various finding on the issue nos.1 and 2 while awarding compensation partly in favour of the appellants. Since, the respondent no.2 herein that is the Oriental Insurance Company Limited (Original opponent no.2) has not impugned the Judgment and Award dated 5th April 2004 passed by the Tribunal or any part thereof including the findings nor has filed any cross objection in this first appeal filed by the appellants (original claimants), this Court is not required to go into the merits of the issue nos.1 and 2.

39. Insofar as the issue no.3 in respect of the entitlement of compensation claimed by the appellants is concerned, the appellants have

claimed the compensation in a sum of Rs.40,00,000/- whereas the Tribunal in the impugned judgment and award, has awarded only a sum of Rs.5,80,400/- as compensation inclusive of No Fault Liability compensation awarded under Section 140 of the Motor Vehicles Act to the appellants.

40. In the claim application, it was the case of the appellants that the said deceased was earning monthly income of Rs.40,000/- to 45,000/-. Reliance was placed on the assessment order passed by the Income Tax department for the assessment year 1994-95. At the time of filing the claim application on 7th September 1996, the appellant no.1 was widow of the said deceased. In paragraph 22(C) of the claim application, the appellants had highlighted the amount of household expenses incurred as well as personal expenses of the appellants which were paid to the appellants out of the said monthly income of Rs.40,000/- to 45,000/-. The said claim application was resisted by respondent no.2 by filing written statement.

41. The appellant no.1, herself entered the witness box and filed an affidavit in lieu of examination-in-chief. As far as the issue no.3 is concerned, it was deposed by her that the said deceased was educated upto B.Com, L.L.B., C.A. and was running a private firm of the Chartered Accountant. The appellant no.1 produced the true copy of the certificates regarding passing of C.A. examination, and certificate of practicing as Chartered Accountant. She deposed that out of the said practice, the said deceased had earned yearly income of Rs.4,50,000/- in the year 1993-94 which was increased upto Rs.6,50,000/- on the date of his death. He was paying income tax.

42. Appellant no.1 also relied on the income tax returns for the assessment year 1993-94, 1994-95, 1995-96. She deposed that the said deceased used to give Rs.25,000/- to 30,000/- per month to her for household expenses. The said deceased had given her one Maruti car excluding other vehicle which was used by the appellant no.1. The appellant no.1 had engaged a driver who was being paid salary of Rs.1500/- per

month. There were three servants for household work out of whom, two servants were working during day time and one was working in the night time. She deposed that the appellants used to pay the salary of Rs.4000/- to the said servants. She further deposed that there were various other household expenses, which were paid out of the amount of Rs.25,000/- to 30,000/- per month given by the said deceased to the appellant no.1.

43. In the cross examination of the appellant no.1, she denied the suggestion that her parents-in-law were looking after all household affair of the appellants including the payment of salary to the driver and other servants. She did not produce any receipt of the salaries paid to the driver and servants. She, however, denied the suggestion put to her that the statement regarding payment of salary to the driver and statements made in the affidavit in lieu of examination-in-chief was false. She also denied the suggestion that annual income of the said deceased in the assessment year 1993-94 was Rs.1,00,000/-, and Rs.1,25,000/- for the assessment year 1994-95, and Rs.1,35,000/- in the assessment year 1994-95. She relied upon the income tax returns of the said deceased filed by her father-in-law after the demise of the said deceased. In paragraph 7 of the cross examination, she deposed that she was remarried on 9th May 1998.

44. A perusal of deposition made in the affidavit in lieu of examination-in-chief of the appellant no.1 and the cross examination of the said witness by the respondent no.2 clearly indicates that insofar as the statement of the appellant no.1 that her husband was earning Rs.4,50,000/- in the year 1993-94 which increased to the extent of Rs.6,50,000/- per annum on the date of his death was not seriously disputed by the respondent no.2. The respondent no.2 only put few suggestions to the said witness about the said vehicle as well as the household expenses mentioned by her in the affidavit in lieu of examination-in-chief. These suggestions were denied by the said witness. The respondent no.2 admittedly did not lead any evidence before the Tribunal.

45. The appellants had also examined Mr. Parashram Tulsiram Jadhav as PW2 who was working as Income Tax Inspector in the Income Tax department, office at Colaba. In his examination-in-chief, the said witness deposed that the said deceased Milind Kulkarni who was income tax payee, was paying income tax since atleast 10 years prior to his death. He produced the original returns filed by the said deceased for the financial years 1994-95 to 1996-97. He identified the signature of the said income tax returns and produced the certified copies thereof. He deposed that as per the returns of the assessment year 1993-94, the fees received by the deceased during the financial year ending 31st March 1993 was Rs.3,64,467/- and his total income tax was Rs.4,06,042.46 for the year ending 31st March 1993. As per the assessment year 1994-95, the fees received was Rs.4,06,012/- and the total income tax was Rs.6,57,572=04 during the financial year ending 31st March 1994. He, further, deposed that as per the returns for the assessment year 1995-96, the fees received by the said deceased was Rs.6,18,800/- and the total income during the said assessment year was Rs.6,85,442=95.

46. In the cross examination of the said income tax Inspector by the respondent no.2, the said witness deposed that the professional has to file the income returns disclosing his income by the end of August every year and if there was an audit, then the last date of filing the returns was 31st October. The returns for the assessment year 1992-93 were filed on 21st March 1995 by father of the said deceased, Sandeep D. Kulkarni. Income tax returns of the said deceased for the assessment year 1994-95, 1994-95 were filed by his mother Shobha D. Kulkari on 29th October 1996 on 31st March 1997 respectively. The income tax returns of the said deceased for the assessment year 1996-97 was filed on 31st March 1997. He deposed that Rs.1,05,000/- was the taxable income shown in the returns of the said deceased for the assessment year 1993-94. The taxable income shown in the returns of the said deceased for the assessment years 1994-95 and 1995-96 was as Rs.1,40,007/- and Rs.2,02,596/- respectively. As per the income tax returns for the assessment year 1993-94 to 1995-96, the said deceased had shown sources of his income more than shown in previous years.

47. In paragraph 15 to 16, the Tribunal has referred to part of oral and documentary evidence led by the appellants. The Tribunal has rendered a finding that the said deceased was practicing as chartered accountant since 13 November 1991, that is from the date of attaining the certificate of practice. The Tribunal has rendered a finding that the appellants did not file any documentary evidence to prove that the said deceased was giving various amounts to the appellant no.1 for household expenses and that out of such amount the appellant no.1 was paying salary to the driver and three household workers. The Tribunal held that since the appellants had not examined any of the servant or driver or could not produce their receipt acknowledging the payment of such salary, it was not possible to accept such oral evidence of the appellant no.1, to find out the total income of the said deceased and to find out the amount of loss of dependency of the said deceased.

48. It is held by the Tribunal that the income tax returns of the said deceased for the assessment year 1993-94, 1994-95 and 1995-96 were filed on 31st March 1995, 29th March 1996 and 31st March 1997 i.e. after the death of the said deceased i.e. on 19th March 1995. None of these returns were filed under the signature of the appellant no.1. The Tribunal also observed that there was a separate certificate dated 31st March 1995 and 29th March 1997 to the effect that advance income tax payment of Rs.25,000/- for the assessment year 1993-94 was deposited by the said deceased on 29th March 1993 and an advance payment of Rs.60,000/- for the assessment year 1995-96 on 16th March 1995 and 21st March 1995 respectively, that is prior to the death of the said deceased. The Tribunal had held that there was a delay in filing the income tax returns for the assessment year 1994-95 which came to be filed on 31st March 1997.

49. In paragraph 16 of the impugned judgment and award, the Tribunal has referred to the net income of the said deceased not only for the assessment year 1993-94, 1994-95, and 1995-96, but also for the assessment

year 1990-91 to 1992-93. It is not in dispute that the income tax returns for the assessment year 1990-91, 1991-92 and 1992-93 showing the net income as Rs.93,257/-, Rs.1,10,683/- and Rs.64,484/- were filed by the said deceased during his life time. Only the income tax returns of the said deceased for the assessment years 1993-94 to 1995-96 were filed by the appellants after his death. The Tribunal has held that the net income from the profession of charter accountancy of the said deceased has been shown at much high level in the returns of the assessment years 1994-95 to 1995-96 which had been submitted not by the said deceased, but by two of the appellants.

50. The Tribunal, accordingly, held that it would not be just and proper to calculate the net income tax of the said deceased only on the basis of the returns from the assessment year 1993-94, 1994-95 and 1995-96, but it would be just and proper to take an average net income from such profession shown in the returns in the assessment years from 1990-91 to 1995-1996 and derived net income tax at Rs.1,10,552/-.

51. The Tribunal came to the conclusion that it would be just and proper that the income of the said deceased for the profession of chartered accountancy to be considered as Rs.1,10,000/- for calculating the loss of dependency and not the entire income of the said deceased which was inclusive of income from the household property and shares etc. The Tribunal held that the total loss of dependency would come to Rs.73,701/- that is Rs.6,150/- per month. The Tribunal, accordingly, held that the loss of dependency can be taken at Rs.1,800/- per month for the appellant no.1, and Rs.750 per month for the appellant nos.2 , 3 and 4. The Tribunal applied the multiplier of 15/- to the amount of loss of dependency and awarded a sum of Rs.68400/- @1800/- and multiplied by 38 months and awarded Rs.5,000/- towards loss of consortium. It is held by the Tribunal that the appellant no.1 would be entitled to the compensation only upto the date of her remarriage that is 9th May 1998 @1800/- and accordingly calculated the loss of dependency at Rs.68,400/- and the amount of consortium at Rs.5000/- .

52. Insofar as the original appellant no.3 and the respondent no.4 who are the deceased father and mother of the said deceased respectively are concerned, the Tribunal held that the appellants would be entitled to the loss of dependency @Rs.1800/- per month that is Rs.21,600/- per year. The appellant nos.3 and 4 were 72 and 60 years old respectively at the time of filing of the claim petition in the year 1996. The Tribunal applied the multiplier of 5 on the ground that the said multiplier shall be applied in case where the age of the victim is above 65 years as provided in the II schedule of Section 163 of the Motor Vehicles Act, 1988. The Tribunal applied the multiplier of 5 to the amount of Rs.21,600/- and derived the amount of dependency at Rs.1,08,000/-. The Tribunal held that the appellants nos.3 and 4 were entitled for ambulance charges of Rs.2,000/- which they had incurred in carrying the said deceased and Rs.4,000/- towards the funeral expenses. The Tribunal held that both the parents are entitled for the compensation of Rs.1,000/- for the loss of love and affection. The Tribunal, accordingly, derived the total compensation payable to the appellant nos.3 and 4 together at Rs.2,32,000/- .

53. Insofar as the appellant no.2 who is the daughter of the said deceased is concerned, the Tribunal derived the loss of dependency at Rs.2500/- per month and considering the age of the said deceased at the time of his death as 36 years, the Tribunal applied the multiplier at 15. After applying the multiplier of 15 to the amount of Rs.18,000/- per annum, the Tribunal derived the compensation payable to the appellant no.2 as Rs.2,70,000/- towards the loss of dependency. The Tribunal also held that the appellant no.2 would be entitled for compensation at Rs.5000/- towards loss of love and affection. The Tribunal derived the total compensation payable to the appellants at Rs.5,80,000/- with interest @ 9% p.a. from the date of filing of claim application till the date of depositing the amount of compensation under Section 140 of the Motor Vehicles Act, 1988, by the respondent no.2 and thereafter, @ 7% per annum from the date of award till realisation.

54. A perusal of the impugned judgment and award indicates that the Tribunal has referred to the net professional income shown in the income tax returns for the said deceased for the assessment years 1990-91 to 1995-96 and has taken average of the net income shown in the income tax returns for last six years and derived the yearly income at Rs. 1,10,552/-. The question that arises for consideration of this Court is that whether the Tribunal simpliciter ought to have taken into consideration the yearly gross income of the said deceased at the time of his death or was justified in taking an average of the net income for the last six years prior to the date of death of the said deceased.

55. It is not in dispute that the income tax returns for the assessment years 1993-94, 1994-95 and 1995-96 were filed by the original appellant nos.3 or by respondent no. 4 after the death of the said deceased. There is also no dispute that insofar as the income tax returns for the assessment years 1990-91, 1991-92 and 1992-93 are concerned, all these returns were filed by the said deceased himself during his life time. A perusal of the record further indicates that the said deceased during his life time had paid advance income tax of Rs.60,000/- for the assessment year 1995-96 which was deposited on 16th March 1995 and 21st March 1995 that is prior to his death.

56. A division bench of this Court in the case of ***New India Assurance Company Limited Vs. Alpa Rajesh Shah and others (Supra)*** has considered the net income on the date of the death after deducting the income tax payable. The Tribunal in that matter had, however, taken an average of the income for last three years.

57. The issue for consideration of this Court is whether the Tribunal was justified in considering the net income shown in the Income Tax returns of the said deceased for the assessment year 1990-91 to 1995-96 and whether the Tribunal could have taken an average of net income for the last

6 assessment years on the ground that income tax returns for the assessment years 1993-94, 1994-95, 1995-96 were filed by two of the appellants of the said deceased after the death of the said deceased.

58. In view of the rival contention of the parties on this issue, I have perused the income tax returns of the said deceased placed on record before the Tribunal and produced before this Court in the record and proceedings of the Tribunal.

59. In the assessment years 1990-91, the said deceased had disclosed the fees received by him as professional income as Rs.2,28,012=55 in the profit and loss account. After deducting various expenses, the net profit reflected in the said income tax returns was Rs.93,257=20. The said deceased had also shown the income received by way of interest, dividend and profit on sale of shares in the profit and loss account. The personal drawings reflected in the balance-sheet towards personal expenses was in the sum of Rs.27,000/-. In the computation of the income, the said deceased has reflected the net profit from the profession at Rs.93,257/-.

60. Insofar as the income tax returns for the assessment year 1991-92 is concerned, the said deceased had shown the professional fees received as Rs.2,46,086/- and after deducting the expenses had shown the net profit in the sum of Rs.1,10,683=57. The drawing reflected in the balance-sheet for the said assessment year was shown as Rs.36,000/-. The gross net profit shown in the computation of income from profession was Rs.1,10,683/-.

61. Insofar as the income tax returns for the assessment year 1992-93 filed by the said deceased is concerned, the professional fees received by the said deceased was shown as Rs.2,72,361=45 and after deducting the various expenses, the net income shown in the profit and loss account was as Rs.64,484=60. The drawing reflected in the balance-sheet of the said assessment year was Rs.78,170=80. The net income reflected in the computation of income from the profession was as Rs.64,484/-. These three years income tax returns for the assessment years 1990-91, 1991-92 and 1992-93 were filed by the said deceased during his lifetime. In the said

computation of the income for the said assessment year 1993-94, the advance tax paid by the said deceased on 20th March 1993 at Rs.20,000/- was shown. After deducting the total tax liability of Rs.18,799/-, the refund claimed was Rs.1,201/-.

62. Insofar as the income tax returns for the assessment year 1993-94 is concerned, the professional fees shown in the Income tax returns filed by the father of the said deceased on behalf of the said deceased was reflected as Rs.3,64,467/- and after deducting the expenses the net income shown was Rs.1,07,293=30. In the said income tax returns, the personal drawings reflected in the Capital Account filed along with the income tax returns for the said assessment year was shown as Rs.29,000/-. In the assessment year 1994-95, the professional fees received by the said deceased was shown as Rs.4,60,120/- and after deducting the expenses, the net profit reflected in the profit and loss account as Rs.3,03,821=05. In the profit and loss account of the said deceased, various other heads of income were also shown, such as dividend, debenture interest, saving bank account interest, remuneration and share of profit from Kulkarni and Lohia, etc. The net income from profession was shown as Rs.1,29,514/-.

63. Insofar as the income tax returns for the assessment year 1994-95 is concerned, the gross professional income reflected in the profit and loss account was shown as Rs.4,60,120/-. In the said income tax returns, the income from other sources such as dividend, debenture interest, saving bank account interest and other income i.e. remuneration and share of profit from Kulkarni and Lohia were also reflected in the computation of income. The net profit shown in the profit and loss account was Rs.3,03,821=05. In the computation of income the net income considered for the purpose of payment of income tax was Rs.1,29,515=05. In the said income tax returns, the advance tax paid by the said deceased during his lifetime at Rs.30,000/- was also reflected.

64. Insofar as the income tax returns for the assessment year 1995-96 is concerned, the professional fees in the profit and loss account of the said deceased was shown as Rs.6,18,800/-. Income from dividend, debenture interest, saving bank account interest and other income i.e. remuneration and

share of profit from Kulkarni and Lohia was also reflected as income in the profit and loss account for the assessment year. After deducting the expenses, the net profit was reflected as Rs.2,53,291=85. The net income from profession shown in the said income tax returns was Rs.1,86,565/-. The advance tax paid by the deceased during his lifetime was reflected as Rs.60,000/-. After deducting the amount of advance tax of Rs.60,000/- from the total tax liability as Rs.52,038/-, the refund of Rs.6,961/- is claimed in the computation of income tax.

65. Insofar as the submission of the learned counsel for the appellants that the Tribunal ought to have considered the gross professional fees received by the said deceased during his lifetime and not the net income reflected in the income tax returns is concerned, it would be appropriate to refer to the Judgment of the Supreme Court in the case of **Syed Basheer Ahmed & ors. Vs. Mohd. Jameel and anr. 2009 (2) SCC 225**. The Supreme Court has adverted the judgment of the three judge bench of the Supreme Court in **Gobald Motors Services Limited Vs. R. M. K. Veluswarmi AIR 1962 SC (1)** in which it was held by the Supreme Court that for arriving a just compensation, it is necessary to ascertain the net income of the deceased available for the support of himself and his dependent at the time of his death with amount which he was accustomed to spend for himself. There is no merit in the submission that gross professional receipt should be considered for computing loss of dependency.

66. The said deceased was a chartered accountant by profession. He reflected the professional income received by him. He had reflected not only the professional income received by him from the profession of chartered accountancy, but had also shown the income from various heads which were not of permanent nature. The said deceased had claimed various expenses incurred in each of the assessment year incurred for earning such professional income. The said deceased had paid the income tax on the basis of the net income earned by him from the profession and other heads of income and after claiming various deductions. The various other heads of the income which were not of permanent nature were rightly not considered by the Tribunal while considering the net income of the said deceased. The income ultimately in the hands of the said deceased was the net income after

deducting the revenue expenses allowed to be deducted under the provisions of the Income Tax Act, 1961 for the purpose of spending such amount on himself and on his dependent family members. The Tribunal could not have considered the gross professional income as the income for the purpose of deriving the loss of dependency. In my view, unless the expenses would have been incurred by the said deceased which were deductible under the provisions of the Income Tax Act, 1961, the said deceased would not have earned the professional income. The revenue expenses thus earned during the course of earning of professional income could not have been added back to derive the income in the hands of the deceased for the purpose of computation of loss of dependency.

67. I shall now consider the issue whether the Tribunal was justified in taking an average of the last 6 years including the net income reflected in the income tax returns of the said deceased for the assessment years including the returns for the assessment years 1993-94 to 1995-96 which were admittedly filed after the date of death of the said deceased.

68. The Supreme Court in the case of **V. Subbulakshmi and ors. Vs. S. Lakshmi and anr. (Supra)** has held that the order passed by the High Court not taking into consideration the income tax returns filed after date of the death of the deceased would not be interfered with. This Court in the **Oriental Insurance Company Ltd. Lalitpur Vs. Ramilaben w/o Jayntilal Patel and ors. (Supra)** has held that the income tax returns filed after the date of the death of the deceased ought to have been excluded from consideration. M.P. High court in the case of **Sutinder Pal Singh Arora & ors. Vs. Ashok Kumar Jain and ors. (supra)** has held that the income tax returns filed after the date of the death of the deceased cannot be taken into consideration as possibility of it having been filed by inflating the income could not be ruled out. This Court in the case of **United India Insurance Company Ltd. Vs. Shrinivas R. Kantam and ors. in FA 665 of 2019 delivered on 19th May 2020** has held that it would be proper to take average of last two years income tax returns after excluding the returns filed after the date of death of the deceased for the purpose of deriving the loss of dependency.

69. For the aforesaid reasons, the Tribunal was justified in considering the income tax returns for the last three years prior to date of death of the said deceased. The income tax returns filed in the assessment years 1990-92 to 1992-93 were filed by the said deceased himself during his life time. The returns for the assessment years 1993-94, 1995-96 were filed by the parents of the said deceased after the date of the death of the said deceased. The Tribunal was thus justified by taking an average of net income of six years. The respondent no.2 has not challenged that part of the judgment and award taking an average of the net income of the last six years reflected in the income tax returns for six years i.e. three returns filed prior to the date of death of the said deceased, and for remaining three years filed after the date of death of the said deceased. I do not find any infirmity in this part of the judgment and award rendered by the Tribunal.

70. A perusal of the impugned judgment and award indicates that the Tribunal has deducted 1/3 amount towards personal expenses of the said deceased after arriving at an amount of Rs.110000/- for calculating the loss of dependency. The Tribunal also determined the amount of compensation in respect of each appellant separately by applying different criteria. In my view, so far as the deduction for the personal expenses from the net income derived by the Tribunal at 1/3 is concerned, it is rightly urged by the learned counsel for the appellants that the Tribunal ought to have considered 1/4 deduction from the net income of the said deceased and not 1/3.

71. There were four appellants in the claim application filed by them. The appellant no.1 who was widow of the said deceased on the date of claim application and even thereafter was housewife. The appellant no.2 was the minor daughter of the said deceased and the appellant no.1. The appellant nos.3 and 4 are parents of the said deceased. The Supreme Court in the case of ***National Insurance Company Vs. Pranay Sethi (supra)*** has held that where the deceased was married, the deduction towards personal living expenses should be 1/3rd where number of dependent family members are 2 or 3, and where dependent family members are 4 to 6 then the

deduction should be $\frac{1}{4}^{\text{th}}$. The Tribunal, thus, could not have deducted $\frac{1}{3}^{\text{rd}}$ from the net income towards the personal expenses of the said deceased instead of $\frac{1}{4}$. This part of the impugned judgment and award, thus deserves to be modified. In my view, the compensation derived by the Tribunal separately against each of the appellants applying different criteria is also totally erroneous.

72. I shall now decide whether the appellant no.1 who was widow on the date of filing the claim application and having remarried during the pendency of the claim application could be awarded the compensation by the Tribunal only upto the date of remarriage or even thereafter.

73. A perusal of the impugned judgment and award indicates that the Tribunal has considered this issue in paragraphs 18 and 19 of the impugned judgment and award. It is held by the Tribunal that the loss of dependency of the appellant no.1 can be said upto the date of her remarriage which took place on 9th May 1998 as admitted by her in her cross examination and not thereafter.

74. Both the parties have relied on various judgments on the issue whether the Tribunal could have allowed the claim for compensation in favour of the appellant no.1 who admittedly became widow and continued to be widow on the date of the filing of the claim application and was remarried during the pendency of the claim application on 9th May 1998 and more particular for the period after the date of her remarriage. The Tribunal in this case has allowed the claim of loss of dependency insofar as appellant no.1 is concerned only up to the date of her remarriage i.e. upto 9th May 1998 and not thereafter.

75. A Division Bench of this Court in an unreported judgment delivered on 12th December 2013 in case of **Smt. Archana Sandip Purandare (Supra)** in First Appeal No.872 of 2012 has held that a widow

of the deceased having remarried is entitled for compensation on account of death of her husband. Nothing has been pointed out to the Court, in law which would disable her to claim compensation only because she has remarried during the proceedings before the Tribunal. This Court held that the law postulates grant of just compensation to the claimants.

76. This Court in a case of ***Maharashtra State Road Transport Corporation Vs. Darabkhan Dafedarkhan & ors. (Supra)*** has held that the entitlement of a widow of the deceased under the provisions of the Motor Vehicles Act, 1988 cannot be curtailed, or taken away only because she married later on. A widow cannot wait for the compensation to come and then decide for another marriage. The realities of the life cannot be overlooked. It is held that a widow may or may not be in a position to marry again. There is no bar, pointed out to the Court under any provision of the law that such widow after marriage is disentitled for claim of the deceased husband.

77. This Court in an unreported judgment delivered on 10th December 2009, in case of ***New India Assurance Company Limited Vs. Mona Chandak & ors*** in First Appeal No.1541 of 2008 has held that the provisions in the form of Section 166 of the Motor Vehicles Act, 1988 is a Social Legislation. The said provisions must be interpreted to further the objective of the said section. The law does not prohibit a widow from remarrying. It is held that it would be too much for insurance company to expect that if the claimant wants to have compensation she should not remarry and suffer miseries. It is held that legislation is required to be adopted to overcome the evil of prohibition of remarriage of a widow. Remarriage cannot be an impediment in claiming the compensation nor can it be a ground to reduce the compensation to which the widow is otherwise entitled.

78. This Court in an unreported judgment delivered on 20th December 2019 in case of ***New India Assurance Company Limited Vs.***

Smt. Sushma M. Sonawane & ors. In First Appeal (st) No.28929 of 2014

after adverting to various judgments has held that status of the widow as dependant has to be considered on the date of death of her husband, and not on the date of filing the claim for compensation. This Court has held that merely because the widow of the deceased who met with an accident was remarried within one year from date of the said deceased or within the shorter period that would not make the widow dis-entitled to make claim for compensation on the ground that the said widow was not dependant on the date of filing the claim application. It is held that the said widow continues to represent the estate of her deceased husband and thus is entitled to make claim for compensation in respect of the change of her marital status after demise of the deceased husband.

79. Jammu and Kashmir High Court in case of **Seema Malik & ors. Vs. Union of India (Supra)** has held that no rights of the widow are taken and recognized on the date of death. It is held that the inheritance never remains in abeyance and therefore rights of a widow are to be taken and recognized on the date when her husband dies. She cannot be deprived of right of getting compensation. It is held that on remarriage of a widow a social stigma which stood imposed earlier is not completely washed of. Some negative factors continue to exist and are taken note of in the case of remarriage of a widow. She on remarriage may not enjoy the same status and frame of mind. Re-adjustment when widow has an infant, creates other social problems and she has to provide some security to the child or children from the first husband. As such a widow on re-marriage cannot be deprived of the compensation.

80. Insofar as the judgment of the Supreme Court in case of **Anju Mukhi & ors. Vs. Satish K. Bhati & ors. (supra)** relied upon by the learned counsel for the respondents is concerned, the said judgment has been rightly distinguished by the Gujrat High Court in case of **Jagruti Shishir Banugariya (Patel) Vs. R. K. Ahir (supra)** on the ground that in the facts of that case before Gujrat High Court it had not come on record about the

income of the husband after her remarriage or the satisfaction of the wife of the deceased about the quality of the life after remarriage.

81. Punjab and Haryana High Court in the case of ***National Insurance Company Ltd Vs. Nidhi Goel (surpa)*** also has rightly distinguished the said judgment of Supreme Court on similar ground. In the facts of this case also, though, the appellant no.1 was a widow of the said deceased and was cross examined by the learned counsel for the respondent no.2, no case was put to the said witness about the income of her husband after remarriage nor about satisfaction of the wife of the deceased, about quality of life after her remarriage. The judgment of the Hon'ble Supreme Court in the case of ***Anju Mukhi & ors. (supra)***, thus, does not assist the case of the respondent no.2 and is clearly distinguishable on the facts of this case.

82. Insofar as the Judgment of Madhya Pradesh High Court in the case of ***Sutinder Pal Singh Arora & ors. (surpa)*** relied by the learned counsel for the respondent no.2 is concerned, in my view, the learned counsel for the appellants has rightly distinguished the said judgment on the ground that the Madhya Pradesh High Court had not considered in the said judgment as to whether the wife was happy after remarriage or not. In my view the said judgment is clearly distinguishable in the facts of this case and would not assist the case of the respondent no.2.

83. In my view, merely because the appellant no.1 was remarried during the pendency of the claim application filed by her, she cannot lose her right to claim compensation arising out of death of her husband. The principle of law laid down by this court in various judgments referred to aforesaid clearly applied to the facts of this case. It is not the case of the respondent no.2 before the Tribunal that after her remarriage the appellant no.1 has sufficient source of income or had sufficient security for herself and the child born out of first wedlock. The inheritance of the appellant no. 1 never remain in abeyance merely because the appellant was remarried

during the pendency of the claim application. She did not lose her rights of claiming maintenance as a legal heir of the deceased under the provisions of the Motor Vehicles Act, 1988.

84. Learned counsel for the respondent no.2 could not point out any provisions under the provisions of the Motor Vehicles Act, 1988, disentitling the appellant no.1 from claiming any compensation arising out of death of her first husband. In my view, the Tribunal has thus erroneously refused to grant the complete compensation as permissible in law that is for the period subsequent to the death of her remarriage. The appellant no.1 would be entitled to a awarded compensation for the entire period and not only for the period up to the date of her remarriage.

85. Insofar as the reliance placed by the learned counsel for the appellants on the unreported judgment of this Court in the case of **Sou.Swara Sachin Kulkarni (supra)** is concerned, in my view, this judgment would not assist the case of the appellants. A Division Bench of this Court in the said judgment has held that the petitioner being the only family member of the deceased is entitled to claim for compassionate employment so as to enable the family to get over the financial crises. The judgment of the Supreme Court in the case of **Manjuri Bera (supra)** relied upon by the learned counsel for the appellants and an unreported judgment of this Court in the case of **Aparna Narendra Zambre & anr (supra)** in support of the submission that the appellant no.1 continued to be a legal representative of the said deceased would assist the case of the appellants and would apply to the facts of this case.

86. Insofar as judgment of Delhi High Court in the case of **Harpreet Kaur & ors (supra)**, relied upon by the learned counsel for the appellants in support of the submission that the Tribunal ought to have considered the payment of advance tax paid by the said deceased himself during his lifetime for considering the yearly income of deceased is concerned, a perusal of the record indicates that the appellants had placed reliance on the

payment of advance tax in two of the income tax returns filed after the date of the death of the said deceased. In both the income tax returns, the parents of the said deceased on behalf of the said deceased had claimed refund of the part of the advance tax paid by the said deceased. In any event, since the parents of the said deceased had filed income tax returns though belatedly which were taken into consideration by the Tribunal along with the income tax returns for the assessment years 1990-91 to 1992-93 for the purpose of taking average, payment of such advance tax would not be the conclusive factor to ascertain the loss of dependency. The judgment of Delhi High Court in the case of **Harpreet Kaur & ors (supra)** thus would not assist the case of the appellants.

87. Insofar as the claim of Rs.50,000/- each towards consortium claimed by the appellants during the course of arguments of this First Appeal, the learned counsel relied upon the judgment of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & ors (supra)** is concerned, the Tribunal has awarded only a sum of Rs.5000/- to the appellant no.1 and has refused to grant separate compensation of Rs.40,000/- to each of the appellants. Learned Counsel for the appellants also placed reliance on the judgment of the Supreme Court in case of **Magma General Insurance Company Limited (supra)** in support of the claim for separate amount of Rs.40,000/- consortium in favour of each of the appellants.

88. In my view, in the facts of this case, the appellant no.2 being a minor on the date of death of the said deceased father, would be entitled to a claim for compensation in sum of Rs.40,000/- for loss of parental aid, protection, affection, society, discipline, guidance and training. The appellant nos.3 and 4 being parents of the said deceased would not be entitled to any filial consortium, in view of the fact that the said deceased was already married.

89. The Supreme Court in the said judgment of ***Magma General Insurance Company Ltd. (supra)*** has held that filial consortium is the right of the parents in case of loss of minor child or unmarried son or daughter. The said deceased was married at the time of his death. Parents thus would not be entitled to claim filial consortium.

90. Insofar as the compensation of Rs.5000/- awarded to the appellant no.1 is concerned, in my view, amount of compensation awarded by the Tribunal in favour of the appellant is not adequate and deserves to be enhanced to Rs.40,000/-. The impugned judgment and award to this extent stands modified.

91. In my view, the appellants would be entitled to the award of a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.15,000/- each towards loss of love and affection, as against the amount of Rs.4,000/- awarded by the Tribunal towards funeral expenses and Rs.5000/- to the appellant nos.2, 3 & 4 towards the loss of affection. The Tribunal did not award any amount in favour of the appellants insofar as the compensation towards the loss of estate is concerned. The said deceased was a chartered accountant by profession and was self employed, and thus would be entitled to 40% of the yearly income towards the future prospects in accordance with the principles laid down by the Supreme Court in ***National Insurance Company Limited & ors Vs. Pranay Sethi & ors (supra)*** and subsequent judgments of the Supreme Court following the said judgment.

92. Insofar as the income of the deceased considered by the Tribunal from his profession as chartered accountant at Rs.1,10,000/- for calculating the loss of dependency is concerned, I am not inclined to interfere with that part of the judgment and award. The Tribunal, however, could not have deducted the expenses to the extent of 1/3 out of the said amount in view of all 4 appellants being dependant on the said deceased at the time of his death. The Tribunal ought to have deducted 1/ 4th towards personal expenses. In my view the Tribunal could not have applied the multiplier on

the basis of age of the appellants, but ought to have applied the multiplier on the basis of age of the said deceased at the time of his death. Considering the age of the said deceased at the time of his death, the Tribunal ought to have applied the multiplier of 15 for the purpose of computing loss of dependency. After adding 40% towards future prospect to the yearly income of Rs.1,10,000/- the amount comes to Rs.1,54,000/-. One fourth of this amount has to be deducted towards personal expenses. After deducting 1/4th towards personal expenses, the amount comes to Rs.1,15,500/-. Multiplier of 15 would be applicable. The amount of loss of dependency thus would be Rs.17,32,500/-.

93. In my view, the amount being awarded to the appellants for the reasons recorded aforesaid would be as under;

1. Loss of dependency : Rs.17,32,500/-
2. Loss of estate :Rs.15,000/-
3. Loss of funeral expenses : Rs.15,000/-
4. Loss of love and affection : Rs.60,000/-
(Rs.15,000/- each)
5. Loss of consortium to appellant no.1 : Rs.40,000/-
6. Loss of parental consortium to the appellant
no.2. : Rs.40,000/-
7. Loss of filial consortium to the appellant
nos.3 and 4 : Rs.80,000/- (Rs.40,000/- each)

94. The amount awarded by the Tribunal in the sum of Rs.5,80,400/- inclusive of no fault liability is enhanced to Rs. 19,82,500/-.

95. I therefore pass the following order :-

- (a) The appellants would be entitled to recover the sum of Rs.19,82,500/- from the respondent no.2 with interest @ 9% pa. from the date of claim application inclusive of no fault liability amount awarded under Section 140 of the Motor Vehicles Act, 1988 till payment or realization.
- (b) The appellants would be entitled to recover this amount after adjusting the amount already withdrawn from the amount deposited

by respondent no.2 before the Tribunal. If there is any short fall in the amount of deposit made by the respondent no.2, after computation of decretal amount on the basis of this judgment, the respondent no.2 shall deposit the amount of such short fall within two weeks from the date of computation of such short fall by the Tribunal.

(c) If there is any surplus amount deposited by the respondent no.2, after paying the decretal amount awarded by the Tribunal and modified by this judgment, such surplus amount shall be refunded to the respondent no.2 by the Tribunal.

(d) If there is any short fall in payment of the Court fees determined on the basis of the enhanced amount, such short fall amount of Court fees of payment shall be paid by the appellants within two weeks from the date of computation of such short fall by the Tribunal without fail.

(e) Appellant nos.1, 2 and 4 would be entitled to apportion the decretal amount in the ratio of 30%, 40% and 15% respectively. Appellant nos. 3A and 3B jointly would be entitled to 15%.

(f) Judgment and Award dated 5th April 2004, passed by the Motor Accident claim Tribunal, Satara and MACP No.485/1996 stands modified and substituted by this Judgment in the manner aforesaid.

(g) First Appeal No.1243 of 2004 is partly allowed in the aforesaid terms. There shall be no order as to costs.

96. This order will be digitally signed by the Private Secretary of this Court. Sheristadar of this Court is permitted to forward a copy of this judgment to the advocate of the parties by e-mail. All concerned to act on digitally signed copy of this order.

[R.D. DHANUKA, J]