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

**FAO-7228 of 2017 (O&M) &
Cross-objections No. 35 of 2019
Date of Decision: 21.12.2020.**

Reliance General Insurance Company Limited

...Appellant

V/S

Rupinder Kaur &Ors.

....Respondents

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present : Mr. Sanjeev Kodan,Advocate
for the appellant Insurance Company.

Mr. Ravinder Arora, Advocate
For respondents No.1 to 6(cross-objectors)
(Presence marked through video conference).

ARUN MONGA, J.

1. Appeal herein bearing FAO no.7228 of 2017 is by the Insurance Company, while the claimants have filed also cross-objections No. 35 of 2019 against an award dated 06.09.2017. I propose to dispose of the appeal as well as cross-objections by this common order.

2. Before proceeding, succinct facts. Lis between the parties is aftermath of accident which took place on 11.08.2016. It is stated that on the fateful day,at about 8:30 am, Jaswinder Singh and his relative Malkiat Singh were on way to Tehsil-Block Majri from village Mehampur Taprian, on their bicycles. At the time of accident, Jaswinder Singh was standing on the road side for crossing the main Kurarli-Baddi road, while Malkiat Singh was coming behind him. Another turbaned person (Kulbir Singh) with his scooty was also waiting on the roadside to get on to the main road. In the meanwhile, one Tempo-407, bearing registration No. PB7AS-4593(for brevity, offending

vehicle), driven by Sandeep Kumar in a rash and negligent manner came from Kurali side. The driver lost control over the vehicle and it hit Jaswinder Singh and the other scooty-man(Kulbir Singh). After hitting them, the offending vehicle entered into nearby fields. Both Jaswinder Singh and Kulbir Singh sustained multiple injuries. Injured were shifted to the hospital for treatment. FIR No. 104 dated 11.08.2016 was registered against Sandeep Kumar under Sections 279, 338 and 427 IPC at Police Station Kurali. Kulbir Singh later succumbed to the injuries on 28.06.2016 while under treatment at PGIMER, Chandigarh and offence under Section 304-A IPC was also added.

3. Respondents No.1 to 6 being the widow(Rupinder Kaur), four minor children(Rajpreet Kaur, Gurshamir Kaur, Harnoon Kaur-minor daughters and Mukhjot Singh-minor son) and father(Prem Singh) respectively of deceased Kulbir Singh filed a claim petition under Section 166 of Motor Vehicle Act against Sandeep Kumar(being owner and driver of the offending vehicle) claiming an amount of Rs.1 crore as compensation on account of death of Kulbir Singh. Later, appellant Reliance General Insurance Company Limited was impleaded being insurer of the offending vehicle, on furnishing of requisite information by the owner. It is claimed that the accident had taken place due to rash and negligent driving of offending vehicle by Sandeep Kumar. It is mentioned in the petition that the deceased was holder of Driving License of Sultanate of Oman and was working as driver there. He was earning Rs.65,000/- per month.

4. The driver-cum-owner and insurance Company of the offending vehicle filed their separate written statements. Both denied the accident in question. They objected to the maintainability of the claim petition. On merits, insurance company, inter alia, pleaded collusion between claimants and driver-cum-owner of the offending vehicle. It was also claimed that the driver of the

offending vehicle was not holding any valid and effective driving license. As such Insurance Company could not have been fastened with any liability.

5. On the basis of pleadings, following issues were framed by the learned Tribunal:-

> *"1. Whether Kuldeep Singh died in a motor vehicular accident which took place on 11.08.2016 on account of rash and negligent driving of the Tempo bearing No PB 7AS4S93 driven by respondent No7 Sandeep Kumar ?OPP*
> *2 If issue No1 is proved, whether the claimants are entitled to receive the compensation if so, to what extent and from which of the respondent ?OPP*
> *3 Whether the claim petition is not maintainable in the present form? OPR*
> *4 Whether the claimants have no locus standi to file the present claim petition? OPR*
> *5 Whether the petition has been filed by the claimants in collusion with the respondent No1 ?OPR*
> *6 Whether the respondent No7 Sandeep Kumar was not holding valid and effective driving licence at the time of accident? OPR*
> *7 Relief."*

6. In support of claim petition, claimant Rupinder Kaur examined herself as PW1 and tendered affidavit (Ex PW1A) in her evidence. She also tendered attested copy of postmortem report of Kulbir Singh as ExPW1B, copy of death certificate as ExPW1C, copies of Aadhar Cards ExPW1/D to ExPW1/I, salary slip Mark A, Copy of passport of deceased as ExPW1/J copy of driving licenses ExPW1/K and ExPW1/L, Copy of Visa Ex.PW1/M. The claimants also examined eye-witness of the accident i.e.Malkit Singh as PW2 who tendered his affidavit ExPW2/A and a bank official Ranbir Singh(PW3) who proved customer information form as ExPW3/B, Account opening form ExPW3/C and statement of account as ExPW3/D of Rupinder Kaur claimant.

7. On the other hand, to rebut the claim of the claimants, driver-cum-owner of the vehicle tendered into evidence copies of driving license as Ex.R1, registration certificate of offending vehicle as Ex.R2, its Insurance Policy as Ex.R3 and verification report as Ex.R4. The Insurance Company also tendered in evidence the insurance policy of the offending vehicle as Ex.R.6.

8. On appraisal of evidence adduced, the learned Tribunal vide the impugned award held under Issue No.1 that the accident in question took place due to rash and negligent driving of offending vehicle by driver Sandeep Kumar. As a result of the accident, Kulbir Singh suffered injuries leading to his death. For arriving at this conclusion, the Tribunal took into consideration statement of PW2 Malkit Singh, who witnessed the accident and deposed on the lines of statement given to the police on the basis of which FIR, *ibid,*was registeredand copy of postmortem report (Ex.PW1/B) of deceased and the death certificate(Ex.PW1/C). Apart therefrom, an adverse inference was drawn against the driver and insurance company who failed to lead any sort of evidence in support of their plea of denial of accident in question.

9. While assessing the compensation payable to the claimants, under issue No.2 the Tribunal concluded that the claimants have failed to establish that deceased was working as a driver at Muscot and was earning Rs.65,000/- per month. It was held that though as per passport, the deceased had gone to Oman and was issued a driving license there, but there is no evidence to establish that he was working as driver there. Accordingly, the Tribunal considered the deceased to be a skilled worker being driver and took his monthly income as Rs.20,000-/-. Since there was no dispute about the age of the deceased to be 41 years at the time of accident, the Tribunal while relying upon the decisions in **Rajesh Vs. Rajbir Singh**[1]and **Sarla Verma Vs. Delhi Transport Corporation**[2]made an addition of 50% to the actual income of the deceased while computing the future prospects. Taking into account the number of dependents, it deducted 1/4th of the income towards personal expenses of the deceased. Multiplier of 15 was applied. The claimants were awarded compensation under the following heads as per calculations below:-

[1]2013(3) RCR(Civil) 170
[2] 2009(3) RCR(Civil) 77

Sr.No.	Heads	Calculation
(i)	Earnings of deceased	Rs.20,000/- per month
(ii)	50% of above to be added as future prospects	(Rs.20,000/- + Rs.10,000/- = Rs.30,000/- per month)
(iii)	1/4 th of Sr.No.(ii) to be deducted as personal expenses of the deceased	Rs.30,000/- - Rs.7500/- = Rs.22,500/- per month
(iv)	Compensation after multiplier of '15' is applied	Rs.22,500/- X 12 X 15 = Rs.40,50,000/-
(v)	Loss of consortium	Rs.1,000,00/-
(vi)	Funeral expenses	Rs.25,000/-
	Total awarded compensation	Rs.41,75,000/-

10. Per registration certificate(Ex.R2) Sandeep Kumar, the driver was also the owner of the offending vehicle. At the time of accident, it was insured with Reliance General Insurance Company vide policy (Ex.R4). Basis thereof, learned Tribunal held the driver-cum-owner and insurance company jointly and severally liable to pay the aforesaid compensation to the claimants. Both issues No.1 and 2 were decided in favour of the claimants.

11. Since no evidence was adduced by the respondents in support of issues No.3 to 5, the onus to prove which was on the respondents, the same were decided against the respondents.

12. While rendering finding on issue No.6, the learned Tribunal took into consideration the driving licence(Ex.R1) of Sandeep Kumar, which was valid from 19.11.2010 to 28.11.2016. In absence of any evidence led by insurance company to the contrary, it was held that the driver of the offending vehicle was having a valid and effective driving license at the time of accident. This issue was hence, decided against the insurance company.

13. The compensation was awarded with interest @ 6% per annum to be calculated from the date of filing of claim petition till its realization. In the event of non-payment of compensation within three months, the claimants were held entitled to penal interest @ 9% per annum from the date of award till realization. Out of the compensation awarded, the Tribunal ordered to pay

Rs.16,75,000/- to claimant No.1(being widow), while Rs.5,000,00/- each were ordered to be apportioned amongst the four minor children and father of the deceased. The compensation amount in respect of minor children was ordered to be kept in a fixed deposit in any nationalized bank till they attain majority.

14. The Insurance Company is in appeal impugning the compensation being exorbitant, while the claimants have filed cross-objections seeking enhancement thereof, on the ground that the Tribunal has taken the monthly income of the deceased on lower side and erred in deducting 1/4th of the income towards personal expenses of the deceased, keeping in view the number of dependents. The amount awarded under conventional heads has also been impugned by claimants,being insufficient. Both sides are thus aggrieved qua the award rendered by the learned Motor Accident Claims Tribunal.

15. Learned counsel for the appellant as well as claimants have filed their respective written submissions and they addressed their arguments also on the same lines. I have gone through the written submissions as well as the record of the case.

16. Learned counsel for the appellant submitted that the Tribunal has erred in taking the monthly income of the deceased as Rs.20,000/- per month. Referring to para No.16 of the impugned award, it has been argued that once it has been held that the claimants have failed to establish the income of the deceased and, in absence of any documentary evidence qua the employment and the income of the deceased, there was no valid and cogent reason with the Tribunal to assess such an exorbitant income of the deceased. According to him, in absence of any income proof, the Tribunal should have taken into consideration the minimum wages prescribed by the State Government. In support of his submission, learned counsel for the appellant relied upon judgment rendered by Apex Court in **Rajan Versus Soly Sebastian and**

others[3], wherein the notional income of the deceased, who was a professional driver, taken by the Tribunal and High Court as Rs.2,000/- per month was set aside and it was held thatincome should have assessed after taking into consideration the relevant Minimum Wages fixed by the Government.

17. Continuing, learned counsel for the appellant argued that, instead of 25%, the Tribunal has wrongly added 50% of the monthly income towards future prospects. The date of birth of the deceased was 28.02.1975 and the date of accident was 11.08.2016. He submitted that there is no dispute that age of the deceased was 41 years at the time of accident. It has also been so held by the Tribunal in the impugned award. Still 50% has been added to the monthly income of the deceased towards future prospects, which is inconsistent with the Constitutional Bench dictum of Apex Court in case titled as **National Insurance Company Limited Versus Pranay Sethi and others** [4], wherein it has been held that 25% should be addedfor future prospects, where the deceased was between the age group of 40-50 years. The relevant portion [para 61(iv)] of the judgment is as under :-

> *"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 regard as the necessary method of computation. The established income means the income minus the tax component."*

18. Relying on Sarla Verma(supra), appellants assertedthat tribunal wrongly applied the multiplier of 15. It has specifically been held per judgment, in head note 'D(e)', that for the age group 41-45 years, multiplier of 14 should be applied. Multiplier of 14 ought to have been applied in the present case, instead of 15.

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[3]2015(3) RCR (Civil) 962
[4]2017(4) RCR (Civil) 1009

19. Learned counsel for the appellant also argued that the accident had occurred due to sole negligence of the deceased himself. A specific suggestion was though put to the eye witness Malkeet Singh PW-2 but he denied that the deceased was trying to cross the main road at the time of accident. However, the counsel relied on report u/s 173 CrPC and a site plan also referred/produced by learned counsel for appellant at the time of arguments to assert that the deceased was trying to cross the main road. The deceased himself contributed to the accident as he did not take much care which he was required while attempting to cross the main road. The deceased was self-negligent while driving his vehicle in rash and negligent manner without observing the traffic rules. He was driving the vehicle on the wrong side. He also violated Rule 9 of Road Traffic Rules 1989, contended the counsel for appellant. Said rule 9 states as below:-

> ***"9 - Giving way to traffic at road junction***.*—The driver of a motor vehicle shall, on entering road intersection at which traffic is not being regulated, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand."*

Relying on above, it was contended that had the deceased been cautious in entering onto the main road, the accident could have been avoided. The deceased was, therefore, solely negligent qua the accident in question. All this was not considered by the learned Tribunal. The impugned award is thus not sustainable in the eyes of law.

20. As regards consortium and interest component, learned counsel for appellant argued that Tribunal has wrongly awarded consortium of Rs.1,00,000/- to the wife and Rs.25,000/- for funeral expenses. Per Pranay Sethi's case, *ibid,* the amount restricted to Rs.70,000/- on conventional heads. In support, he also relied on **New India Assurance Co. Ltd. Vs. Smt.**

Somwatiand others[5]**,** wherein theamount awarded by High Court on the account of love and affection was not upheld by Apex Court. Relevant paras (46 to 48) thereof are reproduced as under :-

> *"46. We may also notice the additional submission advanced in Civil Appeal No....../2020 (arising out of SLP(C)No.8250 of 2020), Oriental Insurance Company Ltd. versus Smt.Rinku Devi &Ors. As noted above, we have taken the view that the order of the High Court awarding compensation towards 'loss of love and affection' at the rate of Rs.50,000/- to each of the claimants is unjustified which is being set aside in this appeal. We, further, in the above appeal also set aside the directions of the High Court in paragraph 9 by which statutory amount along with interest accrued thereon was directed to be deposited in AASRA fund.*
> *47. In result, all the appeals are partly allowed. The award of compensation under the conventional head 'loss of love and affection' is set aside. The Motor Accident Claims Tribunals shall recompute the amount payable and take further steps in accordance with law."*

Therefore, the amount awarded by the Ld. MACT on account of filial consortium is liable to be set aside, contended learned counsel for the appellant.

21. He further argued that the Tribunal has erred in imposing penal interest at the rate of interest of 9% per annum. He has relied upon Sarla Verma's case (supra) besides **UPSRTC versus Islamuddin**[6], **United India Insurance Company Versus Bindu**[7],**Fakirappa Versus Karnataka Cement Pipe Factory**[8] and **Radha Krishna and another Vs. Gokul& others**[9], to contend that rate of interest awarded in the present case also ought to 6% rather than 9 % per annum.

22. Per contra, learned counsel for the claimant/ cross-objectors contended that the compensation awarded by the Tribunal, deserves to be enhanced. According to him, the bald plea about negligence of the deceased is

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[5] Civil Appeal No.3093 of 2020 arising out of SLP (Civil) No. 23478 of 2019 decided on 07.09.2020
[6] 2009(3) SCC-473
[7] 2009(3) SCC-705
[8] 2004(2) PLR-210
[9] Civil Appeal No. 9858 of 2013 arising out of SLP(C) No.1056 of 2008, decided on 31.10.2013

just an after-thought. He relied on trial court judgment dated 03.05.2019, whereby driver of the offending vehicle was held guilty/convicted of causing the accident, which led to death of Kulbir Singh. He argued that apart from the bald allegation of negligence of deceased, no evidence was adduced either by the insurance company or by the owner-driver of the offending vehicle to substantiate it. As such, said plea being totally unsustainable, was thus rightly rejected by the Tribunal.

23. The stand of the claimants/ cross-objectors qua monthly income of the deceased is to the contrary. They contend that the Tribunal has erred in taking the monthly income as Rs.20,000/- per month, ignoring the documents on record as produced by PW3 Ranbir Singh. Said documents established that deceased was working as a driver in Muscat and was earning Rs. 65,000/- per month. Besides, the claimants had also proved copy of passport, copy of driving license issued by Sultanate of Oman as well as residence card issued by Sultanate of Oman, copy of visa as Ex.PW1/M and copy of salary slip as mark 'A'. As per the entries in the Bank account of the claimant / widow there were credit entries of Rs. 50,000/- per month remitted by her deceased husband Kulbir Singh. Further, as per the salary slip issued by Gulfar Engineering and Contracting, Saog, Oman the deceased was earning 378.700 RO (Omani Rial) which is equivalent to Rs. 68,847/- per month. In view of this, the claimants contend that the Tribunal grossly erred in not relying upon the said evidence qua income of the deceased, which is manifold higher than the income assessed as per impugned award.

24. Controverting the plea of insurance company about addition of future prospects, learned counsel for the claimant has submitted that the same has rightly been applied by the Tribunal, as per Pranay Sethi's judgment. However, the Tribunal has erred in deducting $1/4^{th}$ towards personal expenses

inspite of the fact that there are 6 dependents i.e. widow, 4 minor children and father. The Tribunal ought to have, therefore, deducted 1/5th towards personal expenses. He further submitted that Tribunal has erred in awarding Rs. 1,25,000/- on account of conventional heads. Whereas, per judgment of Supreme Court in **Magma General Insurance Co. Ltd. VS Nannu Ram and others**[10], Rs. 40,000/- each has to be awarded on account of loss of consortium to all the claimants. Further, Rs. 30,000/- should have been awarded on account of funeral expenses and loss to estate. Thus, claimant's contention is that the impugned award warrants modification by enhancement in the amount of compensation.

25. Having heard both the learned counsel and after going through the record, I shall now proceed with my discussion and outcome thereof. I find that in the impugned award, the learned Tribunal elaborately discussed the relevant oral and documentary evidence. Tribunal concluded/held that Kulbir Singh indeed died in a motor vehicular accident, which took place on 11.08.2016 on account of rash and negligent driving of the Tempo bearing No PB 7AS-4593,being driven by respondent No.7- Sandeep Kumar. Direct evidence on record shows that at the relevant time, the deceased was standing and waiting on his side of the road, when the tempo hit him due to rash and negligent driving by respondent-Sandeep Kumar. There is no evidence to show that at the relevant time, Kulbir Singh deceased was crossing the road or he did not see the tempo proceeding on the main road from Kurali to Baddi side or he himself was negligent and the accident occurred due to his negligence.

26. As already noticed above, neither any evidence was led either by the owner-driver of the offending vehicle nor the insurance company to substantiate their plea that the accident did not occur in the manner, as alleged

[10] 2018 (4) RCR (Civil) 333

by the claimant or that the deceased had contributed to the accident by his own negligence. Rather, an adverse inference was drawn against the owner-driver of the offending vehicle for avoiding the witness-box. Siteplan, though produced by learned counsel for appellant in this court in course of hearing and as relied upon by him, but it also shows that Kulbir Singh was hit by the offending tempo proceeding from Kurali side to Baddi side, while he was standing on the left side of Kurali-Baddi road. Not only this, PW2 Malkit Singh, who was the eye-witness and author of FIR, specifically testified that the deceased was standing on his side of the road and was waiting to elevate on the main road. No evidence to the contrary has been led either by the owner/ driver or the insurance company.

27. Further, during the pendency of the appeal, in a criminal trial arising out of the same incident, the Court of Judicial Magistrate Ist class, Kharar vide judgment dated 03.05.2019, convicted and sentenced Sandeep Kumar(owner/ driver of the offending vehicle) for the offences under sections 279,304A,427IPC and Section 181 of the Motor Vehicles Act. Meaning thereby, there is a judicial verdict to hold the owner/ driver of the offending vehicle responsible for causing the accident due to which Kulbir Singh lost his life. This also negates the contention of the learned counsel for appellant that at the relevant time, Kulbir Singh was crossing the main Kurali-Baddi road and accident took place due to his negligence. Conjectures and surmises are not sufficient for any such assumption. In my opinion, this finding of the learned Tribunal is correct and in consonance with the recordand, therefore, affirmed.

28. Claim petition reveals that at the time of death, age of Kulbir Singh was given 41 years. In the pass-port and driving licenses, his date of birth is mentioned as 28.02.1975. This evidence negates the claimant's stand herein that at the time of death, the age of Kulbir Singh was 37 years. In my

opinion, the learned Tribunal rightly held that Kulbir Singh was aged between 41-42 years at the time of death.

29. Passport Ex PW1/J shows that Kulbir Singh was an Indian National. Immigration Entry on Ex PW1/M shows that he had returned from Oman to India on 13.07.2016.The accident took place on 11.08.2016. PW1 Rupinder Kaur swore that at relevant time, her husband Kulbir Singh was working as driver in Muscat (Oman). Salary slip Mark 'A' issued by Gulfar Engineering & Contractors, SAOAG shows that for June- 2016, the net pay of Kulbir Singh was 378.700 (Omani Rial), equivalent to Rs. 68,847/-. Statement of bank account Ex PW/D of Rupinder Kaur in Central Bank of India, Chhajji Majra from 02.01.2016 to 15.06.2017 shows that her husband Kulbir Singh had been making regular monthly NEFT remittances to her @ Rs.50,000/- from January- 2016 to June- 2016. Last remittance to her of an amount of Rs. 50,000/- by NEFT was made on 14.06.2016. Obviously, at that time deceased was still employed in Muscat, which was shortly before his return to India to meet his family.

30. These regular remittances by deceased Kulbir Singh, after meeting his personal expenses, support the respondents' version that he was earning about Rs. 65,000/- per month shortly before his return to India and later his death.

31. Kulbir Singh held driving licenses valid for Oman upto 20-10-2021 and for UAE upto 24.08.2020. Had helived loner, having acclimatized to living conditions in Oman and having gained exposure to work culture in Oman, he would have had no problem continuing to work as a driver in Oman. He clearly had the potential and opportunity again to go to Oman or UAE for employment on a salary equal or near equal to, may be even higher than what he was getting in Muscat (Oman), before his return to India on 13.07.2016.

32. Even if at the time of accident/death, Kulbir Singh happened to be out of job, it is obvious that the spell of his unemployment was transitory and temporary. He could either go back to Oman or UAE and again get a job there as driver or remain in India and do his own work like acquiring and plying a truck/ taxi or seek a job as driver. One does not know what were his plans. It cannot thus be said with certainty about what he would have done for a living, had he lived longer. But, given his credentials, in the given situation, out of various options, the higher probability was that Kulbir Singh would again go back to Oman or UAE for employment as driver, in the vent he was unable start/do his own work in India, like acquiring and plying a truck/taxi or get some other suitable opportunity.

33. In the aforesaid premise, to my mind, the notional income of Kulbir Singh ought to be determined by taking into consideration his potential to earn and, the various options and opportunities available to him. Only a cautious combination of speculation, guess, potential/credentials to earn and a fair estimate thereof would guide that determination. In this background, the learned Tribunal was somewhat conservative and erred in assessing the monthly income of Kulbir Singh at Rs. 20,000/- . The same is considerably on the lower side. In the totality of given facts and circumstances, it would be reasonable and fair to hold that the notional monthly income of Kulbir Singh at the relevant time was Rs. 25,000/-. Facts being peculiar and different in present case, the judgment in **Rajan Versus Soly Sebastian and others** supra relied upon by the learned counsel for the appellant seems not applicable.

34. For determining the addition of income on account of future prospects, both learned counsel have relied upon **National Insurance Company Limited Versus Pranay Sethi and others** supra. It is held therein that where the deceased is between the age group of 40-50 years, 25% should

be added for future prospects. As noted above, Kulbir Singh was between 41-42 years of age, when he died. Accordingly, 25% should have been taken as the addition of his income for future prospects and not 50% as wrongly calculated by the learned Tribunal.

35. On correct re-calculations, monthly income of Kulbir Singh, inclusive of 25%enhancement for future prospect, thus would come out to Rs. 31,250/-.His father, widow and four minor children (three daughters aged 12,9 and 5 years and a son aged 2 years) were his dependents. I am of the opinion that a deduction of 25% out of Rs. 31,250/- i.e. Rs.7,813/- towards personal expenses including income tax liability of the deceased would be fair and reasonable.

36. In Pranaay Sethi the Apex Court held 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, to 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. In a subsequent judgment **Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram**[11], Apex Court observed/ held as under

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

[11] **SC2018(4) R.C.R.(Civil) 333 : 2018(9) JT 195**

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. x-x-x-x

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 40,000 each for loss of Filial Consortium."

37. On the aforesaid analogy, in present case, it would be fair and reasonable to determine the compensation under conventional heads as under:

(a)	Funeral expense	Rs.15,000/-
(b)	Loss of estate	Rs.15,000/-
(c)	Loss of spousal consortium for wife	Rs. 40,000/-
(c) (i)	parental consortium for four minor children	Rs. 40,000/- each
(c) (ii)	filial compensation for father	Rs. 40,000/-
	TOTAL	Rs.2,40,000/-

Accordingly, it is held that the claimants are entitled to total compensation of Rs.30,000+2,40,000 = Rs.2,70,000/- under aforesaid conventional heads.

38. In view of the aforesaid discussion and reasons contained therein, finding of the learned Tribunal on issue No. 2 is modified and it is held that the claimants are entitled to total compensation of Rs. 42,15,000/- as per break up given herein below :-

(i)	Monthly earnings of the deceased	Rs.25,000/-
(ii)	Add 25% for future prospects	Rs.6,250/-
(iii)	Total (i) +(ii)	Rs.31,250/-
(iv)	Deduct $1/4^{th}$ for personal expenses	Rs.7,813/-
(v)	Claimants' monthly dependency	Rs.23,437/-
(vi)	Claimants annual dependency	Rs.2,81,244/-
(vii)	Death compensation with multiplier of 14	Rs.39,37,416/-
	Compensation for funeral expenses, loss of estate and consortium, as detailed above	Rs.2,70,000/-
	Total of (vii) + (viii)	Rs.42,14,416/-
	rounded off to	Rs.42,15,000/-

39. Nothing was urged before me against the findings on issue Nos. 4-6 recorded by the learned Tribunal. The same are affirmed.

40. In **Erudhaya v. State Express Transport Corporation Ltd. Civil Appeal No. 2811-2812 of 2020** decided on 27.07.2020, Supreme Court upheld the claim for interest @ 9% of the compensation amount. In view of this, reliance of the learned counsel for appellant on the earlier judgments, for restricting the interest to 6% of compensation amount for the entire period till payment, is misplaced.

41. In present case, the learned Tribunal directed that the compensation amount be paid within three months with interest @ 6% per annum till payment, failing which the claimants would be entitled to interest @ 9% from the date of the award till payment. There seems nothing wrong or unfair in this direction.

42. Resultantly, except for the aforesaid modification in the finding under issue No. 2 and holding that the claimants are entitled to total compensation of Rs. 42,15,000/- instead of Rs. 41,75,000/- , the award of the learned Tribunal is upheld. The appeal and cross objections thus stand disposed of.

(ARUN MONGA)
JUDGE

December 21, 2020
Jiten

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No