

IN THE HIGH COURT, AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK.

FMA 3200 OF 2016

Banasri Banerjee Alias Banasree Banerjee and Another

.....Appellants

Versus

The New India Assurance Company Limited & Another

.....Respondents

For the Appellant: Mr Ashique Mondal, Advocate.

For the Respondent no.1: Mr Parimal Kumar Pahari, Advocate.

As Amicus Curiae: Mr Rajesh Singh, Advocate.

Heard on: 19.09.2022, 21.09.2022.

Judgment on: 01.12.2022.

Bivas Pattanayak, J :-

1.The present appeal is preferred against the judgment and award dated 17 April 2015 (amended by order dated 7 July 2015) passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 4th court, Alipore, 24-Parganas (South) in M.A.C Case no. 27 of 2010 granting compensation in favour of the appellants-claimants to the tune of Rs.35,01,276/-along with interest @ 9% per annum from the date of filing of

the claim application till realisation of the entire amount under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 17 February 2010 at about 2.30 hours while the victim was sitting on the driver's seat on stationed motorcycle bearing no. WB-20S-6189 beside the road, at that time the driver of the offending vehicle bearing no. WB-19-2404 (bus) in a rash and negligent manner dashed the said motorcycle as a result of which the victim sustained severe injuries and was removed to the hospital where the attending doctors declared him dead. On account of sudden demise of the victim, the claimants being his legal heirs and representatives filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 40,00,000/- along with interest.

3. The respondent no.1-insurance company contested the claim application before the learned tribunal. However respondent no.2-owner of the offending vehicle did not contest the claim application before the learned tribunal and the claim application was disposed of *ex parte* against her. Accordingly, the service of notice of appeal upon respondent no.2-owner of the offending vehicle is dispensed with for the aforesaid reasons.

4. The claimants in order to prove their case examined three witnesses including claimant no.1, wife of the deceased and also produced documentary evidence which is marked as **Exhibit 1 to 18** respectively. The contesting

opposite party no.2-insurance company (respondent no.1 herein) also produced documentary evidence namely pay slip of the deceased for the month of January, 2010 marked as **Exhibit A**.

5. Upon considering the materials on record as well as the oral and documentary evidence, the learned tribunal granted compensation in favour of the claimants to the tune of Rs. 35,01,276/-along with interest.

6. Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

7. Mr Ashique Mondal, learned advocate for the appellants-claimants submitted as follows.

As the deceased-victim at the time of accident was aged 37 years, hence the multiplier to be adopted for calculation of compensation should be 15 as per the observation of Hon'ble Supreme Court passed in **Sarla Verma and Others versus Delhi Transport Corporation and Another** reported in **2009 ACJ 1298** however the learned tribunal erred in adopting multiplier 16 instead of 15.

Further since the victim was aged 37 years at the time of accident and was on a fixed salary, hence additional amount of 40% of the annual income of the deceased should be taken into account towards future prospect in view of observation of the Hon'ble Supreme Court passed in **National Insurance**

Company Limited versus Pranay Sethi and Others reported in **2017 ACJ 2700**.

Moreover as the deceased was married at the time of death, as such in view of ***Sarla Verma's case (supra)*** an amount equalling to 1/3rd is to be deducted towards personal and living expenses. However the learned tribunal erred in deducting 1/2 towards personal and living expenses of the deceased.

The learned tribunal has considered the annual income of the deceased as per the income tax certificate **(Exhibit 15)** of Rs.2,73,023/-. However he failed to consider that such income of the deceased was for the period 1st April 2009 to 17 February 2010 i.e of 11 months and thus the income of the deceased is required to be reassessed adding another one month income to the aforesaid income of the deceased appearing in the income tax certificate. Applying the aforesaid method the annual income of the deceased would be Rs. 2,97,843/-.

The learned tribunal allowed consortium to the spouse of Rs. 1,00,000/-and towards loss of love, care and guidance an amount of Rs. 1,00,000/- was granted . Funeral expenses of Rs. 25,000/-was also allowed. Be that as it may, as per the decision of Hon'ble Supreme Court passed in ***Pranay Sethi's case (supra)*** the amount towards conventional heads namely loss of consortium, loss of estate and funeral expenses should be Rs.40,000/-,

Rs.15,000/- and Rs. 15,000/-respectively and accordingly the award of the learned tribunal needs to be modified to such extent.

Moreover, placing reliance on the decision of Hon'ble Supreme Court passed in **(i) Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and Others reported in (2018) 18 SCC 130; (ii) New India Assurance Company Limited versus Somwati and others alongwith others batches of civil appeals reported in (2020) 9 SCC 644 and (iii) United India Insurance Company Limited versus Satinder Kaur alias Satwinder Kaur and others reported in (2021) 11 SCC 780** he submitted that the Hon'ble Court in all the aforesaid decisions taking into consideration the observation of the larger bench made in **Pranay Sethi's case (supra)** enlarged the scope and definition of the word 'consortium' and granted 'filial consortium' and 'parental consortium' as well and accordingly, in the case at hand as the minor has lost his father (deceased) he is entitled to 'parental consortium' of Rs. 40,000/- which shall also have to be taken into account as the learned tribunal failed to grant 'parental consortium'. In this regard he has also referred to two decisions of this court passed in **FMA 38 of 2008 (Oriental Insurance Company Limited versus Swapna Ghosh)** and **FMA 279 of 2009 (Debojyoti Datta versus M/s Oriental Insurance Company Limited & Ors)**. Further as per the decision of the Constitution Bench in **Pranay Sethi's case (supra)** there has to be increase in the amount under conventional heads to the extent of 10% every three years and

hence the amount under conventional heads should be increased by 10% in the present case as more than three years have already passed.

In the light of his aforesaid submissions Mr Mondal, learned advocate for the appellants-claimants prayed for enhancement of the compensation amount.

8. Mr Parimal Kumar Pahari, learned advocate for the respondent no.1-insurance company, in reply, submitted that the doctrine of binding precedent is of utmost importance in administration of judicial system as it promotes certainty and consistency in judicial decisions. The Constitution Bench of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** has extensively dealt with the aspect of 'loss of consortium' taking into consideration the other notable decisions of the Hon'ble court and thereafter came to conclusion that under the conventional heads namely loss of consortium, loss of estate and funeral expenses an amount of Rs. 40,000/-, Rs. 15,000/- and Rs 15,000/- respectively would be just and fair and there cannot be any departure from such observation of a larger bench. Referring to paragraph 21 of the aforesaid decision he submitted that where a bench presided over by two judges differs with the opinion of earlier decision passed by a larger bench the proper course is to refer the matter to a larger bench for decision. However no such recourse was adopted in the decisions of the Hon'ble court relied upon by the appellants-claimants. Accordingly, the

decision of the Constitution Bench passed in ***Pranay Sethi's case (supra)*** with regard to the conventional heads is to be followed.

9. Mr Rajesh Singh, learned advocate appearing as Amicus Curiae submitted that the Constitution Bench in ***Pranay Sethi's case (supra)*** has considered the earlier decisions of the Hon'ble court passed in ***Sarla Verma's Case [2009 ACJ 1298 (SC)]***, ***Santosh Devi's Case [2012 ACJ 1428 (SC)]*** and ***Rajesh's Case [2013 ACJ 1403 (SC)]*** with regard to conventional heads and also dealt with the concept of 'consortium' extensively and after taking into consideration all the aspects including lack of consistency in determining a reasonable sum under the aforesaid heads as a consequence of which orders passed by the tribunals and courts are unguided, observed that reasonable figures under the 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. He further submitted that the decision of the Hon'ble court granting 'filial consortium' in ***Nanu Ram's Case (supra)*** has been allowed in exercise of power under Article 142 of the Constitution of India to do complete justice to the parties in the facts and circumstances of the case. However, this Hon'ble court has no such power, as above, as a court of appeal under Section 173 of the Motor Vehicles Act and therefore as per provisions of Article 141 of the Constitution of India this court cannot take a different view from what has been decided by the Constitution Bench in ***Pranay Sethi's case***. The decisions of the Hon'ble Supreme Court passed in

Somwati's Case (supra) and ***Satinder Kaur's Case (supra)*** following ***Nanu Ram's Case (supra)*** cannot be made applicable to the present case for the similar reasons as above. He has also referred to decisions of this court rendered on similar issue in ***National Insurance Company Limited versus Sohna Singh and Others*** reported in **2020 ACJ 1946** and in **FMAT 332 of 2019 (Magma HDI General Insurance Company Limited versus Mandira Ash and Others)**. Further referring to decision of Hon'ble Supreme Court passed in ***M/s Trimurthi Fragrances (P) Ltd. Through its Director Shri Pradeep Kumar Agarwal versus Government of N.C.T. of Delhi Through its Principle Secretary (Finance) & Ors*** reported in **2022 LiveLaw (SC) 778**, he submitted that the decision of a bench of larger strength would prevail over the decision of a bench of lesser strength and thus the decision of the Constitution Bench passed in ***Pranay Sethi's case (supra)*** would prevail over the other decisions of bench having lesser strength in this regard.

10. Having heard the learned advocates on rival contentions raised in this appeal, I now proceed to discuss the aforesaid issues.

10.1. With regard to the multiplier it is found that the learned tribunal adopted multiplier 16 for calculating the compensation amount. The date of birth of the deceased-victim as per admit card issued by West Bengal Board of Secondary Education (**Exhibit 7**) is 12 February 1972. Therefore the deceased-victim was aged 38 years on the date of accident (i.e 17 February

2010). As per the observation of Hon'ble Supreme Court in ***Sarla Verma's case (supra)*** the multiplier to be adopted should be 15 instead of 16.

10.2. Further keeping in mind the age of the victim to be 38 years and as he was on a fixed salary, an additional amount of 40% of the annual income should be taken into account towards future prospect in view of observation of the Hon'ble Supreme Court passed in ***Pranay Sethi's Case (supra)***.

10.3. With regard to deduction towards personal and living expenses, it is found that the learned tribunal has deducted an amount equalling to 1/2 of the annual income of the deceased-victim. It is found that the deceased-victim at the time of his death was married and the claimants were his dependents and as such following the observation of Hon'ble Supreme Court passed in ***Sarla Verma's case (supra)*** an amount equalling to 1/3rd of the annual income is to be deducted towards personal and living expenses of the deceased- victim.

10.4. With regard to the income of the deceased it has been argued on behalf of the appellants-claimants that the learned tribunal erred in considering the gross income of the deceased-victim mentioned in the Certificate under the Income Tax Act (**Exhibit 15**) which was actually for a period of 11 months and not the annual income of the deceased-victim. On perusal of the Certificate under the Income Tax Act for the assessment year 2010-2011 (**Exhibit 15**) it is found that the return has been submitted for the period

from 1st April, 2009 to 17 February 2010 and the gross salary for such period is Rs. 2,73,023.20/- and the tax component is Rs.6,969/-. However such Certificate does not provide the annual income. For better appreciation and convenience, as per the pay-slip of the deceased-victim for the month of January 2010 (**Exhibit A**) the total earnings is Rs. 23,001/- and professional tax is Rs.130/-. Considering such earnings the total projected annual earnings comes to Rs.2,76,012/-. The aforesaid earnings less tax paid is the actual income of the deceased-victim. Thus the annual income is Rs.2,76,012/- less Rs.6,969/-(income tax) and Rs.130/-(professional tax) which comes to Rs.2,68,913/-.

10.5. In the present appeal the principal legal issue that has arisen is whether in the light of decision of Hon'ble Supreme Court passed in **Nanu Ram's Case (supra)** and subsequent decisions in **Somwati's Case (supra)** and **Satinder Kaur's Case (supra)** it is permissible to grant 'parental consortium' to the minor child in addition to 'spousal consortium' to the wife notwithstanding the decision of the Constitution Bench of the Hon'ble Supreme Court passed in **Pranay Sethi's case (supra)**.

10.6. It is contended by the learned advocate for the appellants-claimants that the minor child of the deceased is entitled to 'parental consortium' on account of demise of his father. The amount towards the conventional head namely 'loss of consortium' has been settled by the Hon'ble Supreme Court in

Pranay Sethi's case (supra) after considering all other earlier decisions passed by it and even noted that in different cases different amounts under conventional heads have been granted. The Constitution Bench took note of the following decisions at paragraph no.48 such as in **Sarla Verma's Case** [2009 ACJ 1298 (SC)], the court granted Rs.5,000/-under the head of loss to estate, Rs.5,000/-towards funeral expenses and Rs. 10,000/-towards loss of consortium whereas in **Santosh Devi's Case** [2012 ACJ 1428 (SC)] the court granted Rs. 5,000/-for transportation of the body, Rs.10,000/-as funeral expenses and Rs.10,000/-as regards loss of consortium and again in **Rajesh's Case** [2013 ACJ 1403 (SC)] the court granted Rs. 1,00,000/-towards loss of consortium and Rs.25,000/-towards funeral expenses and Rs. 1,00,000/-for loss of care and guidance to minor children. It has also quoted with approval the meaning of 'consortium' from paragraph no.17 in **Rajesh's Case's**. After accepting that the concept of 'consortium' was confined to spouse or consort, the allowance for loss of care and guidance of minor children as provided in **Rajesh's Case** was found to be unacceptable at paragraph no.54 in **Pranay Sethi's case** which is reproduced hereunder.

“ 54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh, 2013 ACJ 1403 (SC). It has granted Rs. 25,000/-towards funeral expenses, Rs.1,00,000/-for loss of consortium and Rs.1,00,000/-towards loss of care and guidance to minor children. The head relating to loss of care to minor children does not exist. Though the Rajesh (supra) refers to Santosh

Devi, 2012 ACJ 1428 (SC), it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that a rise in price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures under conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. The principle of re-visiting the said heads is an acceptable principle. But the re-visit should not be fact- centric or quantum- centric. We think that it would be condign that the amount we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10 per cent in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads”

Upon conjointly going through paragraph no.48 and paragraph no.54 of the decision in ***Pranay Sethi’s case (supra)*** it is quite evident that the head

under 'loss of consortium' is confined only to the spouse. In the case of **Nanu Ram (supra)** the two judge Bench referred to other forms of consortium including parental and filial consortium in addition to spousal consortium and granted an amount of Rs.40,000/- each for loss of filial consortium in favour of father and sister of the deceased. Even though filial consortium was granted but while dealing with the head of 'loss of consortium' and referring to **Pranay Sethi's case (supra)** in such context, the Hon'ble court in **Nanu Ram (supra)** observed as follows.

"23.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 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 for loss of filial consortium.

24. 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. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000/-for loss of filial consortium.

It is quite evident from the above that the law relating to 'loss of consortium' has been left untouched and ***Pranay Sethi's case (supra)*** has been said to rule the field. The additional quantum on account of filial consortium as awarded in ***Nanu Ram (supra)*** is at best been allowed in exercise of authority under Article 142 of the Constitution of India in order to render complete justice in the facts and circumstances of the case. As a court of appeal under Section 173 of 1988 Act, this court does not have such power. It is clear that the amount towards loss of estate, loss of consortium and funeral expenses has already been quantified by the Constitution Bench of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** at Rs.15,000/-, Rs. 40,000/- and Rs.15,000/-respectively. Once the decision of the Constitution Bench of the Hon'ble Supreme Court is cited it must be applied and no different view can be subscribed as it is a law laid down within the meaning of Article 141 of the Constitution of India. Accordingly, no further amount shall be granted towards loss of consortium beyond the figure provided as above by the Constitution Bench. For the reasons as above the subsequent decisions in ***Somwati's Case (supra)*** and ***Satinder Kaur's Case (supra)*** cannot be applied as the amount of compensation to be awarded as consortium will be governed by the principles as laid down in ***Pranay Sethi's case (supra)***.

10.7. This court in ***Sohna Singh's case (2020 ACJ 1946)*** and ***Mandira Ash's case (FMAT 332 of 2019)*** while dealing with similar question of law has followed the principles laid down by the Constitution Bench of Hon'ble

Supreme Court in **Pranay Sethi's case (supra)**. The decision of this court in **Swapna Ghosh's case (FMA 38 of 2008)** and **Debojyoti Datta's case (FMA 279 of 2009)** allowing parental consortium cited on behalf of the appellants-claimants cannot be applied for the reasons noted in the foregoing paragraph.

10.8. The Hon'ble Supreme Court in its decision passed in **M/s Trimurthi Fragrances (P) Ltd.(supra) held as hereunder.**

“ 19..... It is settled that the majority decision of a bench of larger strength would prevail over the decision of a bench of lesser strength, irrespective of the number of judges constituting the majority”

Further Justice Hemant Gupta, J (as his Lordship then was) after agreeing with the majority decision also expressed his opinion and concluded as follows.

“ G. The conclusion (1) is that a decision delivered by a bench of largest strength is binding on any subsequent bench of lesser or coequal strength. It is the strength of the Bench and not number of judges who have taken a particular view which is said to be relevant. However, conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the bench strength which was hearing the matter.

H. Thus, it has been rightly concluded that the numerical strength of the judges taking a particular

view is not relevant, but the Bench strength is determinative of the binding nature of the judgment”

Accordingly, bearing in mind the above observation and also in view of the discussion made hereinabove this court is bound by the decision of the Constitution Bench passed in this context in ***Pranay Sethi’s Case (supra)***. Thus the compensation under the conventional heads namely loss of estate, loss of consortium and funeral expenses would be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively alongwith an increase of 10% on such amount as three years have already passed.

11. Now taking into consideration the aforesaid aspects the compensation amount is calculated as hereunder.

Calculation of compensation

Annual Income.....	Rs.2,68,913/-
[Rs.2,76,012/- less Rs.6,969/-(income tax) & Rs.130/-(professional tax)]	
Add: Future Prospects @ 40% of annual Income...	<u>Rs.1,07,565/-(approx)</u>
Annual loss of Income.....	Rs.3,76,478/-
Less: Deduction 1/3 rd of the Annual Income towards personal and living expenses.....	<u>Rs.1,25,493/- (approx)</u>
	Rs.2,50,985/-
Adopting multiplier 15 (Rs.2,50,985/- X 15).....	Rs.37,64,775/-
Add: General Damages.....	Rs.70,000/-

Loss of estate....Rs.15,000/-

Loss of consortium....Rs.40,000/-

Funeral Expenses.....Rs.15,000/-

Add: Increase of 10% on general damages.....Rs.7,000/-

Total Compensation.....Rs.38,41,775/-

12. Thus the total compensation comes to Rs.38,41,775/-. It is informed that the appellants-claimants have already received a sum of Rs. 35,01,276/- alongwith interest on the said sum as granted by the learned tribunal. Hence the appellants-claimants are entitled to the balance amount of Rs.3,40,499/- alongwith interest @ 6% per annum from the date of filing of the claim application till deposit.

13. Accordingly, the respondent no.1-New India Assurance Company Limited is directed to deposit the balance amount of Rs. 3,40,499/- alongwith interest @ 6% per annum from the date of filing of the claim application till deposit, by way of cheque with learned Registrar General, High Court, Calcutta within a period of four weeks from date. The learned Registrar General, High Court, Calcutta upon deposit of the aforesaid amount shall release the said amount to the appellants-claimants in the same proportion as granted by learned tribunal on satisfaction of their identity.

14. Accordingly the appeal stands allowed on contest against respondent no.1-Insurance Company and *exparte* against respondent no.2-Owner of the

offending vehicle. The impugned judgment and award of the tribunal stands modified to the aforesaid extent. No order as to cost.

15. With the aforesaid direction the appeal, stands disposed of.

16. All connected applications stand disposed of.

17. Interim order, if any, also stands vacated.

18. Let a copy of this judgment be forwarded to learned tribunal alongwith the lower court records for information.

19. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak,J.)

