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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 23.09.2022

Pronounced on: 11.10.2022

+ **MAC.APP. 275/2013**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

versus

RAJ KUMARI DEVI & ORS. Respondents
Through: Mr. S. N. Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 for setting aside the award dated 22.12.2012 (as modified vide award dated 16.01.2013) passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Karkardooma Courts, Delhi, in MAC Petition no. 1223/10 titled as *Raj Kumari Devi and Ors. v. Rakesh and Ors* (“**impugned award**”).
2. The learned Claims Tribunal vide the impugned Award held that the Appellant herein is liable to pay compensation to Respondent Nos.1-4 at the first instance with recovery rights

against the Respondent No. 5 (Driver) and Respondent No. 6 (Owner). The relief granted by the learned Tribunal is as under:

S. No.	Head	Compensation awarded
1.	Loss of dependency	Rs. 5,03,685/- (38,745 X 13)
2.	Loss of love and affection	Rs. 25,000/-
3.	Funeral expenses	Rs. 5,000/-
4.	Loss of estate	Rs. 10,000/-
5.	Loss of consortium	Rs. 10,000/-
	Total compensation awarded	Rs. 5,53,685/- (5,03,685 + 50,000)

FACTUAL MATRIX

- On the unfortunate day of the accident, i.e. 07.12.2006, the deceased Sh. Rasik Lal Ram was sitting in a chair and waiting for tea at Patparganj factory area when all of a sudden the offending vehicle, a Mahindra pick-up, bearing registration No. DL-1LE-2545, collided with the chair with a great force. The offending vehicle was being driven rashly and negligently. As a result of the violent impact created by the aforesaid collision, the deceased fell down and sustained fatal injuries. The deceased was immediately taken to Max Balaji Hospital, Patpar Ganj, Delhi where the doctors declared him 'brought dead' after some time.

4. The learned Claims Tribunal awarded compensation of Rs.5,53,685/- in favour of Respondent Nos.1-4 with an interest @ 7.5% per annum from the date of filing of the petition till the realization of the amount. Learned Claims Tribunal was pleased to grant recovery rights to the Appellant against Respondent Nos. 5 & 6 since Respondent No. 5 was not having a valid license and this amounted to a breach of policy conditions.

SUBMISSION ON BEHALF OF THE APPELLANT

5. It was submitted by the learned counsel for the Appellant that the learned Tribunal erred in law by granting recovery rights to the appellant. The learned counsel submitted that after holding that there had been a breach of terms and conditions of the policy as the driver did not possess a valid and effective license, the appellant should have been totally exonerated from the liability to pay compensation or indemnify respondent no.6, owner of the offending vehicle. It was further submitted that it would have been the most appropriate for the learned Tribunal to exonerate the appellant from any liability under the policy as per the specific provision of Section 149 (2) of Motor Vehicles Act.
6. Learned counsel for the Appellant further contended that the compensation under the head '*Loss of dependency*' is to be paid considering future prospects and the same is to be calculated @ 25% of the assessed income of the deceased in terms of dicta of *Hon'ble Supreme Court in National*

Insurance Co. Ltd Vs Pranay Sethi & Ors reported as **2017 AIR (SC) 5157**.

7. It was further contended by learned counsel for the Appellant that in view of the law laid down by the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. v. Satinder Kaur, reported as 2020 SCC Online SC 410***, compensation under the head of '*Loss of love and affection*' needs to be deducted.

SUBMISSION ON BEHALF OF RESPONDENT NOS.1-4

8. Mr. S. N. Parashar, learned counsel appearing on behalf of respondent Nos. 1-4/claimants, placed reliance on the judgment of the Hon'ble Supreme Court in ***Pranay Sethi (supra)*** case and contended that compensation under the head '*Loss of Consortium*' '*Loss of Estate*' and '*Loss of Funeral Expenses*' needed to be modified/enhanced. Learned counsel fairly conceded that in terms of the judgment in ***Pranay Sethi (Supra)***, compensation under the head '*Love and Affection*' had to be deducted.
9. The learned counsel further placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Mukund Dewangan v. Oriental Insurance Company*** reported as **(2017) 14 SCC 663** and contended that the liability to pay compensation was on the insurer of the vehicle irrespective of the fact whether or not the driver of the offending vehicle was

in the possession of a valid driving license at the time of the alleged accident.

REBUTTAL ARGUMENTS

10.Mr. Pankaj Seth, learned counsel for the appellant, in rebuttal contended that the respondent Nos. 1-4/claimants were not entitled for any enhancement in compensation as the respondent Nos. 1-4/claimants had neither challenged the impugned order by way of an appeal nor preferred any cross-objection to the present appeal.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

11.This Court has heard the arguments advanced by the learned counsels for the parties and also examined the documents placed on record and the judgments relied upon by the parties.

12.At the outset, as far as the argument of learned counsel for the appellant with regard to non-entitlement of the respondents/claimants for the enhancement of compensation is concerned, it is pertinent to note the observations of the Hon'ble Supreme Court in the case of *Surekha and others Vs Santosh and others* reported as **2020 ACJ 2156:-**

“2. *This appeal takes exception to the judgment and order dated 4.1.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016 [Shriram General Ins. Co. Ltd. v. Surekha, 2020 ACJ 434 (Bombay)], whereby the High Court, even though agreed with the stand of the appellants that just compensation amount*

ought to be Rs. 49,85,376, however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. **By now, it is well settled that in the matter of insurance claim compensation in reference to the motor accidents, the court should not take hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants.**

4. *As a result, we modify the order passed by the High Court to the effect that compensation amount payable to the appellants is determined at Rs. 49,85,376, with interest thereon as awarded by the High Court”*
(emphasis supplied)

13. It is pertinent to note that the Hon’ble Supreme Court granted enhancement of compensation to the claimants in the abovementioned judgment.

14. Applying the aforesaid observations of the Hon’ble Supreme Court, this Court is of the opinion that the respondents/claimants can be granted enhanced compensation without there being an appeal or a cross-objection in an appeal filed by the Insurance Company.

15. Moving further, it can be discerned that the primary issue raised by the Appellant which needs adjudication in this case is with regard to the liability of the Appellant to compensate the claimants/respondents No. 1-4.

16. The relevant portion of the impugned award passed by the learned Claims Tribunal is being reproduced as hereunder:

“20. I have gone through the material on record. In the present matter, there are two driving licences on record. One driving licence No. P07072006380284, Ex. R3W1/G for motorcycle and LMV (NT) valid for the period from 26.07.2006 to 25.07.2026 produced by the police along with the status report and another licence bearing No. 21222/AG/03, dated 31.12.2003, issued on 31.12.2003 by licencing authority, Agra, mark X, produced by the respondent No. 2/owner of the vehicle. The insurance company has got a report Ex. R-3W-2/1 and Ex. R-3W-2/2 to the effect that licence No. 21222/AG/03 was fake. The witness from the Agra licencing authority testified that above said license was not issued from their authority. It is clear from the material on record that license mark X, was fake. The other license No. P07072006380284, issued by Delhi Licensing Authority, has not been challenged by the insurance company and was valid driving licence but was valid only for motorcycle and LMV(NT). The respondent No.1 was driving the Maxi Cab which was the commercial vehicle and the commercial licence is required for the driving the said light goods vehicle. Under the facts and circumstance, it is clear that respondent No. 1 was not having valid driving licence at the time of accident.

21. The respondent No. 2 stated in the evidence that he had provided driving licence as well as registration certificate to the I.O. The I.O. has produced the driving licence No. P07072006380284, issued by Delhi Licencing Authority. Therefore it is clear that respondent no. 2 has provided the driving licence No. P07072006380284, Ex. R-3W-1/G to the I.O.

22. However, the respondent No. 2 has produced another licence in the court, mark X, allegedly issued by Agra Licencing Authority. It is not the case of respondent No. 2 that I.O. has produced another licence than the licence provided by him to the I.O.

Therefore, it is clear that driving licence No. P07072006380284, Ex. R-3W1/G was in the knowledge of the respondent No. 2. The said licence is not valid for commercial vehicle. The testimony of respondent No. 2 that he had seen the licence, mark X, is not reliable. The respondent No. 2 has filed written statement on 28.02.2007 but did not produce the said licence nor there is any averment in the written statement that he had seen the said licence nor it is averred that any driving test was taken by the respondent No.2 at the time of appointment of the driver. It also needs to be stated that driving licence, mark X, was produced by the respondent no. 2 only on 16.12.2010 while written statement was filed by the respondent No. 2 on 28.02.2007. The respondent No. 2 stated during cross-examination that he was not aware of the Delhi address of respondent No. 1 and further stated that respondent No. 1 was the resident of Kamla Nagar, Agra, UP. The respondent No. 2 failed to state the correct address of respondent No. 1. It cannot be believed that respondent No. 2 employed the respondent No. 1 without any acquaintance or relation and without ascertaining the address of respondent No. 1. Even otherwise respondent No. 2 failed to examine respondent No. 1 to establish that respondent No. 1 has ever possessed the said driving licence, mark X, or has provided, the copy of the same to the respondent No. 2. The respondent No. 2 has also failed to prove the driving licence No. 21222/AG/03, dated 31.12.2003, mark X, by producing the original or making any efforts for production of the original of said driving licence. The respondent No. 2 has failed to discharge the onus cast on it. The respondent No. 2 has not averred in written statement that he had seen the licence of respondent No. 1 or had taken driving test before employing the respondent No. 1. The judgment cited by respondent No. 2 is of help to the case of respondent No. 2. It is admitted fact that the offending vehicle Mahindra Pickup was a light goods vehicle

while driver was having licence for LMV(NT). Admittedly there is a violation of terms and conditions of policy. The respondent No. 1&2 i.e. driver and owner of the vehicle are jointly and severally liable to pay compensation.

23. Since the respondent No. 3 has admitted the policy, the respondent No. 3 shall initially satisfy the award. The respondent No. 3 shall be entitled to recover the awarded amount from respondent No. 1 &2.”

17. On the issue of breach of policy conditions, it is pertinent to note the decision of the Hon’ble Supreme Court in ***National Insurance Company Limited v. Swaran Singh*** reported as (2004) 3 SCC 297. The Court has held:

“110. (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the

insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them."

(emphasis supplied)

18. It becomes pertinent at this juncture to refer to the relevant portion of the insurance policy which lays down the terms and conditions of the policy annexed as **(Ex. R3W1/F)**:

*"Persons or classes of Persons entitled to drive:
Any person including Insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.*

Provided also that the person holding an effective Learner's Licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of Central Motor Vehicle Rules, 1989."

19. It transpires from a perusal of the record that the driver of the vehicle did not possess a valid and effective driving license at the time of accident. This inference draws its strength from the examination of Sh. Pramod Kumar Verma, Sr. Assistant, RTO office, Agra, UP as **R-3W-2** who has stated that as per the record of the authority, the driving license no.

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21222/AG/03 in the name of Rakesh was not issued by the authority and hence the same was fake. The inference is further supported by the statement of surveyor in the Driving License Verification Report annexed as **Ex. R3W1/E** wherein it has been stated that the Driving License possessed by the driver at the relevant time was issued for driving the private vehicle only although he was driving commercial vehicle at the time of accident. Thus, he was not authorized to drive the insured commercial vehicle DL- ILE-2545.

20. In such cases, as has been observed in *Swaran Singh (supra)*, the onus is on the insurer to prove the breach on part of the insured of terms and conditions of the Insurance Policy. It emanates from a perusal of the records that the Appellant insurance company has been successful in discharging this onus.
21. The judgment of this Hon'ble Court in the matter of *New India Assurance Co. Ltd. v. Sanjay Kumar & Ors.* reported as *ILR (2007) II Delhi 733*, also merits consideration. In the said judgment, this Court has held that although the onus is on the insurer to prove that there was breach of terms and conditions of the policy, but once the record for the Licensing Authority is summoned to prove that the driver did not possess a valid driving license, the onus would shift on the insured (**the owner of the vehicle**) who must then step into the witness box and prove the circumstances under which he

acted and handed over the vehicle to the driver. Relevant part of the judgment is reproduced hereunder:

“22. Thus, where the insurance company alleges that the term of the policy of not entrusting the vehicle to a person other than one possessing a valid driving licence has been violated, initial onus is on the insurance company to prove that the licence concerned was a fake licence or was not a valid driving licence. This onus is capable of being easily discharged by summoning the record of the Licencing Authority and in relation thereto proving whether at all the licence was issued by the authority concerned with reference to the licence produced by the driver. Once this is established, the onus shifts on to the assured i.e. the owner of the vehicle who must then step into the witness box and prove the circumstances under which he acted; circumstances being of proof that he acted bona fide and exercised due diligence and care. It would be enough for the owner to establish that he saw the driving licence of the driver when vehicle was entrusted to him and that the same appeared to be a genuine licence. It would be enough for the owner, to discharge the onus which has shifted on to his shoulders, to establish that he tested the driving skill of the driver and satisfied himself that the driver was fit to drive the vehicle. Law does not require the owner to personally go and verify the genuineness of the licence produced by the driver. ”

(emphasis supplied)

22. It is pertinent to note that the negligence and failure to observe reasonable care on part of the insured is established from the fact that the insured entrusted his vehicle to be driven by respondent No. 5 without satisfying himself as to his credentials or his competence to drive the vehicle in

question. No evidence has been led by the owner (respondent No. 6) to prove that he took any driving test of respondent No. 5 before employing him. This evidence goes on to establish the breach of terms and conditions of the insurance policy by the insured and disentitles him from avoiding his liability towards the claimants.

23. This Court notes that similar findings were arrived at by the learned Claims Tribunal which in turn directed the Appellants to pay the compensation to the claimants as the factum of the policy was admitted by them. The Appellants were held entitled to recover the compensation amount from respondent Nos. 5 and 6. In the present appeal, the Appellants have prayed for their absolute exoneration from the liability to compensate the claimants.

24. At this juncture, it will be apposite to take into consideration the underlying policy of the Motor Vehicles Act, 1988. The Act is a social welfare legislation as has been emphasised time and again by the Hon'ble Supreme Court.

25. In the case of ***Sohan Lal Passi v. P. Shesh Reddy*** reported as ***(1996) 5 SCC 21***, the Hon'ble Supreme Court has observed as hereunder:

“10. The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great

importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident."

26. It is pertinent to note that in ***Skandia Insurance Co. Ltd. v. Kokilaben Chandravandan*** reported as (1987) 2 SCC 654, the need for beneficial construction of the provisions of the Motor Vehicles Act, 1988 was emphasized by the Hon'ble Supreme Court in the following terms:

"13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to

*protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. **The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation.** ..In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. **Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The***

provision has therefore to be interpreted in the twilight of the aforesaid perspective.”

“14. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to, the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.”
(emphasis supplied)

27.To give full effect to the beneficent nature of the Act, the Court must ensure that the compensation amount is disbursed to the claimants at the earliest. The practice in this regard has been to make the insurance company liable to satisfy the claim of the aggrieved third party and thereafter recover the same from the insured. This practice obviates the misery caused to the claimants in having to approach different forums

to avail of their entitlement to just compensation under the Act.

28. This practice holds good even in cases where there has been a breach of terms and conditions of the insurance policy by the insured, wherein the insurance company first satisfies the claimants and thereafter gains recovery right against the insured. This becomes evident from the observation of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Swaran Singh (supra)***. The relevant paragraph is being reproduced hereunder:

*“110. (ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. **The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other.** In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.*

*(x) **Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-***

section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.”

(emphasis supplied)

29. Upon considering the position of law as emanating from a perusal of the above judgments, this Court finds itself in agreement with the view taken by the learned Claims Tribunal in the impugned award wherein the insurance company was made liable to compensate the claimants and was given recovery right jointly and severally against respondent Nos. 5 & 6.
30. The other arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of **Pranay Sethi (supra)** and **Sarla Verma v. DTC & Ors.** reported as **(2009) 6 SCC 121**.
31. In **Pranay Sethi (Supra)**, the Hon'ble Supreme Court has fixed the compensation amount for the conventional heads, namely, 'Loss of Estate', 'Loss of Consortium' and 'Funeral

Expenses', at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/ respectively. The same is to be increased by 10% after a period of 3 years. As admitted by the learned counsel for the parties, the multiplier should be adopted in terms of the dicta laid down in *Sarla Verma (supra)* which was upheld in the judgment of *Pranay Sethi (supra)* whereby it was held that for the purposes of selection of multiplier, the age of the deceased had to be taken into account. Since there was discrepancy regarding the age of the deceased in the present case, the learned Tribunal proceeded on the basis that the deceased fell within the age group of 46-50. Hence, the learned Claims Tribunal rightly applied the multiplier as 13.

32. The Hon'ble Apex Court in *Pranay Sethi (Supra)* has made the following observations with regard to grant of compensation under the head '*Future Prospects*':-

"....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any

amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.”
(emphasis supplied)

33. Applying the aforementioned dicta of the Hon’ble Supreme Court in ***Pranay Sethi (supra)***, an addition of 25% of the established income of the deceased should be granted under the head ‘*Future Prospects*’ if the deceased falls within the age group of 40-50. Hence, in the present case, the future prospects should be granted at the rate of 25%.

34. With regard to the deductions to be made towards ‘*Personal and Living Expenses*’, the Hon’ble Supreme Court in ***Pranay Sethi (supra)*** has upheld the deductions as ascertained in the case of ***Sarla Verma (supra)***. According to the abovementioned cases, the deductions are to be calculated as under:-

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated

on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle.

In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted

to one-third and contribution to the family will be taken as two-third.”

35. It is borne out from the records that the deceased was survived by 4 dependents. Accordingly, in terms of the aforesaid judgments, deduction towards personal and living expenses of the deceased should be one fourth ($1/4^{\text{th}}$).

36. In view of the above discussion, the impugned Award dated 22.12.2012 (as modified vide Award dated 16.01.2013) is modified to the following extent:

1.	Actual income (per month) (Minimum wages)	Rs.3312 (per month)
2.	Income after adding 25% future prospects (per month)	Rs.3312 +(25% of Rs.3312)= Rs.4140 (per month)
3.	Loss of dependency(A)	(Rs.4140X12)- (Rs.4140X12/4)X13=Rs.4,84, 380/-
4.	Funeral expenses(B)	Rs. 16,500/-
5.	Loss of estate(C)	Rs, 16,500/-
6.	Loss of consortium(D)	Rs. 44,000X4/- =Rs.1.76,000/-
	Total compensation awarded(A+B+C+D)	Rs. 6,93,380/-

37. Accordingly, the compensation granted by the learned Tribunal is enhanced from **Rs. 5,53,685/-** to **Rs. 6,93,380/-**.

- 38.The Appellant is directed to deposit the entire differential amount with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire amount, the said enhanced amount along with the balance amount lying deposited with this Court with the accrued interest thereon may be released to the respondent nos. 1-4/claimants as per the proportion as directed by the learned Claims Tribunal within a period of two weeks thereafter.
- 39.There would no change in the rate of interest awarded by the learned Claims Tribunal.
- 40.Appeal stands disposed of. No order as to costs.

GAURANG KANTH, J.

OCTOBER 11, 2022