

\$~

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

%

Reserved on: 04.11.2022

Pronounced on: 24.11.2022

+ MAC.APP. 555/2013

NEW INDIA ASSURANCE CO. LTD Appellant

Through: Mr. J. P. N. Shahi, Advocate

versus

FARZANA RAHAT & ORS Respondents

Through: Mr. S. N. Parashar, Advocate

+ MAC.APP. 834/2013

FARZANA RAHAT & ANR Appellants

Through: Mr. S. N. Parashar, Advocate

versus

AAS MOHAMMAD & ORS Respondents

Through: Mr. J. P. N. Shahi, Advocate

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The subject-matter of challenge in the present case is the award dated 16.04.2013 (“**impugned award**”) passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Saket Courts, New Delhi, in suit no. 61/2012 titled as *Smt. Farzana Rahat v. Mr. Aas Mohammad*. Vide the impugned award, the learned Claims Tribunal awarded a sum of Rs.25,31,583/- (Rupees Twenty Five Lacs Thirty One Thousand Five Hundred

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 1 of 37

and Eighty Three only) along with interest @ 7.5% per annum including interim award if any, from the date of filing the petition i.e. 19.11.2012 till the notice under Order XXI Rule 1 CPC was given by the respondents. Respondent no. 3 i.e. the insurance company, was directed to deposit the award amount within a period of thirty days. The Insurance Company was also directed to pay further interest @ 12% per annum in case of non-payment of the said amount within thirty days.

2. Against the impugned award, **MAC.APP. 555/2013** has been preferred by the Appellant/ New India Assurance Company Ltd. for setting aside the impugned Award dated 16.04.2013 whereas **MAC.APP. 834/2013** has been preferred by the Claimants for enhancement of compensation amount in terms of the impugned Award dated 16.04.2013.
3. Both these appeals arise out of the impugned Award dated 16.04.2013 passed by the learned Claims Tribunal and have their genesis in the same incident. Hence, both these appeals are being heard together and disposed of by this common judgment.
4. Learned Claims Tribunal vide the impugned Award dated 16.04.2013 granted the following relief:

a. Salary	Rs. 26, 117/-
b. Conveyance allowance	Rs. 1000/-
c. Monthly income for purpose of calculating compensation amount	Rs. 25,117/-

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 2 of 37

d. Future Prospects (50% enhancement)	Rs. 25, 117/- + Rs. 12, 558.50 = Rs. 37,675.50
e. Deduction towards personal expenses	1/2 of Rs. 37, 675.50 = Rs. 18,837.75
f. Multiplier applicable	11
Head	Compensation awarded
Loss of dependency	Rs.24,86,583/- (Rs.18,837.75 x 12 x 11)
Loss of love and affection	Rs. 25,000/-
Funeral expenses	Rs. 10,000/-
Loss of estate	Rs, 10,000/-
Total compensation awarded	Rs. 25,31,583/-

FACTUAL MATRIX

5. On the unfortunate day of the accident, i.e. 27.04.2008, the deceased was hit by tractor no. RJ-05-RA-2064 attached with trolley being driven by the driver (Respondent No. 1 before the learned Claims Tribunal). The aforesaid accident happened at Gali No. 7 in front of Govindpuri, Ravidas Marg, PS Kalkaji, New Delhi. The injured was taken to the hospital where he was

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 3 of 37

declared brought dead. An FIR was registered against the driver of the offending vehicle.

6. A claim petition was filed by the parents of the deceased. The driver, owner and insurer of the alleged offending vehicle were made Respondent Nos. 1, 2 and 3 respectively. Respondent Nos. 1 and 2 filed a joint written statement denying the claim of the petitioners and contending that they had been falsely implicated in the case. A written statement was also filed by respondent No. 3/Insurance Company denying the claim of the petitioners but admitting the fact that the offending vehicle bearing registration No. RJ-05-RA-2064 was insured with it vide policy valid from 16.06.2007 to 15.06.2008.

7. Upon going through the pleadings of the parties, the learned Claims Tribunal framed the following issues:

- “1. Whether the deceased suffered fatal injuries in a road vehicular accident that took place on 27.04.2008 due to rash and negligent driving of vehicle bearing registration no. RJ-05-RA-2064 by respondent no. 1?*
- 2. Whether the petitioners are entitled for compensation? If so to what amount and from whom?*
- 3. Relief”*

8. In support of their claim, the claimants got examined three witnesses: (i) Mr. Rahat Habib Khan, father of the deceased (PW-1); (ii) Mr. Imran Ali, eye-witness to the accident (PW-2) and (iii) Shri Harsh M. Sharma, Sr. Manager, Human Resources, M/s Ranbaxy Laboratories Ltd. (PW-3). On the other hand, the driver of the offending vehicle, Aas Mohammad, got himself examined as DW-1. The Insurance Company got examined two

witnesses: (i) Shri Charandeep Singh, Admn. Officer, M/s New India Assurance Company Ltd. was examined as R3W-1 and (ii) SI Balbir Singh was examined as R3W-2.

9. Upon perusing the records and going through the testimonies of the witnesses, the learned Claims Tribunal decided all the issues in favour of the Claimants and against the Insurance Company. The Insurance Company was held liable to pay compensation to the tune of Rs.25,31,583/- to the claimants.

SUBMISSIONS ON BEHALF OF THE INSURANCE COMPANY

10. Mr. J.P.N. Shahi, learned counsel on behalf of the Insurance Company, contended that the award passed by the learned Claims Tribunal was perverse and was based on an erroneous interpretation of facts and law.
11. It was further contended by the learned counsel that the Insurance Company must be granted recovery rights against the driver and the owner of the offending vehicle as the same was being plied in breach of the conditions of the insurance policy. To further his contention, learned counsel submitted that the tractor was insured with the Insurance Company. But at the time of the accident, the insured tractor was attached to an uninsured trolley carrying *malba* and the same was being plied by the driver and owner as a commercial vehicle without the necessary permit, fitness certificate and driving license.
12. Learned counsel further submitted that the learned Claims Tribunal had misconstrued the monthly income of the deceased

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 5 of 37

by including *conveyance allowance* and *utility allowance* as a part of salary of the deceased even though the benefit of these allowances was reaped exclusively by the deceased and not his dependents.

13. It was further contended by learned counsel that the future prospects must be reduced to 40% from 50% of the assessed income of the deceased in terms of dicta of Hon'ble Supreme Court in *National Insurance Co. Ltd v. Pranay Sethi & Ors* reported as (2017) 16 SCC 680. Learned counsel furthered his contention by submitting that the learned Claims Tribunal had failed to appreciate that the deceased was not a permanent employee as he had worked in the company for only eight months and no appointment letter had been produced to prove that he was entitled to regular annual increments.
14. It was further contended by learned counsel for the Insurance Company 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 '*Loss of love and affection*' was to be deducted.

SUBMISSIONS ON BEHALF OF THE CLAIMANTS

15. Mr. S.N. Parashar, learned counsel appearing on behalf of the claimants, submitted that the impugned award was based on an erroneous appreciation of facts, law and evidence on record and the learned Tribunal had grossly failed to ascertain just and proper compensation.

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 6 of 37

16. Learned counsel sought enhancement of the compensation amount awarded by the learned Tribunal. He made a three-fold submission: (i) Wrong assessment of income of deceased; (ii) Change in multiplier; (iii) Enhancement of amount awarded under non-conventional heads
17. It was contended by the learned counsel that learned Claims Tribunal had wrongly assessed the monthly income of the deceased by ignoring the fact that the deceased was working in a Multi-National Company where package salary was offered to the employees which included other benefits having pecuniary value besides the income under conventional salary heads. Learned counsel furthered his contention by submitting that these variable pay and other monetary benefits payable to the deceased were an essential part of his annual package and in turn resulted in *loss of dependency* to the claimants.
18. Placing reliance on the judgment of this Hon'ble Court in ***Oriental Insurance Company v. Kamlesh & Ors., MAC 623/12 decided on 15.02.2016***, learned counsel submitted that the deceased was getting fixed conveyance allowance of Rs.1000/- which was part of total salary of the deceased and not a variable conveyance allowance. In view of the above submission, learned counsel submitted that the same had been erroneously deducted by the learned Claims Tribunal while arriving at the monthly income of the deceased.
19. Learned counsel further submitted that the twin deductions done by the learned Claims Tribunal in the name of personal expenses

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 7 of 37

of the deceased, i.e. firstly under the head *conveyance charges* deducted from the salary and secondly under the head ‘personal expenses @ 50% of the income’ as the deceased was unmarried, were unwarranted and the same resulted in miscarriage of justice as it crossed the maximum limit of deductions, i.e. 50% of the income of the deceased.

20. It was further contended on behalf of the claimants that the learned Claims Tribunal had erroneously applied the multiplier as 11 taking into consideration the average age of the claimants, i.e. dependents of the deceased. Placing reliance on ***Sarla Verma v. DTC*** reported as **(2009) 6 SCC 121**, learned counsel argued that the multiplier to be applied was 17 as the age of the deceased at the time of the accident was 28 years.

21. Placing reliance on the judgment of the Hon’ble Supreme Court in ***Pranay Sethi (supra)***, learned counsel further contended that compensation under the heads ‘*Loss of Consortium*’, ‘*Loss of Estate*’ and ‘*Loss of Funeral Expenses*’ needed to be modified/enhanced. Learned counsel further submitted that the claimants were entitled to get compensation under the head *loss of filial consortium* in terms of the judgment in ***Satinder Kaur (Supra)***.

LEGAL ANALYSIS BASED ON FACTS OF THE CASE

22. This Court has heard the arguments advanced by the learned counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 8 of 37

23. The controversy between the parties can be narrowed down to the following points:

- i. Negligence of the driver
- ii. Recovery rights to the Insurance Company
- iii. Assessment of income of the deceased
- iv. Future prospects to be awarded
- v. Deductions to be allowed
- vi. Multiplier to be applied
- vii. Compensation under non-conventional heads

24. This Court shall now proceed to discuss these points in detail.

i. **Negligence of the driver**

25. The first ground of challenge raised by the Insurance Company pertains to the issue of negligence wherein the Insurance Company has contended that the learned Claims Tribunal has failed to appreciate the evidence on the issue of negligence. The Insurance Company has mounted this challenge based on the following grounds:

- (i) The site plan established that the accident took place due to negligence of the deceased.
- (ii) The learned Claims Tribunal failed to appreciate the law that the negligence was to be established by the claimant as a full-fledged Trial.
- (iii) The learned Claims Tribunal failed to appreciate that the name of eye-witness (PW-2) Mr. Imran Ali Khan does not appear in the list of witnesses filed with the Challan under

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 9 of 37

Section 173 of the Code of Criminal Procedure, 1973 and his evidence was not recorded by the police.

- (iv) The learned Claims Tribunal failed to appreciate the statement of Mr. Aas Mohammad, the driver, that the accident had not taken due to his negligence and he had been falsely implicated.
- (v) The learned Claims Tribunal had failed to appreciate the law laid down in *Minu B. Mehta And Another v. Balkrishna Ramchandra* reported as *AIR 1977 SC 1248* and *Reshma Kumari & Ors v. Madan Mohan* reported as *(2013) 9 SCC 65* that the proof of negligence is a must in the claim petition and the same has not been furnished in the present case.

26. In this regard, it will be pertinent to quote the observations of the Hon'ble Supreme Court in *N. K. V. Bros (P) Ltd vs M. Karumai Ammal And Ors.* reported as *(1980) 3 SCC 457*, which reads as follows:

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 10 of 37

judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'.”
(emphasis supplied)

27. It will be pertinent to note that the Hon’ble Supreme Court has, in a catena of cases, made observations about the standard of proof of negligence in Motor Accident Claims cases. The observations of the Hon’ble Court in ***Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors.*** reported as **(2009) 13 SCC 530**. The same is being reproduced hereunder:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied...”
(emphasis supplied)

28. The same has been reiterated by the Hon’ble Supreme Court in ***Anita Sharma v. New India Assurance Co. Ltd.*** reported as **2020 SCC OnLine SC 1002** in the following terms:

“21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 11 of 37

analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true."

(emphasis supplied)

29. It flows from these observations that the contention of learned counsel for the Insurance Company necessitating a full-fledged trial to establish negligence on part of the driver does not hold water. In view of the Act being a piece of beneficial legislation, the standard of proof in motor accident claims cases is that of preponderance of probabilities instead of that of proof beyond reasonable doubt. This Court shall now proceed to ascertain whether or not the claimant's version of the case is probable.

30. At this juncture, it will be pertinent to note that the learned Claims Tribunal had decided this issue in favour of the claimants.

The relevant portion of the award is being reproduced below:

"6.Accordingly, I do not find the testimony of DW-1, Aas Mohammad worthy of any credence. On the other hand, the statements of PW-1, Rahat Habib Khan, father of the deceased, Azhar Yaqoob Khan and PW-2, Shri Imran AN, an eye witness to the accident stand corroborated with the certified copy of the Final Report U/s 173 Cr.P.C. filed by the police in respect of this accident (FIR No. 188/08, PS Kalkaji) against the R-1, Aas Mohammad for his trial for the offences U/s 279/304-A IPG. The certified copies of FIR, Site Plan, Seizure Memo of the offending vehicle, Arrest Memo of R-1/driver and Superdaginama of the offending vehicle have also been filed on record. To determine the negligence of the driver of the offending vehicle, I am being guided by the judgment of Hon'ble High Court in case titled Basant Kaur & Ors. Vs. Chattar Pal Singh & Ors., 2003 ACJ 369 M.P. (DB) wherein it has been held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 12 of 37

the accident. Further it has been held in catena of cases that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. I am also being guided by the Judgment of Hon'ble High Court of Delhi in case titled "National Insurance Company Limited Vs. Pushpa Rana" (ACJ 287) wherein it was held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under Section 279/304A IPC or the certified copy of the FIR or in addition the recovery memo or the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one.

7. In view of the above discussions and the documents filed on record, it stands proved on record that the deceased, Azhar Yaqoob Khan had suffered fatal injuries due to rash and negligent driving of respondent No. 1 on 27.04.2008. Accordingly, the issue No. 1 is decided in favour of the petitioners and against the respondents."

(emphasis supplied)

31. This Court has gone through the evidence produced by the claimants in their support. There is no reason to disbelieve the testimony of PW-2 and Shri Imran Ali (eye witness/ PW2), who also withstood the test of cross-examination. Learned Claims Tribunal has also evaluated their testimonies with great care and has ascertained the veracity of the testimonies by corroborating the same with other evidence available on record.

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 13 of 37

32. Upon a perusal of the records, it transpires that the cross-examination of PW2 does not reveal anything to shake his testimony so far as the manner of accident is concerned. It is pertinent to note that the said accident took place in broad daylight at 09:30 AM on an April morning on a road which was common thoroughfare. It is therefore not inconceivable to have more than one eye-witnesses to the same. In view of this fact, the non-appearance of the name of PW-2 in the list of witnesses filed with the Challan under Section 173 of the Code of Criminal Procedure, 1973 does not prejudice the case of the claimants. The Respondents before the learned Claims Tribunal failed to impeach the credit of PW2 or present any evidence as to his being an interested witness. Insofar as the submission with respect to contributory negligence is concerned, there is nothing on record and nothing is elicited in the cross-examination of PW2 to establish the contributory negligence, if any, on the part of the deceased or to disprove the manner of accident as pleaded by the Respondents before the Tribunal. No mechanical defect in the offending vehicle at the time of accident is revealed upon scrutinizing the record. Furthermore, from a perusal of oral testimony of PW2 coupled with the evidence of the eye-witness Gopal before the Police, it is clearly manifest that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. There is thus ample proof of negligence on part of the driver of the offending vehicle. This debunks the

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 14 of 37

contention of the learned counsel for the Insurance Company as to the absence of proof of negligence.

33. Accordingly, this Court is in conformity with the decision of the learned Claims Tribunal with regard to the finding that the alleged incident, whereby the deceased lost his life, took place because of the offending vehicle bearing registration no. RJ-05-RA-2064 being driven in a rash and negligent manner.

ii. Liability of the Insurance Company

34. Learned counsel for the Insurance Company has prayed for recovery rights against the driver and the owner of the offending vehicle as the same was being plied in breach of the conditions of the insurance policy. It is the contention of the learned counsel appearing on behalf of the Insurance Company that the tractor carrying *malba* in the trolley, which had been insured with the Insurance Company, was attached to an uninsured trolley and the same was being plied by the driver and owner as a commercial vehicle without the necessary permit, fitness certificate and driving license.

35. Before proceeding with this issue, it will be pertinent to note the findings of the learned Claims Tribunal on the same. The relevant portion of the award is being reproduced below:

“The learned counsel for the R-3/Insurance company has contended that the Insurance Company is not liable to pay any compensation as the offending vehicle i.e. Tractor bearing No. RJ-05-RA-2064 was being plied with a trolley and thus the said offending tractor was being used for commercial purposes but the respondent No. 1/driver of the offending vehicle did not have a valid and effective

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 15 of 37

driving licence to drive a commercial vehicle at the time of accident. In this regard, the learned counsel for the R-3/Insurance Company has placed reliance on statements of its two witnesses i.e. R3W1, Sh Charandeep Singh, Admn Officer, M/s New India Assurance Company Limited, Legal Department, DRP-II, 12/1, Jeevan Raksha Building, Asaf AN Road, New Delhi and R3W2, 81 Balbir Singh, No. D-1208, Rashtriyapati Bhawan, New Delhi. R3W1, Sh Charandeep Singh has averred that the driver, Aas Mohammad was driving the vehicle bearing No. RJ-05- RA-2064 (Tractor) which was full of raw material at the time of accident and that he was holding a licence No. RJ-05/DLC/07/6344 which was issued for LMV non-transport whereas he was driving commercial vehicle at the time of accident and hence the insurance company is not liable to pay any compensation. Per contra, the learned counsel for the respondents No. 1 and 2 has argued that the trolley attached to the offending vehicle was not being used for any commercial purposes. **R3W1, Sh, Charandeep Singh has himself admitted during his cross-examination on 18.03.2013 that respondent No. 1 was having a valid and effective driving licence to drive the tractor and that it is not mentioned in the insurance policy, Ex. R3W1/1 that the driver must be having a commercial licence to drive the tractor when the trolley is attached. While answering a specific query put up by the Ld counsel for the petitioner on 18.03.2013 regarding any document about the use to which the tractor No. RJ-05-RA-0264 was being put to at the time of accident, R3W1, Sh Charandeep Singh has answered that the said tractor was carrying malba/ waste material at the time of accident but he himself admitted during his cross-examination on 18.03.2013 that he has stated that trolley was full of raw material but he cannot say what that raw material was or how and where that material was being used by the insured/ owner and has volunteered to say that whatever he has stated in his affidavit is based on FIR and Chargesheet.** Now coming to the deposition of R3W2, SI Balbir Singh, No. D-1208, Rashtriyapati Bhawan, New Delhi, he has deposed that he had filed the Chargesheet /Final Report under Section 173 Cr.P.C. in respect of FIR No. 188/08, PS Kalkaji after concluding the investigations at Patiala House Court, New Delhi before the concerned area Magistrate. But this witness has admitted during his cross-examination on

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 16 of 37

02.04.2013 that he had not seized the offending vehicle after the accident and has volunteered to say that the same had been seized by some other police official who had investigated the case prior to him on 04.05.2008. He further averred that the matter was being investigated by ASI Abdul Qayum before him. R3W2, SI Balbir Singh has further admitted that he does not know if the said tractor was carrying manure or agricultural waste products at the time of accident and also volunteered to say that he had only seen it at the time of release on superdari when it was carrying malba. He has further admitted that no seizure memo of the goods being carried in the tractor was prepared by him or the previous IO ASI Abdul Qayum has not been summoned or examined by the R-3/insurance company. No witness has been got examined or summoned by the R-3/Insurance company to prove the exact contents of tractor trolley at the time of accident. There is nothing on record to establish that the insured/owner was plying the offending tractor on hire or commercial basis. Thus, the R-3/Insurance Company has failed to establish that at the time of the accident, the offending vehicle was being used for commercial purposes or that there was any deliberate or fundamental breach of the terms and conditions of the insurance policy by the insured/owner of the offending vehicle and its plea of exoneration from the liability to pay the compensation or recovery rights is hereby rejected. The respondent No. 3, being the insurer of the offending vehicle at the time of accident, is jointly and severally liable with other respondents who are the driver and owner of the offending vehicle at the time of accident. Accordingly, the respondent No. 3 i.e. M/s New India Assurance Company Ltd. is directed to deposit the award amount within a period of 30 days. In case of any delay, it shall be liable to pay interest at a rate of 12% per annum for the period of delay.”

(emphasis supplied)

36. It can be discerned from the above findings of the learned Tribunal that it has rejected the plea for exoneration or recovery rights to the Insurance Company on the ground of lack of evidence to prove commercial use or breach of policy. Upon a

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 17 of 37

perusal of the records, this Court finds itself in agreement with the learned Claims Tribunal.

37. *In arguendo*, it will be apposite to state that even if the offending vehicle was being plied as a commercial vehicle, no recovery rights could be granted to the Insurance Company. In this regard, it will be pertinent to note that the Hon'ble Supreme Court has expressed its opinion of this issue in a catena of decisions. One such decision is ***S. Iyyapan v. United India Insurance Co. Ltd. & Anr.*** reported as (2013) 7 SCC 62. The relevant portion of the judgment reads as:

“17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 18 of 37

is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.”

(emphasis supplied)

38. It is pertinent to note that in ***Kulwant Singh v. Oriental Insurance Co. Ltd.*** reported as (2015) 2 SCC 186, the Hon’ble Supreme Court has referred to the decision in ***S. Iyyapan (supra)*** and has laid down that once the driver is holding a licence to drive light motor vehicle, he can drive commercial vehicle of that category. It was held that in such a case, the Insurance Company could not disown its liability. Accordingly, the Hon’ble Court took the view that there was no breach of any condition of insurance policy entitling the Insurance Company to recovery rights.

39. The decision of the Hon’ble Supreme Court in ***Sant Lal v. Rajesh & Ors.*** reported as (2017) 8 SCC 590 will be of special significance here as the Hon’ble Court has answered a similar question. Relevant portion of the judgment is reproduced hereunder:

“2. This Court has considered the question whether the holder of licence for light motor vehicle can drive tractor attached to the trolley carrying goods and also whether separate endorsement is required authorizing him to drive such a transport vehicle?”

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 19 of 37

3. We have answered the question that driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the trolley was transport vehicle of the category of light motor vehicle. Hence, there was no breach of the conditions of the policy.

*4. Accordingly, in view of the answer given to reference by the three Judge Bench of this Court in Mukund Dewangan vs. Oriental Insurance Co. Ltd. etc. (Civil Appeal No.5826 of 2011), these appeals have to be allowed and are hereby allowed. **The right given to the insurer to recover amount from owner is hereby set aside. The liability is held to be joint and several of owner, driver and insurer...***

(emphasis supplied)

40. It is amply clear from the afore-stated observations that the Insurance Company cannot shirk away its responsibility to compensate the claimants on the ground of the offending vehicle being driven as a commercial vehicle without a license or an endorsement to do the same. Upon a perusal of evidence on record and the findings returned by the learned Claims Tribunal, this Court is of the considered opinion that the tractor along with the trolley attached to it was insured with the Insurance Company as is elicited from the cross-examination of both **R3W1** and **R3W2**. This Court sees no reason to disbelieve the same. Moreover, keeping in mind the decision in *Sant Lal (supra)*, it can be safely concluded that the vehicle being driven as a commercial vehicle without endorsement will not be a fundamental breach of the Insurance policy in order to grant

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 20 of 37

recovery rights to the Insurance Company. Therefore, this Court finds itself in agreement with the view taken by the learned Claims Tribunal and is of the opinion that no recovery right can be granted to the Insurance Company.

iii. Assessment of income of the deceased

41. Before the adjudication of any other issue, it is essential to address the submission of the learned counsel for the claimants pertaining to the assessment of income of the deceased. It was contended by the learned counsel that the learned Claims Tribunal had wrongly assessed the monthly income of the deceased by ignoring the fact that the deceased was working in a Multi-National Company where annual package was offered to the employees which included other benefits having pecuniary value besides the income under conventional salary heads. As submitted by the learned counsel, such benefits were an essential part of his annual package and in turn resulted in *loss of dependency* to the claimants.

42. The date of birth of the deceased as per his High School Statement of Marks (**Ex. PW1/1**) is 28.08.1980. The accident took place on 27.04.2008. The age of the deceased at the time of the accident was **28 years** and he was working as a Research Scientist in Ranbaxy Laboratories Ltd., since 03.09.2007 as per his Appointment letter (**Ex. PW3/B**). Further, PW3, Mr. Harsh M. Sharma, Senior Manager – Human Resources at Ranbaxy Laboratories Ltd. has brought the salary slips from the office of

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 21 of 37

the Employer of the deceased for the months of February 2008 and March 2008 as **Ex.PW3/E** and **EX.PW3/F** respectively. PW3/Mr. Sharma has also brought on record the Confirmation letter of the deceased dated 20.03.2008 confirming him in the services of the company with effect from 03.03.2008 (**Ex. PW3/C**) and the document dated 25.02.2008 in proof of revision in pay package w.e.f. 01.01.2008 (**Ex. PW3/D**). In his evidence dated 04.03.2013, PW3 deposed that the deceased was a regular and permanent employee of the company and was entitled to annual increments and other benefits as per the Company's policy. The relevant part of the evidence of PW3 is reproduced hereunder:

“The deceased, Dr. Azhar Yaqoob Khan had joined our company on 03.09.2007 as a Research Scientist. The deceased had a doctorate (Ph.D) in Pharmaceutical Medicines. It is correct that the deceased was an income tax assessee. I am not aware about the exact amount of income tax deducted at source of the salary of the deceased. Vol. The said details are with the Accounts Department. As per our records, in the month of March, 2008, the deceased getting a basic salary of Rs.10,117/-, HRA Rs.7,000/-, conveyance allowance of Rs.1,000/-, education allowance of Rs. 4,000/- and utility allowance of Rs.4,000/-. The education allowance and the utility allowance were fixed amount paid to the employees according to their grades and formed part of their monthly salary. It is correct that annual performance bonus were paid on the basis of the performance and satisfactory service of the employee. The salary was paid to the deceased by crediting the same in his salary account. It is incorrect to suggest that deceased was not permanent employee of our company.”

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 22 of 37

43. Upon careful consideration, this Court finds merit in the submission of learned counsel for the claimants that the deceased had been receiving his remuneration in the form of an annual package and the same cannot be accurately broken down into monthly salary. **Ex. PW3/D** placed on record demonstrates a number of benefits bestowed upon the deceased by his employer and the monetary equivalent of these benefits. Many of these benefits are calculated on a *per annum* basis and it will not be convenient to break them down into monthly allowances. In the view of these facts, the salary slips for the months of February 2008 and March 2008 will be inadequate to arrive at the annual package of the deceased. Therefore, for the sake of convenience, it will be sagacious to consider the revised annual package of the deceased as per **Ex. PW3/D** *less the income tax payable* for the purpose of arriving at the appropriate multiplicand.
44. From a reading of the testimony of PW3 and perusal of documents on record, it is evident that the employment and annual package of the deceased has been proved on record without any realm of suspicion. However, the learned Claims Tribunal has erroneously taken monthly salary instead of taking into consideration the annual package of the deceased. Moreover, the learned Claims Tribunal has also not deducted the Income Tax to be paid by the deceased in arriving at the figure of Rs.25,117/- as the monthly income of the deceased. In the considered opinion of this Court, the same needs to be reworked.

45. To decide upon the issue of net salary of the deceased, it will be pertinent to apply the principle laid down by the Apex Court in the matter of *Shyamwati Sharma v. Karam Singh* reported as (2010) 12 SCC 378 and *Manasvi Jain v. DTC Ltd.* reported as (2014) 13 SCC 22, wherein it was categorically held that except contribution towards income tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take-home salary. The relevant portion of *Shyamwati Sharma (supra)* is reproduced hereunder:

“9. In this case as the annual income has been worked out as Rs.2,48,292/-, appropriate deduction has to be made towards income-tax. The rate of income tax is a varying figure, with reference to taxable income after permissible deductions and the year of assessment. The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.”

46. With regards to the issue of deduction of income tax, it will be profitable to refer to the decision in *Vimal Kanwar v. Kishore Dan* reported as (2013) 7 SCC 476, wherein it was held that:

“22. The third issue is “whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act”.

23. In *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] this Court held: (SCC p. 133, para 20)

“20. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation.”

This Court further observed that: (SCC p. 134, para 24)

“24. ... Where the annual income is in taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’.”

Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head “salaries” one should keep in mind that under Section 192(1) of the Income Tax Act, 1961 any person responsible for paying any income chargeable under the head “salaries” shall at the time of payment, deduct income tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (“TDS”, for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from “salary”, the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.”

(emphasis supplied)

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 25 of 37

47. On the basis of the above observations of the Hon'ble Supreme Court, the yearly income of the deceased should be assessed after making deduction of the income tax for the relevant year. The deduction of income tax is to be according to the Income Tax Act and Rules.
48. Further, on the question of deduction towards conveyance allowance, it would be pertinent to quote the observations of this Court in the recent case of ***Ram Charan & Ors. v. The New India Assurance Co. Ltd., MAC.APP. 433/2013***, decided on **18.10.2022**. The relevant portion of the said judgment is being reproduced as hereunder:

“16. Allowances are special benefits accorded to employees, the benefits of which are reaped either by employees alone or by their families as well. Including all incentives, bonuses or allowances to the income would be of inconsistent logic as the legal heirs would reap the benefits of certain allowances regardless of whether they enjoyed the same status prior to the demise of the deceased or not. Thus, evaluating the nature of the allowance/incentive must be the clincher in determining if such allowance/incentive must be considered a part of the actual income of the deceased.

17. The court in the case of Meenakshi Mishra (Supra) nowhere implies a blanket inclusion of all allowances or benefits. In fact, the allowances that were included as a part of the salary in the case are ones that the family of the deceased were also enjoying when he was alive.

xxxx

19. Reckoning Jashuben (Supra), the holding in Meenakshi Mishra (Supra) can thus be distinguished from the facts of the present case. Since the benefits granted to the deceased were Travel and Washing Allowances which solely satisfied the purpose of

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 26 of 37

ameliorating the hassles faced by employees during their employment, the Appellants cannot gain from such allowances that the deceased had enjoyed during his employment. In fact, a perusal of the salary slip of the deceased, Smt. Kalawati Devi, shows that the salary of the deceased is inclusive of Dearness Allowance and House Rent Allowance, which has not been deducted by the learned Claims Tribunal. From this, it is evident that the learned Claims Tribunal has only deducted the allowances that were solely for the personal benefit of the deceased. This court thus concurs with the findings of the learned Claims Tribunal on the exclusion of Travel and Washing allowance from the income of the deceased.”

(emphasis supplied)

49. In view of the above observations, this Court is of the considered opinion that *conveyance allowance*, which was for the exclusive benefit of the deceased, was rightly excluded from the purview of the multiplicand by the learned Tribunal.

50. The annual income of the deceased is calculated as follows based on the revised pay slip (Exhibit PW3/D) of the deceased for the assessment year 2009-2010.

(i) Taxable income (after exemptions and deductions) =
Basic + Gratuity + Fixed Medical allowance+
Minimum guaranteed bonus+ Performance bonus +
Telephone allowance + Composite hard furnishing +
Education allowance (over and above Rs. 200) + LTA
(No bills for claiming exemption on record) + Utility
allowance+ HRA = Rs. (10,017X12) + 5,779+
15,000+1,44,000 +24, 469+ 7,200+ 3,000+
(3,800X12)+ 40,000 + (4,000X12) +84,000 =
Rs. 5,37,252/-

- Contribution towards PF and Superannuation fund included as deductions

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 27 of 37

- HRA is exempted u/Section 10 (13A) of Income Tax Act on producing the rent receipts. No rent receipts are on record
- LTA is exempted only if Bills are attached. No travel bills have been produced on record

(ii) Thus, income tax (as per FY 2008-09) = Rs. 55,000+ 30% of (Rs. 5,37,252- Rs. 5,00,000)

Rs. 55,000/- + Rs. 11,175.6/- = Rs. 66,175.6 + 3% educational cess= **Rs.68,160.868/-**

(iii) Annual income for the purpose of calculating compensation, i.e. the multiplicand = (Rs. 5,37,252- – Rs. 68,160.868) + exemptions and deductions

=Rs. 4,33,041.338/- + +Rs. 14, 424 (Contribution towards PF) + Rs. 18, 030 (Contribution towards superannuation fund)

=Rs. 5,01,545.132/-(rounded to Rs.5,01,545/-)

51. Upon detailed calculation keeping in mind the above-stated observations, the annual income of the deceased pertinent for the purpose of constituting the multiplicand comes out to be **Rs.5,01,545/-**. The assessment of income by the learned Claims Tribunal therefore stands revised to this extent.

iv. Future prospects to be awarded

52. This Court recently in **MAC Appeal 448/2015** titled as ***Surya Sharma Vs Anil Kumar Sharma & Ors, decided on 17.10.2022*** examined the issue of multiplier to be applied to an employee working in a private sector and held as follows:

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 28 of 37

“With respect to the consideration of the future prospects, admittedly the deceased was 29 years of age at the time of the alleged incident. As rightly pointed out by learned counsel for Respondent No.3, permanent employment refers to those wherein the employee cannot be terminated in ordinary course, i.e., employees of Central and State Government. Whereas in this case, the deceased was employed in a private company namely, M/s Fun Foods Private Limited, hence he was under a contractual obligation, thereby making him an employee under “fixed salary” which employment can be terminated by giving notice. Hence, the deceased can be treated as a person with “fixed salary” as provided in para 59.4 of Pranay Sethi (Supra) judgment. Therefore, the future prospects of 40% can be awarded to the deceased who was a salaried employee and was below the age of 40 at the time of his accident.

53. Hence applying the same ratio in the present matter, in view of the observations of Hon’ble Supreme Court in ***National Insurance Co. Ltd v. Pranay Sethi & Ors*** reported as (2017) 16 SCC 680 at **Para 59.4**, future prospects at the rate of 40% of the income are to be added to the income of a person where the deceased had a fixed salary and was below the age of 40 years.

54. Hence, the annual income of the deceased, inclusive of future prospects, is re-assessed at **Rs. 7,02,163/-** (i.e. **Rs. 5,01,545/-** + **40%** of **Rs. 5,01,545/-**).

v. Deductions

55. At this juncture, it will be pertinent to point out that the learned counsel for the claimants has challenged the deduction towards

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 29 of 37

personal expenses @ 50% as the deceased had his father and mother who were dependent on him and he contributed all his salary towards their maintenance. However, this Court notes that the deduction @ 50% in the case of a bachelor is no longer *res integra* in view of the observation in **para 31** of **Sarla Verma & Ors. v. DTC & Anr.** reported as **(2009) 6 SCC 121**. The same is being reproduced below:

“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 dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.”

56. In view of the above, this Court is in full agreement with the deduction @ **50%** made by the learned Claims Tribunal towards the personal expenses of the deceased. This issue needs no further interference.

57. It will also not be out of place here to note the contention of learned counsel on behalf of the claimants with respect to there being double deductions, i.e. first towards *conveyance charges* from the salary and the second under the head of *personal expenses* from the future prospects, and the same being in breach of the 50% ceiling of deductions. This Court is of the considered

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 30 of 37

opinion that this contention does not hold water in view of the established judicial practice. This Court, therefore, finds no reason to interfere with the same.

vi. Multiplier to be applied

58. With regard to the multiplier to be applied, it has been an established judicial practice since the decision in ***Sarla Verma (Supra)*** that the appropriate multiplier to be applied is arrived at keeping in view the age of the deceased. The same has been re-affirmed by the Hon'ble Supreme Court in ***Sunita Tokas v. New India Assurance Company*** reported as ***(2019) 20 SCC 688*** at ***Para 4***. The same is being reproduced as hereunder:

*“We have perused the judgments of the Courts below, and find that the Multiplier has been fixed on the basis of the age of the mother of the deceased boy. The issue with respect to whether the Multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the mother, is no longer res integra. **There are a catena of judgments rendered by this Court, wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased, and not on the basis of the age of the dependents.**”*

(emphasis supplied)

59. In view of the above decision, this Court is of the opinion that the learned Claims Tribunal erroneously calculated the average age of the dependents for the purpose of arriving at the multiplier of 11. As noted above, the age of the deceased at the time of his death was 28 years. The multiplier applicable in this case will be **17**.

vii. **Compensation under non-conventional heads**

60. Learned counsel for the parties have sought modification of award with respect to non-conventional heads in terms of **Pranay Sethi (supra)** and **Satinder Kaur (supra)**. These arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court.
61. The Hon'ble Apex Court in the case of **Pranay Sethi (supra)** has held as under:

“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, 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 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 on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 32 of 37

percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

(emphasis supplied)

62. A 3-judge Bench of the Hon’ble Supreme Court in the matter of ***United India Insurance Company Limited v. Satinder Kaur Alias Satwinder Kaur and Ors. (2021) 11 SCC 780***, held in paras 28-35 that the Hon’ble Supreme Court in ***Magma General Insurance Co. Ltd v. Nanu Ram*** reported as ***(2018) 18 SCC 130***, gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Further the Hon’ble Supreme Court also held that ‘loss of love and affection’ is contemplated in loss of consortium itself and there is no justification for awarding compensation towards loss of love and affection as a separate head. The relevant part of the judgment is reproduced hereunder:

“29. Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

30. In Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted “consortium” to be a compendious term, which encompasses spousal

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 33 of 37

consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

31. 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 and affection, and their role in the family unit.

32. Modern jurisdictions world over have recognised 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 permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

*33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of 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 the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in *Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]*.*

*34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in *Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]*, has recognised*

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 34 of 37

only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."

(emphasis supplied)

63. In view of the aforesaid observations of the Hon'ble Supreme Court, this Court deems it appropriate to award loss of consortium as parental consortium to be granted to the parents of the deceased who was unmarried. The same, after revision, amounts to **Rs. 44, 000/- X 2= Rs.88,000/-**.

64. It is pertinent to note that the 3-Judge Bench of the Hon'ble Supreme Court in the aforementioned judgment has held that loss of love and affection is comprehended in loss of consortium. Therefore, the learned Claims Tribunal was not justified in granting loss of love and affection to the Appellants. Accordingly, the judgment of the learned Claims Tribunal in respect of loss of love and affection and loss consortium is modified to this extent.

65. The learned Claims Tribunal granted Rs. 10, 000/- under each of the heads i.e. *funeral expenses* and *loss of estate* respectively to the claimants. In view of the judgment in ***Pranay Sethi (supra)***, this Court deems it appropriate to grant **Rs. 16,500/-** and

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 35 of 37

Rs.16,500/- under the heads *funeral expenses* and *loss of estate* respectively to the claimants. The judgment of the learned Claims Tribunal is modified on both these accounts.

66. In view of the detailed discussion hereinabove, the impugned Award dated 16.04.2013 is modified to the following extent:

S. No.	Head	Compensation Awarded
1.	Income after deduction of tax	Rs. 5,01,545/- p.a.
2.	Future prospects	40%
3.	Income after adding future prospects	Rs. 7,02,163/- p.a.
4.	Deduction towards personal expenditure	1/2 of Rs. 7,02,163/- = Rs.3,51,081.5/-
5.	Multiplicand	Rs. 7,02,163/- Rs.3,51,081.5/- = Rs.3,51,081.5/-
6.	Multiplier (As per <i>Sarla Verma</i>)	17
7.	Loss of dependency (A)	Rs. 59,68,385.5 (Rs.3,51,081.5/- X17)
8.	Funeral expenses (B)	Rs. 16,500/-
9.	Loss of estate ©	Rs. 16,500/-
10.	Loss of consortium (Filial consortium)(D)	Rs. 44,000 /-X 2 = Rs.88,000/-
Total Compensation awarded(A+B+C+D)		60,89,385.5 /- (Rs. 60,89,386/- in round figure)

67. Accordingly, the computation of compensation by the learned Claims Tribunal is enhanced from **Rs. 25,31,583/-** to **Rs.60,89,386/-** to be paid to the claimants.
68. The Insurance Company is directed to deposit the differential amount within a period of 4 weeks with the Registrar General of this Court. It is pertinent to note that vide order dated 02.07.2013 of this Court, 70% of the awarded amount was released in favour of the claimants by the Registrar General and the rest was directed to be kept in the form of FDR with UCO Bank, Delhi High Court Branch, New Delhi initially for a period of six months to be renewed periodically.
69. On deposit of the differential amount, Registry is directed to release the balance amount alongwith interest and the differential amount to the claimants in terms of the impugned Award dated 16.04.2013. The statutory deposit along with the interest accrued thereon shall be released to the Appellants in both the matters.
70. There would be no change in the rate of interest awarded by the learned Claims Tribunal.
71. The appeals stand disposed of in the above terms. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 24, 2022

MAC.APP. 555/2013

MAC.APP. 834/2013

Page 37 of 37