

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**+ MAC APP. 831/2015**

**Judgment reserved on :25.04.2022**

**Date of decision: 19.11.2022**

**JAMANTI DEVI & ORS** ..... Appellants  
Through: Mr.Manish Maini, Advocate  
Versus

**MAHESHWAR RAI & ORS** ..... Respondents  
Through: Mr.S.P.Jain, Advocate for R-3  
(Tata AIG General Insurance  
Co.Ltd.)

**CORAM:**  
**HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT**

**ANU MALHOTRA, J.**

1. The appellants No.1 to 7, namely, appellant No.1 Jamanti Devi (wife), appellant no.2 Seema Kumari (daughter), appellant No.3 Ruby Kumari (daughter), appellant No.4 Guddi Kumari (daughter), appellant No.5 Arjun Pandey (son), appellant No.6 Punit Kumar (son) and Rajmati Devi w/o late Sh. Shiv Nath Pandey (mother), the legal heirs of the deceased Kamal Dev Pandey, who expired on 15.8.2013 being hit on 14.8.2013 at about 8:35 p.m. by an Eicher Truck bearing registration No. DL-ILP-4714 and sustained fatal injuries, have sought modification of the judgment dated 5.5.2015 of the Court of the Judge, MACT (East), KKD Courts, Delhi in Suit No. 221/2013 and have sought enhancement of the award payable to them apart from seeking the just and reasonable compensation along

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with the interest @ 18% per annum from the date of filing of the claim petition till realization in their favour and against the respondents with the respondents arrayed to the appeal being respondent No.1 Maheshwar Rai, being the driver of the offending vehicle, respondent No.2 Rajesh Kumar Sahu being the owner of the said vehicle and the respondent No.3 TATA AIG General Insurance Co. Ltd. being the insurer.

2. Vide order dated 20.10.2015, the two applications bearing CM Nos. 24478-24479/2015 filed on behalf of the appellants seeking condonation of delay of 11 days in filing the appeal and 30 days' delay in re-filing the appeal were allowed and the delay in filing and re-filing of the appeal was condoned.

3. Vide CM No. 28843/2016 the appellants sought dispensation of the service upon the respondent Nos. 1 and 2, i.e., the driver and the owner of the offending vehicle in as much as there had been no violation and the breach of terms and conditions of the Insurance Policy by the respondent Nos. 1 and 2 and the respondent No.3 had been held liable to indemnify the respondent Nos. 1 and 2 which application vide order dated 29.8.2016 was allowed and the service upon the respondent Nos. 1 and 2 had been dispensed with and they were directed to be deleted from the array of parties.

4. Vide order dated 29.8.2016, the MAC Appeal 831/2015 appeal was admitted and written submissions were submitted

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apart from oral submissions made on behalf of either side i.e., the appellants and the respondent No.3.

5. Vide the impugned order of which modification is sought, the learned Judge, MACT, East, Karkardooma Courts held the appellants herein entitled for the total amount of compensation towards all the heads as under:

*“21.The petitioners are thus entitled for the total amount of compensation towards all the heads, which is as follows:-*

| S. No. | On Account of              | Amount (Rs.)    |
|--------|----------------------------|-----------------|
| 1      | Loss of dependency         | Rs.10,62,672.00 |
| 2      | Loss of Love and affection | Rs.1,00,000.00  |
| 3      | Funeral Expenses           | Rs. 25,000.00   |
| 4      | Loss of Estate             | Rs. 10,000.00   |
| 5      | Medical Bills              | Rs. 1,500.00    |
| Total  |                            | Rs.11,99,172.00 |

”

and awarded the amount of compensation of Rs.11,99,172/- in their favour and against the respondents and held vide paragraph 22 that in as much as the Insurance Company had not denied the policy as on the date of the accident as to who was liable to pay the compensation of amount with there being no violation of the policy conditions and there being nothing to support the permitted defence under Section 149(2) of the

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Motor Vehicles Act, 1988, no recovery rights were granted and that the Insurance company i.e., the respondent No.3 to that MAC No. 221/2013 as also the respondent No.3 arrayed to the present appeal was to make good the compensation in terms of the accepted policy which was directed to be paid in terms of the award to the effect:

“

**AWARD**

*23.The Resultantly, the petition stands allowed. The Insurance Company is hereby directed to pay the compensation of Rs.11,99,172/- within one ' month to the Petitioner with VCO Bank, Karkardooma Courts Complex, Delhi. Followmg the judgment of Smt. Bishekha Devi & Am. Vs. Mohd. Afsar & Ors. MAC. APP. 1087/2012 passed by Hon'ble Delhi High Court, the respondent no.3 shall also pay interest @ 9% p.a. on the total compensation amount from the date of petition till realization to the Petitioner.”*

6. The appellant No.1 is the widow of the deceased, the appellant Nos.2 to 6 are the children of the deceased and the appellant No.7 is the mother of the deceased.

7. The appellants submit that at the time of the accident the deceased was aged 48 years and had good health and was employed as a Store Assistant with M/s A.B.Creations and was earning Rs.15,500/- per month plus incentives and was the sole bread earner of the family and the appellants had suffered great shock and agony on account of the sudden and premature death of the deceased apart from sustaining financial losses.

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8. Vide the impugned award the learned Judge, MACT, held the monthly income of the deceased as being Rs.10,218/- i.e., the minimum wages applicable at the relevant time to a graduate and also held that the petitioners, i.e., the appellant herein were not entitled to any future prospects.

9. The appellants submit however that vide the award assailed by the appellants vide paragraph 16 it had been observed as under:-

*“16.PW2 Ms. Bharti Bhalla, Proprietor of the firm M/s. A.B. Creations stated that deceased had joined the firm only two months back and was paid his salary in cash. She stated that no PF was deducted from deceased's salary nor he was covered under ESI Scheme. From Record, it reveals that deceased was a Post Graduate and had joined the Firm M/s. A. B. Creations only two months back. In the absence of Salary Slips or any Income Tax or other record, the minimum wages of a Graduate only are to be taken into consideration. Therefore, the monthly income of deceased is taken as Rs. 10,218/- i.e. the minimum wages, which were applicable at the relevant time to a Graduate.”*

10. The appellants submit that the witness Ms.Bharti Bhalla, the employer of the deceased, had stated in cross-examination that she did not have any personal knowledge of the qualification and experience of the deceased and all these works were looked after by the Manager. The appellants further submit that Vinay Kumar, Accounts Assistant (Manager) of the firm had been summoned by the appellant and was present in

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the Court as a witness but was not allowed to be examined by the learned P.O., MACT vide order dated 16.7.2014. The appellants further submit that the learned P.O., MACT, summarily discarded the documents placed and proved on the record in EX.PW2/1 otherwise proved beyond reasonable doubt. Inter alia, the appellants submit that the deceased was a permanent employee with the firm as a Store Assistant and was getting Rs.15,500/- per month plus incentives and that he was covered under the ESI Scheme and PF was also deducted from his salary.

**11.** Inter alia, it has been submitted by the appellants that the learned P.O., MACT, did not consider or rely upon the service documents and did not discuss the same in the impugned award, i.e.,

- the Attendance Register of deceased at page 245 of the LCR.
- the Salary receipt of the deceased at page 285 of the LCR
- the Appointment letter of the deceased at page 219 of the LCR
- the ESI form of the deceased at page 231 of the LCR
- the PF deduction in the salary of deceased at page 221 of the LCR.

The appellants submit that all those aforementioned documents form the part of Exhibit PW-2/1, and that the Appointment Letter of the deceased clearly revealed that the deceased also was entitled to O.T. charges (Over-

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time), deduction of Provident Fund (P.F.) and he was covered under the E.S.I. Scheme.

- 12.** The appellants submit further that the deceased left behind following claimants:-

“

| S.No.          | Name                | Age | Relation       |
|----------------|---------------------|-----|----------------|
| Appellant No.1 | Jamanti devi        | 43  | widow          |
| Appellant No.2 | Ms.Seema Kumari     | 18  | Daughter       |
| Appellant No.3 | Ms.Rubi Kumari      | 26  | Daughter       |
| Appellant No.4 | Ms.Guddi Kumari     | 27  | Daughter       |
| Appellant No.5 | Arjun Pandey        | 20  | Son            |
| Appellant No.6 | Master Puneet Kumar | 17  | Minor Son      |
| Appellant No.7 | Rajmati Devi        | 65  | Widowed Mother |

- 13.** The appellants further submit that the children of the deceased were financially dependent on the earnings of the deceased, and that though some of the children were major, they were studying and totally dependent upon earnings of the

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deceased and after the death of the deceased, the children were left high & dry in life, striving for learning and earning and also facing challenges from every hook and corner.

**14.** Inter alia, the appellants submit that the Ld. MACT erred in not granting any compensation for the loss of consortium to the family members/ Appellants.

**15.** Vide the impugned award of which modification is sought the learned P.O., MACT, vide paragraph 18 thereof to the effect:-

*“18. As per record deceased was 48 years of age as on the date of accident. In view of judgements rendered in "Sarla Verma & Ors. Vs. DTC & Anr. (2009) ACJ 1298", "National Insurance Co. Ltd. V/s. Shyam Singh & Ors. (2011) 7 see 65" and Lalita Devi & Ors (Supra). In view of "Sarla Verma (Supra)", in the absence of any evidence having brought forth that all petitioners were dependent on the income of deceased, it is only petitioners no. 1 and 7 who are entitled for the compensation. Thus, 1/3rd of the income of deceased has to be deducted towards his living expenses. After such deduction, the contribution to the family (dependent) comes to Rs.6,812.00 (Rs.10,218.00 - Rs.3,406.00 i.e. 1/3). Thus, the compensation under the head **Loss of Dependency** would be Rs. 10,62,672/- (Rs.6,812.00 x12x 13).”,*

thus observing to the effect that it was only the petitioners No. 1 and 7 who are entitled for the compensation.

**16.** Vide paragraphs 20 and 21 of the impugned award of which modification is sought it was held as under:

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*“20. In view of the judgments in Rajesh & Ors. Vs. Rajbir Singh & Ors. (Supra) and another in Kalpana Raj & Ors. Vs. Tamilnadu STC, (2014) ACJ 1388, the petitioners are also entitled to a sum of Rs. 1,00,000/- towards loss of love and affection Rs. 10,000/-, towards loss of Estate and Rs.25,000/- towards funeral expenses.*

*21. The petitioners is thus entitled for the total amount of compensation towards all the heads, which is as follows:*

| S. No. | On Account of              | Amount (Rs.)    |
|--------|----------------------------|-----------------|
| 1      | Loss of dependency         | Rs.10,62,672.00 |
| 2      | Loss of Love and affection | Rs.1,00,000.00  |
| 3      | Funeral Expenses           | Rs. 25,000.00   |
| 4      | Loss of Estate             | Rs. 10,000.00   |
| 5      | Medical Bills              | Rs. 1,500.00    |
| Total  |                            | Rs.11,99,172.00 |

”

**17.** The appellants further submit that the learned P.O., MACT, erred in not granting compensation for loss of consortium to the family members.

**18.** On behalf of the respondent no.3, the TATA AIG General Insurance Co. Ltd., apart from submitting that in the absence of proof of rash and negligent driving, the claim of the claimants was liable to be dismissed by the learned P.O., MACT as the proceedings were conducted under Section 166 of the Motor Vehicles Act, and that the claimants could not be granted any compensation without proving the rash and

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negligent driving on the part of the driver of the alleged offending vehicle.

**19.** It was submitted on behalf of the respondent No.3 that the proof of negligence is a *sine qua non* and the claimants cannot get any compensation whatsoever without the proof of negligence.

**20.** It was also submitted on behalf of the respondent No.3 that apart from the said submissions referred to herein above qua the aspect of non-proof of rash and negligent driving by the driver and negligence of the driver, there was no infirmity, in the award of the learned P.O., MACT, in as much as the learned P.O., MACT, had considered the age of the deceased as 48 years and had applied the multiplier of 13, seeing the age of the deceased there was no infirmity in the impugned award and that the claimants had failed to bring on record the dependency on the income of the deceased by the legal heirs. The respondent No.3 thus submits that in the absence of the same the Ld. Tribunal has taken into consideration that 1/3rd of the income of the deceased was required to be deducted towards self expenses of the deceased.

**21.** The respondent No.3 has thus submitted that though the claimants failed to establish the rash and negligent driving on the part of the driver of the alleged offending vehicle still the learned Tribunal has awarded the amount of compensation in favour of the claimants though they are not entitled to get any

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compensation from the respondent No.3 and the present appeal is liable to be dismissed with heavy costs.

22. Reliance was placed on behalf of the respondent no.3 on the verdict of the Hon'ble Supreme Court *in United India Insurance Co.Ltd. V. Satinder Kaur @ Satwinder Kaur and Others*; Civil Appeal No. 2705/2020 and *Satinder Kaur @ Satwinder Kaur and Others V. United India Insurance Co. Ltd*; Civil Appeal No. 2706/2020 dated 30.06.2017 wherein the verdict in SLP (Civil) No. 25590/2014 dated 30.10.2017 by the Constitution Bench of the Hon'ble Supreme Court in *National Insurance Company Limited V. Pranay Sethi & Ors.*; 2017 ACJ 2700, was applied to the facts and circumstances of the appeals and reiterated and applied the law laid down by the Hon'ble Supreme Court in a catena of verdicts vide observations in paragraph 8:

“8. ....

*b) Loss of Consortium*

*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 nonpecuniary damage for loss of consortium is one of the major heads for*

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*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.*

*In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., this Court interpreted "consortium" to be a compendious term, which encompasses spousal 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. 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.*

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*Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under 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.*

*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 of consortium will be as per the amount fixed in Pranay Sethi (supra).*

*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 High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution*

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*Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.*

*In Magma General (supra), 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.*

*The Tribunals and 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.*

***c) Funeral Expenses - Rs. 15,000 to be awarded***

*The aforesaid conventional heads are to be revised every three years @10%.”*

**23.** On behalf of the appellants, reliance is placed on the verdicts of the Hon’ble Supreme Court in ***National Insurance Company Limited V. Pranay Sethi & Ors.***; 2017 ACJ 2700 wherein it has inter alia been laid down vide paragraph 61 of the said verdict to the effect:

*“61. In view of the aforesaid analysis, we proceed to record our conclusions;*

*(i) .....*

*(ii) .....*

*(iii) While determining the income, an addition of 50 per cent of actual salary to the income of the deceased towards future prospects, where the deceased had a*

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*permanent job and was below the age of 40 years, should be made. The addition should be 30 per cent, if the age of the deceased was between 40 and 50 years. In case the deceased was between the age of 50 and 60 years, the addition should be 15 per cent. Actual salary should be read as actual salary less tax.*

*(iv) In case the deceased was selfemployed or on a fixed salary, an addition of 40 per cent of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 per cent where the deceased was between the age of 40 and 50 years and 10 per cent where the deceased was between the age of 50 and 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

*(v) For determination of the multiplicand, the deduction towards personal and living expenses, the Tribunals and the courts shall be guided by paras 14 and 15 of Sarla Verma, 2009 ACJ 1298 (SC), which we have reproduced herein before.*

*(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma, 2009 ACJ 1298 (SC), read with para 21 of that judgment.*

*(vii) The age of the deceased should be the basis for applying the multiplier.*

*(viii) Reasonable figures under conventional heads, namely, loss to estate, loss of consortium and funeral expenses should be Rs. 15,000, Rs. 40,000 and Rs. 15,000 respectively. The aforesaid amounts should*

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*be enhanced at the rate of 10 per cent in every three years.”*

24. Reliance was also placed on behalf of the appellants on the verdict of the Hon’ble Supreme Court in ***Santosh Devi Vs. National Insurance Co. Ltd. and Others***; 2012 ACJ 1428 wherein it had been observed to the effect that the formula for increase of income for future prospects adopted for persons with permanent jobs in ***Sarla Verma’s case, 2009 ACJ 1298(SC)*** would also be applied to persons who were self employed or were engaged on fixed wages and also to contend that where there was no evidence led to the contrary about the dependency of the major sons of the deceased, they could not be denied compensation on the demise of their father.

25. It is essential to observe, however, that in view of the verdict of the Constitution Bench in ***National Insurance Company Limited V. Pranay Sethi & Ors.*** (supra) it is the directions in ***National Insurance Company Limited V. Pranay Sethi & Ors.*** (supra) that have been reproduced herein above in paragraph 23 that would prevail.

26. Reliance was also placed on behalf of the appellants on the verdict of the Hon’ble High Court of Orissa at Cuttack in ***Dhruba Chandra Behera V. National Insurance Co. Ltd. and Others***; 2012 ACJ 1434 as also on the verdict of the Hon’ble Supreme Court in ***United India Insurance Co. Ltd. V. Satinder Kaur and Others***; 2020 ACJ 2131 to contend that the law laid down vide the verdict dated 30.10.2017 of the Constitution

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Bench of the Hon'ble Supreme Court in *National Insurance Company Limited V. Pranay Sethi & Ors.*; 2017 ACJ 2700, was applied to the facts and circumstances of the said case and reiterated and applied as per the law laid down by the Hon'ble Supreme Court in a catena of verdicts vide observations therein **in paragraph 8** as reproduced herein above.

27. Likewise on behalf of the respondent No.3 reliance was placed on the verdict of the Hon'ble Constitution Bench of the Hon'ble Supreme Court in *National Insurance Company Limited V. Pranay Sethi & Ors.*(supra), *United India Insurance Company Ltd. v. Satinder Kaur and Ors.* and on the verdict of the Co-ordinate Bench of this Court in *New India Assurance Co. Ltd. V. Devki & Ors.*; a verdict dated 29.2.2016 in MAC APP.165/2013 and *Reliance General Insurance Company Ltd. V. Suman & Ors.*; a verdict dated 15.1.2018 in MAC.APP. 697/2016.

### ANALYSIS

28. The thrust of the arguments on behalf of the respondent No.3 is to the effect that in as much as the proceedings were conducted under Section 166 of the Motor Vehicles Act, 1988, the claimants could not have been granted any compensation without proving any rash and negligent driving on the part of the driver of the alleged offending vehicle and that it was necessary thus to remit the proceedings back to the MACT.

29. Qua this submission it is essential to observe that the MAC APP. 831/2015 was instituted on 13.8.2015 and that the

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said submission is raised by the respondent No.3 for the first time on 21.3.2022 through its written submissions.

**30.** Furthermore, vide order dated 18.12.2013, the learned P.O., MACT, passed an interim award under Section 140 of the Motor Vehicles Act, 1988, on the grounds of no fault liability. Apart from the same it cannot be overlooked that the petition as filed by the appellants before the learned P.O., MACT, dated 7.10.2013 pursuant to which the award dated 5.5.2015 of which modification is sought was a petition both under Sections 166 and 140 of the Motor Vehicles Act, 1988.

**31.** In terms of Section 140(3) and (4) of the Motor Vehicles Act, 1988, as it existed prior to 25.4.2022 it had been legislated to the effect that:

*“140. Liability to pay compensation in certain cases on the principle of no fault.—*

*(1) .....*

*(2) .....*

*(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.*

*(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or*

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*permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.*

.....”,  
and it was observed vide para 3 and 4 of the interim award dated 18.12.2013 to the effect:

*“3. Section 140 of the M.V. Act provides no fault liability. For getting interim relief under this section, the Tribunal is only required to see prima facie the factum of accident involving the offending vehicle and fatum of death of the person in the impugned accident. The certified copy of FIR no. 388/13 recorded u/s 279/304A IPC at PS New Ashok Nagar Delhi shows the involvement of the vehicle as well as death of the deceased. The copy of MLC shows that the patient was taken to hospital on account of injuries received due to said accident and during treatment she expired.*

*4. The contents of FIR and the investigation of this case as well as the record of investigation established that deceased Kamal Dev Pandey sustained fatal Injuries in the above referred accident involving offending vehicle. Therefore, I hold that petitioners have established their claim for interim compensation. Accordingly, I allow Interim compensation of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioners together with interest @ 7.5 % from the date of filing of the petition till the date of realization.”*

**32.** The said interim award was not challenged by the respondent No.3 and rather in compliance of the interim award

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dated 18.12.2013, the respondent No.3 deposited seven cheques with the learned P.O., MACT, East , Karkardooma as observed vide the proceedings dated 26.3.2014 which read to the effect:

“26.3.2014

*File put up today on an application filed for release of interim cheque of compensation.*

*Pr. Applicants with counsel Ms. Pooja Goel.*

*An Interim Award has been passed on dated 18.12.2013 for amount of Rs. 50,000/- alongwith interest @ 7.5% from the date of filling of petition till the date of realization.*

*In compliance of order dated 18.12.2013 insurance company has deposited seven cheques with this tribunal.*

| S.No | Cheque No. | Amount   | In favour of  |
|------|------------|----------|---------------|
| 1.   | 241738     | 25,946/- | Jamanti Devi  |
| 2.   | 241740     | 3,113/-  | Seema Kumari  |
| 3.   | 241741     | 3,113/-  | Rubi Kumari   |
| 4.   | 241742     | 3,113/-  | Guddi Kumari  |
| 5.   | 241744     | 3,113/-  | Arjun Pandey  |
| 6.   | 241971     | 3,113/-  | Puneet Kumar  |
| 7.   | 241739     | 10,379/- | Rajmanti Devi |

*The Manager of Oriental Bank of Commerce Preet Vihar Branch Delhi is directed to open saving bank accounts in the above said names and release the above said cheques amount in their respective accounts except Puneet Kumar. The amount of Puneet Kumar be kept in FDR till he attains the age of majority.”*

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33. Furthermore, it is essential to observe that for the application of Section 166 of the Motor Vehicles Act, 1988, the application thereunder in terms of Section 166 of the Motor Vehicles Act, 1988, as per the *proviso* of Sub Clause 2 thereof has to contain a separate statement to that effect that no claim for compensation under Section 140 of the Motor Vehicles Act, 1988, has been made which has to be placed immediately before the signatures of the applicant. Section 166 of the Motor Vehicles Act, 1988, provides as under:

***“Section 166(1) in The Motor Vehicles Act, 1988***

*(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—*

*(a) by the person who has sustained the injury; or*

*(b) by the owner of the property; or*

*(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*

*(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

*Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.*

*[(2) Every application under sub-section (1) shall be made, at the option of the claimant,*

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*either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:*

***Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.] (emphasis supplied)***

*3[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]*

**34. The factum that the petition was instituted *both* under Section 166 and 140 of the Motor Vehicles Act, 1988 by the petitioners, i.e., the appellants herein, negates the submission of the respondent No.3 that the petition had been filed only under Section 166 of the Motor Vehicles Act, 1988 and thus the prayer made by the respondent No.3 that the matter be remanded back to ascertain the aspect of the negligence of the driver of the offending vehicle, cannot be accepted.**

**35. As rightly observed vide the award dated 5.5.2015 of which modification has been sought by the appellants, the issue No.1 framed to the effect :**

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*“i)Whether deceased Kamal Dev Pandey suffered fatal injuries in a road accident on 14.08.2013 involving vehicle bearing registration no. DL-1LP-4714 driven by respondent no.1 in a rash and negligent manner? (OPP)”*

as has rightly been adjudicated to the effect that the accident happened as a result of negligent driving by the respondent No.1 in which Kamal Dev Pandey, i.e., the deceased of whom the appellants herein are the legal heirs, sustained fatal injuries, in as much as reliance was placed by the learned P.O., MACT, on the verdict in ***Cholamandalam M.S. General Insurance Co. Ltd. v. Kamlesh*** : 2009 (3) AD (Delhi) 310 that an adverse inference had to be drawn because the driver of the offending vehicle did not appear in the witness box and as laid down in ***United India Insurance Company Ltd. Vs. Deepak Goel & Ors.***, 2014 (2), T.A.C. 846 (Del) by this Court wherein FIR was lodged and chargesheet was filed and the documents mentioned, the said documents were sufficient to establish the facts that the driver of the vehicle in question was negligent in causing the accident particularly when there was no defence available from his side.

**36.** Likewise, it is essential to observe that ***National Insurance Company Ltd. v. Pushpa Rana & Ors.*** ; 2009 ACJ 287 it has been held by this Court:

*“The last contention of the appellant insurance company is that the respondents - Petitioners should have proved negligence on the part of the driver and in this regard the*

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*counsel has placed reliance on the judgment of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. Meena Variyal (Supra). On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced: (i) certified copy of the criminal record of criminal case in FIR No.955 of 2004, pertaining to involvement of the vehicle in question ; (ii) criminal record showing completion of investigation of police and issue of chargesheet under Sections 279/304A, Indian Penal Code against the driver; (Hi) certified copy of FJ.R., wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of vehicle in question and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under the Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."*

37. Furthermore, as laid down by the Hon'ble Supreme Court in ***Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.***, (2009) 13 SCC 530, the Hon'ble Supreme Court laid down that even in a petition under Section 166 of the Motor Vehicles Act, 1988, the petitioners were merely to establish their case on the touchstone of preponderance of probabilities while dealing with the claim petition under the Motor Vehicles Act, 1988, and vide paragraph 15 thereof it was observed to the effect:

*"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was to be borne in mind, that*

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*strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the petitioners. The petitioners 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."*

**38.** Significantly, the learned P.O., MACT, had also observed vide the award dated 5.5.2015 of which modification has been sought that it had perused the criminal case record and the charge sheet filed in the case FIR No. 388/2013 at Police Station New Ashok Nagar against the respondent No.1 and that the facts were supported and corroborated by the Investigating Officer of the case who conducted the investigation in the matter.

**39.** Furthermore, it cannot be over looked that a claim before a Motor Accident Claims Tribunal is neither a criminal case nor a civil case and though in a criminal case the matter is to be proved beyond reasonable doubt for a conviction and in a civil case the matter has to be decided on the basis of preponderance of evidence but in a claim before the MACT that standard of proof is much below than what is required in a criminal case as well as in a civil case though there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation. The Tribunal is however not expected to take or to adopt the nicety of the civil or of a criminal case and all that it is required to

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conduct is the summary inquiry or interpretation of the legislation which is for the welfare of the society and it is bound to take a broader view of the whole matter as laid down in ***Ranu Bala Paul V. Bani Chakraborty***: 1998 AIHC 4814, as also laid down in the verdict of the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh in ***Anil Tiwari V. Saheb Singh***, 2000 (1) TLJ 59 (Madhya Pradesh) for the claim cases under the MACT in the Motor Vehicles Act, 1988, the first information report, the inquest panchnama, postmortem report and the death certificate are not required.

**40.** The contention thus of the respondent No.3 that the matter is required to be remanded back to ascertain the liability of the driver of the offending vehicle, cannot be sustained.

**41.** As regards the observations in the impugned award of which modification is sought that the deceased was 48 years of age on the date of the accident and there was no evidence brought forth that all the petitioners were dependent on the income of the deceased and only petitioner Nos. 1 and 7, namely, Jamanti Devi (wife) and Rajmati Devi (mother) who are entitled for compensation, this Court is of the considered view that, it is essential to observe that apart from the appellant No.1, the widow of the deceased and the appellant No.7, the widowed mother of the deceased, the appellant No.2, i.e., Ms Seema Kumari, the unmarried daughter aged 18 years and the appellant No.6 Master Puneet Kumar, then minor son have essentially to have to be considered to have been dependent on

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the earnings of the deceased. The appellant No.3, Rubi Kumari and appellant No.4 Guddi Kumari were married daughters of the deceased at the time of the award as testified by the appellant No.1 Smt. Jamanti Devi in her testimony as PW-1 in her cross-examination on the date 16.7.2014 and though she stated on 1.4.2015 that her daughters namely Rubi Kumari and Guddi Kumari, i.e., the appellants No. 3 and 4 were married after the demise of her husband, the said contention in view of her deposition dated 16.7.2014 cannot be accepted. It is thus the appellant No.1, Jamanti Devi (wife), appellant No.2 Seema Kumari (Daughter), appellant No.6 Puneet Kumar (the minor son then aged 17 years and the appellant No.7 Rajmati Devi (the widowed mother of the deceased) who are entitled to the compensation due to the demise of the deceased and thus the appellant No.2 is entitled for compensation till she marries and the appellant No.6 Puneet Kumar with date of birth 1.1.1996 as per the bio-data of the deceased submitted to his employer M/s A.B. Creations in as much as he would attain majority on 1.1.2014, till he attained majority.

**42.** Furthermore, qua the observations of the learned P.O., MACT, that the monthly income of the deceased was to be taken as Rs.10,218/- i.e., minimum wages which were applicable at the relevant time of graduates in view of the deposition of PW-2 Ms.Bharti Bhalla, Proprietor of the firm M/S. A. B. Creations with observations in para 16 of the award in question to the effect:

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*“16.PW2 Ms. Bharti Bhalla, Proprietor of the firm M/s. A.B. Creations stated that deceased had joined the firm only two months back and was paid his salary in cash. She stated that no PF was deducted from deceased's salary nor he was covered under ESI Scheme. From Record, it reveals that deceased was a Post Graduate and had joined the Firm M/s. A. B. Creations only two months back. In the absence of Salary Slips or any Income Tax or other record, the minimum wages of a Graduate only are to be taken into consideration. Therefore, the monthly income of deceased is taken as Rs. 10,218/- i.e. the minimum wages, which were applicable at the relevant time to a Graduate.”,*

it is essential to observe that it had been stated by Ms.Bharti Bhalla, Proprietor of the firm M/S. A. B. Creations, the employer of the deceased in her cross-examination that all employees were paid salary in cash between 15000/- to 18000/- per month depending on the position of the employee. She further stated that documents i.e., an apparent reference to the documents, i.e., application for appointment with bio data, appointment letter, Gratuity Form, Form-16 under U.P. Factory Act, joining letter, EPF Form, Voter I card, Salary certificate, wages vouchers, full and final settlement with the legal heirs of deceased, wages register from May 2013 to August 2013 and income tax return for the year 2012-13 and 2013-14 are Ex.PW2/1 (colly) were under the signatures of her manager whom she had authorized, though she had stated that she did not have personal knowledge of the appointment of the deceased or the documents brought by her that day and stated that all these works were looked after her Manager Mr.Harish

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Joshi. She however stated that no PF was deducted from the salary of the deceased as he was exempted from the same and the deceased was also not covered under the ESI Scheme.

**43.** However, the EPF form of the deceased on the record of the Trial Court, as rightly contended on behalf of the appellants and the record of the MACT states categorically that the summoned witness Mr.Vinay Kumar S/o Sh.Shyam Sunder, Account Assistant M/s. A. B. Creations was present on 16.7.2014 but the learned P.O., MACT, did not examine the said witness and rather required the presence of Ms. Bharti Bhalla, the employer of the deceased. However, Mr.Harish Joshi, the factory manager of M/s A.B.Creations in relation to which Ms.Bharti Bhalla deposed that all the works were looked after by the Manager Mr.Harish Joshi was present on 10.9.2014 but the learned P.O., MACT, thought it necessary that the employer Ms.Bharti Bhalla was examined.

**44.** On a consideration of the record the Court is of the considered view that the salary of the deceased has essentially to be held to be Rs. 15,500/- per month and in the circumstances of the case, the Court holds it to be a fixed salary.

**45.** Placed on record however are the Employees Provident Fund Scheme,1952 (Paragraph 34) & The Employees Pension Scheme, 1995, Form No.11 dated 3.6.2013 but as has been deposed by Ms.Bharti Bhalla no PF was being deducted from

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the salary of the deceased and furthermore, she also stated that the deceased was not covered under ESI Scheme.

**46.** The Court thus in terms of the verdict in *National Insurance Company Limited V. Pranay Sethi & Ors.*; (supra) of the Hon'ble Constitution Bench of the Supreme Court taking the case of the deceased to be of a fixed salary of Rs.15,500/- per month in terms of paragraph 61.4 of the said verdict as followed also in *United India Assurance Co. Ltd. V. Satinder Kaur* (supra) wherein the observations in *National Insurance Company Limited V. Pranay Sethi & Ors.* had been reproduced as under:

*“61. In view of the aforesaid analysis, we proceed to record our conclusions;*

*(i) .....*

*(ii) .....*

*(iii) .....*

*(iv) In case the deceased was self employed or on a fixed salary, an addition of 40 per cent of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 per cent where the deceased was between the age of 40 and 50 years and 10 per cent where the deceased was between the age of 50 and 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”*

*(emphasis supplied)*

an addition of 25% in the instant case where the deceased was between the age of 40-50 years in as much as he was 48 years of age at the time of his demise, has to be added towards future prospects and thus the award dated 5.5.2015 of the learned P.O. MACT, to the extent that it rewards nothing towards future

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prospects needs to be modified to include the future prospects in terms of paragraph 61.4 at the rate of 25%. The observations of the learned P.O. MACT, to the effect that the petitioners, i.e., the appellants herein were not entitled to the future prospects is set aside.

47. Furthermore, in terms of the verdict in *National Insurance Company Limited V. Pranay Sethi & Ors.*; (supra), the award of compensation towards Loss of Affection to the tune of Rs.1,00,000/- is set aside, however, towards Loss of Consortium in view of the verdict of the Hon'ble Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram*, 2018 ACJ 2782(SC) as expounded by the Hon'ble Supreme Court in *United India Assurance Co. Ltd. V. Satinder Kaur* (supra) wherein it has been observed to the effect:-

“ .....

*In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., this Court interpreted "consortium" to be a compendious term, which encompasses spousal 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.*

*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.*

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*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.*

*Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under 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.*

*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 (supra).*

*At this stage, we consider it necessary to provide uniformity with respect to the*

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*grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.*

*In Magma General (supra), 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.*

*The Tribunals and 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.”*

it is apparent thus that the loss of consortium has to be compensated to those who fall within the ambit of spousal consortium, parental consortium as well as filial consortium and loss of love and affection is comprehended in loss of consortium as adhered to in the verdict dated 11.10.2021 in MAC APP. No. 46/2021 titled **Suman Devi & Anr. V. Mahesh Arora & Anr.** by a Co-ordinate Bench of this Court, the loss of consortium is to be given at the rate of Rs. 40,000/- per claimant and thus each of the appellants, i.e., appellant No. 1 to 7 are entitled to be awarded an amount of Rs.40,000/- each towards loss of consortium are so awarded.

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48. Towards funeral expenses the amount awarded by the learned P.O., MACT vide the award dated 5.5.2015 was Rs.25,000/- which in terms of the verdict of the Hon'ble Supreme Court in *National Insurance Company Limited V. Pranay Sethi & Ors.*; (supra) a verdict dated 31.10.2017 could only have been Rs.15,000/- and the funeral expenses are thus reduced to Rs.15,000/- from Rs.25,000/-.

49. As regards the deduction of 1/3<sup>rd</sup> of the income of the deceased towards living expenses by the learned P.O., MACT vide paragraph 18 of the award of which the modification is sought observing to the effect that it was only petitioner nos. 1 and 7, i.e., the appellants no. 1 and 7 were entitled for compensation in view of the observation in para 41 wherein it has been held that the appellant No.1, the widow of the deceased, the appellant No.2, the unmarried daughter of the deceased, the appellant No.6, the minor son of the deceased and the appellant No.7, the widowed mother of the deceased, i.e., the four persons were dependent on the income of the deceased, in terms of the observations of the Hon'ble Supreme Court in *Sarla Verma & Ors. Vs. DTC & Anr.* (2009) ACJ 1298 in paragraph 30 thereof which reads to the effect:

*“ 30. 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*

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*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 dependent family members is 4 to 6, and one-fifth (1/5th ) where the number of dependent family members exceeds six.”*

50. Thus after addition in view of future prospects the contribution to the family works out to be Rs.15,500/- + 25% of Rs.15,500/- (towards future prospects), i.e., Rs.19,375/- and after such deduction and addition of 25% towards future prospects in view of the paragraph 61 (iv) of the verdict of the Hon’ble Supreme Court in **National Insurance Company Limited V. Pranay Sethi & Ors.**; (supra), the contribution to the dependent family works out to be Rs.15,500/- + 25% of Rs.15,500 – Rs.4843= Rs.14531.25. Thus the contribution to the family comes to Rs.14531.25/- and thus the compensation under the head of “Loss of Dependency” would be Rs.14531.25 X 12 X 13 (in terms of the multiplier of 13 as stipulated in para 40 of the verdict of the Hon’ble Supreme Court in **Sarla Verma & Ors. Vs. DTC & Anr.**) and thus the compensation under the head “ Loss of Dependency” amounts to Rs.22,66,875/-. The compensation awarded qua the medical bills of Rs.1,500/- is sustained and the Loss of Estate is to be added as Rs.15,000/- in place of Rs.10,000/-. The loss of consortium to each of the appellants No.1 to 7 Rs.40,000/- each, is awarded i.e., Rs.40,000/- X 7 = Rs.2,80,000/-.

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**CONCLUSION**

**51.** Thus the appellants are held to be entitled to the total compensation amount towards the head as under:

| Head               | Amount (Rs.)                               |
|--------------------|--------------------------------------------|
| Loss of Dependency | 22,66,875 (To appellants no. 1,2, 6 and 7) |
| Loss of Consortium | 2,80,000 (Rs.40,000 X 7)to all appellants  |
| Loss of Estate     | 15,000                                     |
| Funeral Expenses   | 15,000                                     |
| Medical Bills      | 1,500                                      |
| Total Compensation | 25, 78,375/-                               |

in terms of paragraph 61 of the verdict of the Hon'ble Supreme Court **National Insurance Company Limited V. Pranay Sethi & Ors.**; (supra) of the Hon'ble Constitution Bench of the Hon'ble Supreme Court.

**52.** The respondent No.3 is thus directed to make the payment of Rs.25,78,375/- with interest @ 9% per annum thereon from the date of filing of the petition before the learned P.O. MACT, i.e., Suit No. 221/2013 till the date of its realization to the appellants No. 1, 2, 6 and 7, i.e., appellant No.1 Jamanti Devi (wife), appellant No.2 Seema Kumari (daughter), appellant No.6 Master Puneet Kumar (then minor son) and appellant No.7 Rajmati Devi (mother) as per the schedule to be drawn by the learned P.O. MACT, East District, Karkardooma in terms of the verdict in **General Manager**

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*Kerala State Road Transport Corporation, Trivandrum V. Susama Thomas (Mrs) & Others:* (1994) 2 SCC 176, with the loss of consortium of Rs.40,000/- each being also payable to appellants No. 3 to 5, appellant No.3 Rubi Kumari (daughter), appellant No.4 Guddi Kumari (daughter) and appellant No.5 Arjun Pandey (son). The amount deposited or paid, if any, by the respondent No.3 in terms of the award dated 5.5.2015 in SC No. 221/2013 shall be adjusted towards the payment of the entire compensation as directed herein above.

**53.** A copy of this order be sent to the learned P.O., MACT, East District, Karkardooma, for compliance.

**ANU MALHOTRA, J.**

**NOVEMBER 19, 2022**  
**Sv**

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