

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 50 OF 2020

APPELLANTS: 1] Anuj s/o Shamkumar Khadloya,
 (Original Aged about 35 years, Occu: Service,
 Claimants on RA) R/o Bajoriya Nagar, Yavatmal
 Tah. and Dist. Yavatmal (MS) (R.A. Same)

2] Jugalkishor s/o Gowardhan Rathi,
 Aged about 64 years, Occu: Business.

3] Leena w/o Jugalkishor Rathi,
 Aged about 59 years, Occu: Business.

4] Snehal d/o Jugalkishor Rathi,
 Aged about 28 years, Occu: Household.

Nos. 2 to 4 R/o Saibaba Mandir Ward,
 Civil Lines, Chandrapur. Tah. and
 Dist. Chandrapur (MS) (R.A. Same)

...VERSUS...

RESPONDENTS 1] Sharad s/o Keshav Meshram,
 (Original Non- Aged 48 years, Occu: Driver,
 applicants on R.A) R/o Chaprala, Tah. Bhandrawati,
 Dist. Chandrapur (MS)

Correct address of Respondent
No.2

Rajesh Kanhailal Kanoongo
 Aged about 52 years, Occupation:
 Business, R/o Rajasthan Cargo
 Carriers, Tulsi Bhavan, Behind
 Central Avenue, Gandhibag,
 Nagpur, Tq. & Dist. Nagpur.

Sd/-
 23.9.
 C.F. Appellants
 M.P. Khajanchi, Adv.

2] Rajesh s/o Kanhailal Kanoongo,
 Aged about 52 years, Occu: Business,
 (Owner of TATA Truck HGV No. MH-
 34M 6845)
 (i) New Vikas Roadlines, Maharani
 Complex, Nagpur Road Chandrapur
 Tah. & Distt. Chandrapur (MS)
 (ii) Rajasthan Cargo Carriers, Dighori
 Chowk, Near Flyover, Bhandara
 Road, Nagpur.

- 3] National Insurance Company Ltd.,
(through its Branch Manager, Above Bank
of India, Jatpura Gate Branch, Chandrapur
Tah. & Dist. Chandrapur (MS).
- 4] Navalkishor s/o Gowardhan Rathi,
Aged about 47 years, Occu: Radiologist
R/o Saibaba Mandir Ward, Civil Lines,
Chandrapur, Tah. and Dist. Chandrapur
(MS). (R.A. Same)

Mr M.P. Khajanchi, Advocate for the Appellants.

Mr Cecil Anthony, Advocate for the Respondent No. 3.

CORAM : URMILA JOSHI-PHALKE, J. .

DATE OF RESERVE : 24/01/2023

DATE OF DECISION : 17/03/2023

ORAL JUDGMENT :

1. The present appeal is preferred by the appellants who are the original claimants for enhancement of the compensation which is granted by the Member, Motor Accident Claims Tribunal, Chandrapur in MACP No. 175/2010 on 11/07/2019.

2. Brief facts, which are necessary to decide the appeal are as follows :-

The deceased Minal w/o Anuj Khandloya, is the wife of the appellant No.1 and daughter of the appellant Nos. 2 and 3 and the sister of appellant No.4. At the time of accident, she

was aged about 22 years and was a business woman as well as pursuing her studies and her yearly income was Rs. 2,10,000/-.

3. On 13/3/2010, at about 9.15 a.m., deceased Minal was proceeding from Civil Lines, Chandrapur towards the house of one Mr Sudhir Heda on two wheeler namely Dio bearing Registration No. MH-34-Q-620. She was driving her two wheeler in a moderate speed after observing the traffic rules and regulations. When she reached near old Warora Naka Chowk, at the relevant time, offending truck bearing No. HGV MH-34 M-6845, came in a rash and negligent manner without observing traffic rules and regulations, and was proceeding towards railway over bridge, gave dash to the two wheeler of Minal. Due to severe dash, Minal died on the spot. As per the contention of the appellants i.e original claimants that, the truck was driven by its driver in a rash and negligent manner without observing the traffic rules and regulations. The said truck was owned by opponent no.2 driven by opponent no.1 and validly insured with opponent No.3/National Insurance company. Regarding the said accident, the crime was registered vide CR no. 68/2010 at Chandrapur Police Station against the truck driver. As the said accident has taken place, due to rash and negligent driving of truck driver which was owned by the opponent No.2 and validly insured with opponent No.3. Opponent Nos.1 to 3 are jointly and severally liable to pay

compensation.

4. As per the contention of the claimants the deceased had very bright academic carrier. She was studying in Third Year degree course of Bachelor of Architecture in Smt. Manorabai Mundle College of Architecture Nagpur. She was hard working ambitious and sincere girl. She had completed foundation course in Auto-Cad in June-2010. She had further completed foundation course in 3D modeling and animation in the year June-2008. She was having a promising future and earning capacity. She was doing the business of editing photographs, using Photo-shop Software and was earning income to the tune of Rs. 1,50,000/- to 2,10,000/-, She was also income tax payee. Her marriage with the applicant No.1 took place on 17/06/2009, and she met with an accident on 13/03/2010. The applicant no.1 has lost the company of his wife within one year of marriage. Thus, the claimants claim the compensation of Rs.21,50,000/- towards loss of income and Rs. 50,000/- damages and mental suffering, loss consortium etc.

5. The said application is strongly opposed by the respondent No.3/ Insurance Company. Admittedly, the respondent Nos.1 and 2 have not contested the claim. As per the contention of the insurance company, the accident took place due to the negligence of deceased as she was talking on mobile phone and driving the vehicle by one hand. She was also not wearing the helmet while driving the two wheeler. Thus she has contributed for the said accident and therefore, she is not entitled for any compensation. Learned trial Court has recorded the evidence, and

after recording the evidence, awarded the compensation @ Rs 9,47,500/-.

6. Being aggrieved and dissatisfied with the judgment and award passed by the learned trial court, the present appeal is preferred by the original claimants, on the ground that learned Claims Tribunal had not considered the income of the deceased and inadequate compensation amount was awarded. It is further submitted on behalf of the appellants that, future prospects in view of the judgment of the Hon'ble Apex Court was not taken into consideration by the Tribunal. The claimants are entitled for the enhancement of the compensation.

7. Heard learned Adv. Khajanchi for the appellant, he submitted that, at the time of accident, the deceased was only 22 years of age, she was earning handsome amount by doing the business and was also income tax payee. To substantiate the contention that deceased was well qualified, claimants have produced matriculation certificate as well as her higher secondary examination certificate. He further invited my attention towards the certificate which shows that she had completed foundation in 3D Modeling and Animation. She had also completed foundation course in Auto-Cad. To show that she was income tax payee, she produced on record the Income Tax acknowledgment of the year 2008-09, 2009-10 and submitted that, in the year 2008-09, her annual income was shown as Rs. 1,50,000/-. In the year 2009-10, her income was shown as Rs. 1,87,000/-. Thus, there is ample evidence to show that, she was earning Rs.1,50,000/- to

Rs.2,00,000/- per year from the said business. Learned trial Court has not considered the future prospects and awarded the inadequate compensation.

8. He further submitted that, she was not only contributing in her matrimonial family but her parents were also dependent on her income. The learned trial Court has not considered the amount of dependency and wrongly deducted the amount and awarded inadequate compensation. He submitted that in view of the judgment of the Hon'ble Apex Court in the case of *National Insurance Company Ltd. V/s Pranay Sethi and others*, the claimants are entitled to receive the enhanced amount of compensation.

9. On the other hand, learned advocate for the respondent No. 1 Mr Cecil Anthony submitted that, the deceased contributed to the said accident. Thus there was contributory negligence on the part of the deceased. He submitted that learned trial Court has rightly considered the income and rightly awarded the compensation, therefore no interference is called for.

10. In support of the contention, learned advocate Mr Khajanchi, placed reliance on the *New India Assurance Company Ltd. Vs Sunil Parashram Garud and others*¹. Wherein, it is held that, in this day and age, considering the cost of living, the income of both the husband and wife are equally important for running the house, as they supplement each others income. In case, once spouse loses the benefit of contribution and enter by the other in managing the household in such a situation, the surviving spouse

1 2016 (2) ALL MR 354

would be entitled for loss of dependency. He further relied upon *National Insurance Company Ltd. V/s Pranay Sethi and others*².

11. On the other hand, Mr Cecil Anthony learned advocate for the respondent placed his reliance on *A. Manavalagan Vs A. Krishnamurthy and others*³. Wherein it is held that, the question of awarding any amount under the head of loss of dependency would not arise as there was no financial dependency. The deceased was not even managing the household as is normally done by house wife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such case, the main head of compensation will be loss to the estate.

12. It is further held by the Katakana High Court, the law contemplates two categories of damages on the death of a person, the first is the pecuniary loss, sustained by the dependent members of his family as a result of such death, and the second is the loss caused to the estate of the deceased, as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependents beneficially entitled. In the second category, the action is brought by the legal representatives on behalf of the estate of the deceased and the compensation, when recovered forms part of the assets of the estate.

13. After considering the rival submissions of the parties and perusal of the evidence, the following points arises my consideration.

2 (2017) 16 SCC 680

3 2004 Legal Eagle (KAR)338

a) Whether the claimants have made out the case for enhanced compensation amount?

It is not disputed that, the deceased died in an accident which took place on 13.3.2010. The involvement of the vehicle bearing truck no. MH-34-M-6845 is also not in dispute. Regarding the said accident, admittedly the crime was registered by CR No. 68/10 against the truck driver. The offending truck is driven by the opponent no.1 and owned by the opponent no.2 and validly insured with the opponent no.3, at the time of accident. To substantiate the contention, the applicants have adduced their evidence by examining claimant No.1 Anuj Shamkumar Khandloya and Claimant No.2-Jugal Kishor Gowardhan Rathi, who is the father of the deceased. To prove the rashness and negligence of the truck driver, the claimants have adduced the evidence of Vanraj Laxmichand Gandhi, who is the eye-witness of the said accident. As already observed that the accident in-question is not disputed. The defence raised by the insurance company is that, the deceased was driving the two wheeler and was talking with the mobile phone and she was also not wearing the helmet at the time of accident. Thus, she has contributed on the said accident. Though insurance company has raised the defence of contributory negligence, no evidence adduced by the insurance company to prove the same. The Insurance company has also not challenged the finding of the trial Court and raised the ground of contributory negligence, therefore, only question remains, regarding quantum of the compensation. It has to be seen, whether the tribunal has awarded inadequate

compensation ignoring the legal principals.

14. To prove the fact that, deceased was earning member and was contributing in the family. The claimant no.1 -Anuj Shamkumar Khandloya, who is the husband of deceased stepped into the witness box and adduced his evidence. As per his evidence, he is a software engineer, he chosen deceased as his life partner as she was possessing substantial knowledge, experience, hard-working attitude and promising future. He undergone terrible mental agony due to the sudden death of his wife, within just nine months from his marriage. Now, he has to lead the life of a widower or ex-widower at this young age. He was staying in Australia for his higher education and it was their cherish desire that, after completion of her education, deceased Minal would join him in Australia, where they could make out their carrier. However, due to the sudden incident, his entire plans got frustrated. He further testified that, deceased pursuing her Bachelor of Architecture at Nagpur. At the time of her death, she was studying in third year of Bachelor of Architecture. She was also doing the business of editing photographs by using Photo-shop software and also embroidery designing by Computer. She had completed foundation course in Auto-Cad and foundation course in 3D Modelling and Animation from reputed institution. She was earning handsome income i.e. Rs. 1,50,000/- to Rs. 2,00,000/- per annum. He was cross-examined at length. During cross-examination, he admitted that his father in law had a transport and crusher business, he had also admitted that his father-in-law runs Sari Business. He further admitted that he had

performed second marriage and had a daughter from the said marriage. Thus, from the cross-examination, it is brought on record that, now the applicant no.1 has performed second marriage, so he was not dependent on the income of his wife, they were residing at two places. The applicant No.2 who is the father of the deceased also entered into witness box. As per his evidence by Exh. 64 deceased was his daughter and was looking after him as well as his younger daughter who was taking education. His daughter was having extra-ordinary academic carrier as she was pursuing her Bachelor of Architecture. She was also running her own business of editing photographs using Photo-shop software and also embroidery designing. They were dependent on her and thus he claimed compensation. He was also cross-examined at length, he had admitted that Chhya Enterprises is the firm run by their family. After demise of victim all monetary belongings were diverted to applicant No.1 i.e. husband. Thus from his cross-examination, the attempt was made to show that the parents were not dependent on her and therefore, they are not entitled for any compensation.

15. The insurance company has examined the truck driver to show that the deceased had contributed to the said accident. However, his evidence is only to the extent that when he was proceeding by driving his truck, he heard the noise and found that the two wheeler of the deceased dashed against his truck. During his cross-examination, he denied that the said accident took place due to his negligence. After perusal of the police papers and spot panchanama which shows that the alleged incident has taken place

on Warora Road on Flyover.

16. As per the recitals of the panchanama, the truck has dashed against the two wheeler from the backside. Therefore, contention of the truck driver that the said accident took place as two wheeler has dashed from the backside of the truck is not sustainable. Thus, the evidence of truck driver is not sufficient to show that, the accident took place due to the negligence of the deceased. Thus evidence adduced by the insurance company is not sufficient to prove the contributory negligence of the deceased.

17. It is well settled that, just compensation is to be awarded to the legal representatives of the person, who died in an accident, for the injured, who sustained the accidental injury in the accident. The provision of compensation under the Motor Vehicle Act is enacted to compensate the legal representatives, whose near and dear one met with an accident for sustaining injuries in an accident. The concept of just compensation should be on the basis of fairness, reasonableness, simultaneously the compensation cannot be granted as a bonanza though the discretion vested in the tribunal is wide. It is obligatory on the part of the tribunal to be guided by the expression that it is just compensation. The determination has to be on the foundation of evidence brought on record, as regards the age and income of the deceased and thereafter by applying the multiplier. The formula relating to the multiplier has been determined, in the case of *Sarla Verma and others Vs Delhi Transport Corp. And another*⁴. The duty of the tribunal and the

4 (2009) 2SCC(Civ)770

Court is also to see that just compensation is to be awarded by including addition of future prospect on the proven income at present.

18. In the light of the above legal principals, it has to be seen whether the appellants are entitled for enhanced compensation. In the case of *National Insurance Company Ltd. V/s Pranay Sethi and others (supra)* the Hon'ble Apex Court has held that, although the wages/income of those employed in an unorganized sector has not registered a corresponding increase, and has not kept pace with the increase in the salaries of the government employees, and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self employed and even those who engaged on daily basis, monthly basis or even seasonal basis.

19. It is further held that, we can take judicial notice of the fact that with the view to meet the challenges, posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of tailor, who earns his livelihood by stitching clothes. If the cost of living increases and the prices of the essentials go up, it is but natural for him to increase the cost of his labour. So will be the case of ordinary skilled and unskilled labours etc.

20. By applying these principals, in the present case, as per the evidence adduced by the applicant deceased was taking education as well as she was earning by running the business of editing photographs using Photo-shop software. She was also

dealing with the embroidery designing on the computer. In support of the contention, the applicants placed on record Income Tax Department acknowledgment which show that deceased was Income Tax Payer and was earning Rs. 1,50,000/- to Rs. 2,00,000/- from the said business. The income tax department acknowledgment for the assessment year 2008-09 shows her income as Rs. 1,50,000/- towards the gross income. After deduction, her income for the said year appears to be Rs. 1,44,997/-. For the next assessment year, her gross total income was Rs. 1,87,888/- and after deduction her total income was Rs. 1,82,850/-. The details computation of total income show that, in the year 2009 net profit Rs. 1,51,500/- and she had paid the income tax on the said amount. In the year 2009-10, her income was around Rs. 1,90,000/- and she had paid the income tax of Rs.1,87,888/-.

21. Thus, the contention of the applicants that she was running the business is substantiated by the income tax document which shows that she was earning member. She had the qualification to run the said business as she had completed foundation course in Auto-Cad from the Cad Center Training Services, Pune. Thus, there is sufficient evidence on record to show that, she was running business and was earning Rs. 1,50,000/- to 2,00,000/-. Her accident occurred on 13/03/2010 and she had paid income tax for the year 2009-10 on the income of Rs. 1,87,888/-. Thus average income of the deceased can be taken into consideration as Rs. 1,75,000/- per year.

22. There is no dispute that, the deceased was well educated

lady, she was not only pursuing her Bachelor of Architecture but she had completed foundation course in 3D modeling and animation at Pune as well as foundation course in Auto-cad. At the time of accident, her age was only 22 years. The claimants have claimed the compensation of Rs. 22,00,000/- i.e. 21,50,000/- towards loss of income + 50,000/- towards pain and suffering, loss of consortium etc. The tribunal has awarded Rs. 9,47,500/- by taking into consideration her annual income as Rs. 1,95,000/- per year. The tribunal has also considered that, she was utilizing $\frac{3}{4}$ th Income for herself and rest of the income was spending for the family members. The tribunal has considered that, after deducting $\frac{3}{4}$ th, the amount comes to Rs 26,32,500/-. Thus $\frac{1}{4}$ income of deceased which she had spent for the family comes Rs. 8,77,500/- and besides that she is entitled for the compensation under the conventional heads i.e. funeral expenses of Rs. 15,000/- loss of consortium Rs. 40,000/- and loss of estate Rs. 15,000/- which according to the learned counsel for the claimant is in adequate compensation.

23. Learned advocate Khajanchi vehemently submitted that in today's era both husband and wife are contributing equally for the family. The deceased was also earning for her family. Though her husband was residing at Australia but she was residing at Nagpur for her education purpose. She was earning for her better future. Moreover, her parents were also dependent upon her, younger sister was minor and considering the same the compensation is to be awarded. In support of his contention he placed reliance on *New India Assurance Company Ltd. Vs Sunil*

Parshram Garud and others (supra). Wherein it is held that in this day and age, considering the cost of living, the income of both the husband and wife are equally important for running the house as they supplement each others income. It cannot be generally said that, as the other spouse earning, there is no dependency. When the husband and wife with separate income are living together and sharing their expenses and in consequences thereof, their joint living expenses are less then twice the expenses of each living separately, then each by the fact of sharing is conferring a benefit on the other. This results in higher saving. In case one spouse losses the benefit of contribution rendered by the other in managing the household, in such a situation, the surviving spouse would be entitled to compensation for loss of dependency (i.e. loss of services rendered in managing household). He submitted that in the present case also, due to the education the deceased was staying in India. Claimant No.1 is staying in Australia. After completing the education the deceased was desiring to join his company. Thus, it can be said that she was saving the amount to approach to her husband. Merely because they are residing at two separate places, it cannot be said that, she was not contributing to the income of the claimant No.1.

24. In the present case, it has come in the evidence that the deceased was contributing her entire income not only for her family but also for the family of the parents also. Thus her contribution is to be taken into consideration. The said evidence has not challenged by the insurance company.

25. Per contra, learned advocate for the Respondent No.1 Mr. Cecil Anthony submitted that, admittedly claimant and deceased were staying at different places. They both were earning and they both were not dependent upon each other. Therefore, question of awarding the amount under the head of loss of dependency would not arise as there was no financial dependency. In fact, in this case, the deceased was not even managing the household and therefore, the claimants are not entitled for any compensation towards the loss of dependency.

26. After giving the thoughtful considerations and submissions made by both the parties. The evidence on record shows that the claimant No.1 Anuj was residing at Australia, whereas a deceased was staying along with her father as she was taking the education. While taking education, she was running the business and contributing in her fathers family. The days are gone when only the son was maintaining the family but now a days the daughters, who are shouldering the responsibility, not only of the matrimonial family but of their parents also.

27. In the present case also, the deceased was shouldering the responsibility of her parents and she was contributing not only in the family of her husband but also contributing for the family of her parents. Though the parents were not completely dependent upon the deceased but her contribution in the family of parents cannot be ignored. As well as her contribution towards the family of her husband is also to be taken into consideration. If she would not have earned by running the business, definitely it was claimant who

has to incur the expenses towards the education of deceased as well as for her maintenance. Thus, the facts and circumstances shows that by earning some amount, she was saving the amount of her husband. Thus, the husband of the deceased was earning at the relevant time and as such was not dependent on the income of his wife, cannot be accepted. In view of the evidence which has come on record, that the claimant no.1 Anuj was working in the Australia, her parents were also running there respective business. At the same time, the evidence which came on record show that the deceased was contributing in the family of the parents as well as incurring the expenses for her education which automatically saving the amount of her husband, which he has to incur for her education.

28. Considering the cost of living, the income of both the husband and wife is equally important for betterment of the life. It cannot be generally said that when the other spouse is earning there is no dependency. They are living separately as the deceased was taking education. Deceased was not only taking education but she was earning and sharing the expenses by incurring the same for her education as well as her living costs. In consequences thereof, their joint living expenses are less than twice the expenses of each living separately. In case, one spouse who contributes for the family, definitely others income is saved. In such a situation, the surviving spouse would be entitled to compensate for loss of dependency.

29. As far as submission advanced by the learned counsel for the insurance company is concerned, it is submitted that they both were not residing at one place and therefore, they were not

dependent on each others income. But as observed that the deceased was earning and contributing in her parents family as well as she is incurring the expenses towards her education and towards her living cost. If she would not have been earning member, definitely it was the husband, who has to incur the expenses for her education and her living cost. Therefore, the contention of the insurance company that husband was not dependent on her earning is not sustainable. She had definitely supported her husband and parents.

30. As observed by this Court, in the judgment *New India Assurance Company Ltd. V/s Sunil Parashram Garud and others (supra)* that “in this 21st century, the cost of living is touching to the sky and in this day and age, considering the cost of living, the income of both i.e. the husband and the wife are equally important for running house as they supplement each others income”. Here also, this fact needs to be taken into consideration. Even it is also assumed that deceased was spending 50% of the amount on her own and 50% for her parents and for her matrimonial family then also the claimants are entitled to receive the compensation by applying the multiplier method.

31. In the above circumstances, the income of the deceased is taken into consideration as average income of Rs. 1,75,000/- per year and it is held that she was incurring the expenses of 50% for herself and 50% for the other family members. Then the said amount comes as $\text{Rs. } 1,75,000 \div 50\% = 87,500/-$. Admittedly, the deceased was 22 years at the time of accident. The

evidence shows that she was well educated lady and pursuing his carrier in Bachelor of Architecture. In view of the judgment of *Sarla Verma and others Vs Delhi Transport Corp. And another (supra)*, the multiplier applied is to be 18.

32. In view of the principals laid down by the Hon'ble Apex Court *National Insurance Company Ltd. V/s Pranay Sethi and others (supra)* the 40% future prospects to be added in that amount it comes to Rs. 87,500+35,000/- = 1,22,500/-. After applying the multiplier of 18 it comes to Rs. 22,05,000/-. Thus, amount of compensation comes to Rs. 22,05,000/-.

33. Admittedly, the claimant No.1 has performed the second marriage, after the death of the deceased. It would be highly improper to compel him to lead the life of widower till he receives the compensation. Due to death of the deceased, definitely he had undergone some pain and sufferings. The concepts of loss of consortium in legal parlance is the right of the spouse to the company, care, health, comfort guidance, society, solace, affection and sexual relations with his or her health. The said non-pecuniary head of damages has to be understood properly. The loss of companionship, love, care and protection etc., the spouse is entitled to receive the some amount towards compensation under the head of consortium. Therefore, the claimant No.1 is entitled to receive the amount of Rs. 40,000/- towards consortium which is already granted by the tribunal.

34. The concept of the consortium is recently interpreted by the Hon'ble Apex Court in the case of *Magma General Insurance*

Co. Ltd vs Nanu Ram and others ⁵. Wherein the Hon'ble Apex Court considered the judgment of constitutional bench in *National Insurance Company Ltd. V/s Pranay Sethi and others (supra)* which dealt with the various heads, under which the compensation is to be awarded in a death case. It is held by the Hon'ble Apex Court that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and '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. 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. Here, in the present case also, the claimant nos.2 and 3 have lost their young daughter during their lifetime. It was great shock and agony for them, therefore, they are entitled for Filial consortium. Thus, in addition to the above amount they are entitled to receive 40,000/- towards Filial consortium.

35. In the light of the above principals laid down by the Hon'ble Apex Court, here in the present case also, it appears that learned trial Court has not considered the aspect that the deceased had also contributed to the family and awarded inadequate

5 Civil Appeal No.9581/18 (Arising out of SLP (Civil) No. 3192/18 dt. 18.09.18

compensation. In fact, the deceased was also contributing not only to her matrimonial family but also contributing for the family of her parents. Thus, the appellants have made out a case for enhancement compensation as tribunal had not considered the said aspect. It is well settled that just compensation is to be awarded. Section 168 of the Motor Vehicles Act deals with just compensation and the same has to be determined on the foundation of fairness, reasonableness, equitability on acceptable legal standard because such determination can never be in arithmetical exactness. It can never be perfect. The concept of just compensation has to be viewed through the fairness, reasonableness and non-violation of principals of equitability. Admittedly, there should not be a windfall, simultaneously the compensation granted cannot be an apology for compensation. The just compensation has to be on the foundation of evidence brought on record as regards, the age and income of the deceased, and thereafter, the appropriate multiplier to be applied.

36. The basic principals on the basis of which the compensation is to be granted should be on the basis of pragmatic computation which is in proximity to reality. It is well settled and well accepted that, money cannot compensate a life lost but an efforts has to be made for grant of just compensation having uniformity of approach. There has to be balance between the two extreme i.e. a windfall and bonanza. In the light of the above discussions, I pass the following order :-

- a) The First Appeal is allowed.
- b) The appellants are entitled for receive the

compensation of Rs. 22,00,500/-+40,000/-= 22,40,500/-, after deducting the compensation amount awarded by the tribunal i.e. 12,93,000/- with interest @ 7.5% p.a. from the date of filing the appeal.

- c) The insurance company is directed to deposit the enhanced amount of compensation within three months from the date of passing of the judgment.
- d) The appellants are entitled to withdraw the amount of compensation after depositing the deficit Court fee stamp on the enhanced amount.
- e) The enhanced amount of compensation is to be apportioned equally between all the appellants.

JUDGE