



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

Reserved on: 10.08.2023

Date of decision: 06.09.2023

+ **MAC.APP. 778/2018 & CM APPLs. 35574/2018, 53180/2018, 4235/2021, 27229/2021**

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr.Pankaj Gupta, Adv. for
Ms.Suman Bagga, Adv.

versus

SUNITA RANI & ORS

..... Respondents

Through: Mr.Yash Aggarwal and
Ms.Chitrakshi, Adv.

+ **MAC.APP. 130/2019**

SUNITA RANI & ORS

..... Appellants

Through: Mr.Yash Aggarwal and
Ms.Chitrakshi, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE CO LTD & ANR

..... Respondents

Through: Mr.Pankaj Gupta, Adv. for
Ms.Suman Bagga, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These cross appeals have been filed by the Insurance Company (MAC.APP.778/2019) and by the Claimants (MAC.APP. 130/2019) challenging the Award dated 08.05.2018 (hereinafter referred to as the "Impugned Award") passed by the learned Motor Accidents Claims Tribunal-1, North District, Rohini Courts, Delhi (hereinafter referred to

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as the ‘Tribunal’) in MACT 5683/2016 titled as *Ms.Sunita Rani & Ors. v. Sh. Sewa Lal & Anr.*

2. By way of the Impugned Award, the learned Tribunal has held that the deceased-Shri Sat Narain Gandhi had died in a motor accident due to the motorcycle bearing registration no. DL-7SBN-3537 (hereinafter referred to as the ‘Offending Vehicle’) being driven in a rash and negligent manner. The learned Tribunal further held that even the deceased was negligent in driving his motor scooter and, therefore, has attributed contributory negligence of 40% to the deceased for purpose of calculating the compensation amount payable to the claimants. The learned Tribunal has granted a compensation of Rs.14,96,905.60, along with interest at the rate of 9% per annum from the date of the filing of the Claim Petition, that is, 27.03.2015, till the realisation of the compensation amount, in favour of the Claimants.

CHALLENGE TO THE IMPUGNED AWARD BY THE INSURANCE COMPANY

3. As far as the Insurance Company is concerned, it challenges the Impugned Award on two grounds:-

- a) That there was no evidence before the learned Tribunal to hold that the accident had taken place with the Offending Vehicle; and
- b) Even assuming that the accident had taken place with the Offending Vehicle, the learned Tribunal has erred in attributing only 40% towards contributory negligence of the deceased.



CHALLENGE TO THE IMPUGNED AWARD BY THE CLAIMANTS

4. As far as the claimants are concerned, they challenge the Impugned Award by contending that the learned Tribunal has erred in attributing contributory negligence of 40% to the deceased, thereby reducing the compensation payable.

5. The claimants further seek enhancement of the amount awarded towards loss of future prospects and under the heads of Funeral Expenses, Loss of Estate and Loss of Consortium.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE INSURANCE COMPANY

6. The learned counsel for the Insurance Company contends that in the present case, the FIR in relation to the accident was registered on 27.06.2013, against an unknown suspect/accused. He submits that the FIR recorded that when the Police reached the site of the accident, they did not find any eye-witness(s) or witness(s) present; and that the deceased had already been shifted to Satyawadi Raja Harish Chandra Hospital, Narela, Delhi. The FIR further records that even at the hospital, there was no eye-witness(s) or witness(s) to the said accident. He submits that, thereafter, the Police, on 25.09.2013, filed an untraced report before the concerned learned Metropolitan Magistrate. The Claimant no.1, Ms.Sunita Rani, that is the respondent no.1 herein, however, filed a Protest Petition dated 29.01.2014, stating that the accident had been caused by the Offending Vehicle and further claiming that Shri Amit Kumar (PW-2) was an eye-witness to the same. The learned Metropolitan



Magistrate, North District, Rohini Courts, Delhi vide order dated 10.11.2014, directed the Police to carry out further investigation. The Police, however, again filed a closure report on 01.03.2015, stating that the identity of the vehicle with which the accident had taken place could not be established. The said report was challenged again by the Claimant no.1, however, vide order dated 17.03.2015, the learned Metropolitan Magistrate accepted the Closure Report. The Claimant no.1 challenged the above order by way of a Revision Petition, being Criminal Revision No. 23/2015, before the Court of the learned Additional Sessions Judge-04 (North), Rohini Courts. The same was disposed of by the learned Additional Sessions Judge, vide order dated 04.06.2015, finding fault with the investigation conducted by the Police, and setting aside the order dated 17.03.2015 passed by the learned Metropolitan Magistrate, and directing the learned Metropolitan Magistrate to treat the Protest Petition filed by the Claimant no.1 as a complaint under Section 200 of the Code of Criminal Procedure, 1973. The learned Metropolitan Magistrate, vide order dated 16.03.2016, dismissed the Protest Petition/complaint of the Claimant no.1, finding that there was lack of sufficient evidence to summon any person for an offence as per the evidence produced. The Claimant no.1, still being unsatisfied, challenged the said order before the Court of the learned Additional Sessions Judge-III, North District, Rohini Court (hereinafter referred to as the 'Additional Sessions Judge') in Criminal Revision No. 57503/2016. The learned Additional Sessions Judge, vide order dated 03.11.2016, dismissed the said Revision Petition, holding that Shri Amit Kumar (CW-1) was not an eye-witness to the accident and in the absence of any eye-witness, who could depose that



the accident had taken place due to the rash and negligent driving of somebody, the learned Metropolitan Magistrate had rightly dismissed the complaint of the Claimant no.1.

7. The learned counsel for the Insurance Company submits that from the above sequence of events, it is apparent that in spite of detailed investigation by the Police and even with the evidence led by the Claimants before the learned Metropolitan Magistrate, it could not be proved that the accident had taken place with the Offending Vehicle, or that the Offending Vehicle was being driven in a rash and negligent manner.

8. The learned counsel for the Insurance Company further submits that even before the learned Tribunal, the Claimants examined Shri Amit Kumar (PW-2) as an alleged eye-witness to the accident. He, in his cross-examination, admitted that he was not an eye-witness to the accident. While he remembered the number of the Offending Vehicle, he could not remember the number of the scooter which the deceased was driving. He submits that the statement of Sh. Amit Kumar (PW-2) had been disbelieved as an eye-witness not only by the learned Metropolitan Magistrate and the learned Additional Sessions Judge, but even by the learned Tribunal in the present case.

9. The learned counsel for the Insurance Company further submits that the learned Tribunal had, on its own, summoned Shri Vikas Saini (CW-1) as a Court witness. He admitted that even he had not seen the accident, nor could he see the vehicle number involved in the said accident. The learned Tribunal has rightly disregarded his statement as a



proof of the Offending Vehicle being involved in the accident in question.

10. The learned counsel for the Insurance Company submits that the only evidence on which the learned Tribunal has placed reliance for its finding that the accident was caused by the Offending Vehicle, was a statement of Shri Sewa Lal (R1W1), the driver of the Offending Vehicle. He submits that the learned Tribunal has erred in placing reliance on the statement of Shri Sewa Lal (R1W1). He submits that Shri Sewa Lal (R1W1), though claimed that he was coming from Sonapat at the time of the accident, he could not tell at what time he was going to Sonapat when he turned back towards Delhi. He, in fact, admitted that he did not know even the way of going from Delhi to Sonapat. He could not remember whether he was carrying his mobile phone on the day of the accident. The Police has found that from the location of his mobile phone shown in the Call Data Record (in short, 'CDR'), his phone was not at the location of the accident. He stated that he could not remember whether he had taken leave from the office for going to Sonapat on the date of the accident, and admitted that he was giving the statement to help the Claimants. The learned counsel for the insurance company submits that clearly Shri Sewa Lal (R1W1) had been set up by the Claimants to falsely admit that the accident had taken place with him driving the Offending Vehicle. He submits that the present was a clear case of involving the Offending Vehicle in the accident only to claim compensation from the Insurance Company.



11. Placing reliance on the order dated 16.12.2021 of the Supreme Court in Special Leave Petition (Civil) No. 1110/2017 titled ***Safiq Ahmad v. ICICI Lombard General Insurance Co. Ltd. & Others.***; and of the High Court of Gujarat in ***Bajaj Allianz General Insurance Co. Ltd. Through Gaurang Shantilal Raviya v. State of Gujarat***, Neutral Citation no. 2018:GUJHC:26141; and the judgment dated 24.01.2021 of the High Court of Madras in CrI. OP No. 2302 and 4174 of 2021 titled ***Cholamandalam MS General Insurance Company Ltd and Ors. v. Director General of Police and Ors.***, the learned counsel for the Insurance Company submits that this is a fit case which should be referred to a Special Investigating Team of the Police as a fraudulent claim has been filed against the Insurance Company to recover compensation when the accident had taken place with an unknown vehicle and it was a hit and run case.

12. The learned counsel for the Insurance Company, on the question of contributory negligence, has placed reliance on the statement of Shri Sewa Lal (R1W1) to submit that Shri Sewa Lal (R1W1) had explained that it was the deceased who had suddenly applied the brakes without giving any signal, due to which, the deceased lost the control of the scooter and fell down on being hit by the Offending Vehicle on the back side of the scooter in spite of Shri Sewa Lal (R1W1) applying maximum brakes. The learned counsel for the Insurance Company submits that Mechanical Inspection Report showed damage to the scooter on the left and the front side. There was no damage on the scooter on the back side. He submits that from the same, it is apparent that the scooter had fallen



down on its own due to some negligence of the deceased, and, therefore, attribution of only 40% as contributory negligence to the deceased by the learned Tribunal is improper.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE CLAIMANTS

13. On the other hand, the learned counsel for the Claimants submits that the learned Tribunal has rightly placed reliance on the statement of Shri Sewa Lal (R1W1) to hold that as the driver of the Offending Vehicle has admitted to the accident being caused by the Offending Vehicle, there was no need to lead further evidence to prove the same. He submits that the learned Additional Sessions Judge, in its order dated 04.06.2015 passed in Criminal Revision Petition no. 23/2015 titled ***Smt. Sunita Rani v. The State (Govt. of NCT of Delhi)***, had found that merely because the CDRs of the eye-witness did not show the location of the mobile phone at the site of the accident, it cannot be presumed that the eye-witness was not present at the site of the accident. The learned Additional Sessions Judge had further made scathing remarks against the investigation carried out by the Police.

14. The learned counsel for the Claimants, placing reliance on the judgments of the Supreme Court in ***N.K.V Bros v. M Karumai Ammal and Ors***, (1980) 3 SCC 457; ***Kusum Lata and Ors v. Satbir and Ors***, (2011) 3 SCC 646; ***Sunita and Ors v. Rajasthan State Road Transport Corporation and Ors***, (2020) 13 SCC 486; ***Anita Sharma and Ors v. New India Assurance Company Limited and Ors***. (2021) 1 SCC 171; and in ***Janabai WD/O Dinkarrao Ghorpade v. M/s ICICI Lombard***



Insurance Company Ltd, (judgment dated 10.08.2022 passed in Special Leave Petition (Civil) No. 21077/2019), submits that merely because the identity of the Offending Vehicle could not be established in the criminal trial, and a criminal offence could not be established, is no ground for doubting the authenticity of the Claim Petition filed by the Claimants before the learned Tribunal. He submits that the standard of proof in the two proceedings is vastly different; in the criminal case, the standard of proof being beyond reasonable doubt, while before the learned Tribunal, the standard of proof being one of preponderance of the probability.

15. He submits that the Claimant no.1-Smt. Sunita Rani, wife of the deceased was examined as PW-1. In her affidavit of evidence, she clearly stated that it was through her own inquiry and efforts that she could trace Shri Amit Kumar (PW-2) who informed her that he had seen the accident and had noted down the make and registration number of the Offending Vehicle. She had then approached the Investigating Officer, who still did not carry out a proper investigation and filed a Closure Report. He submits that merely because the Police did not carry out a proper investigation into the manner of the accident and the involvement of the Offending Vehicle, the Claimants cannot be prejudiced and their Claim Petition cannot be dismissed or disbelieved.

16. The learned counsel for the Claimants submits that from the evidence of Shri Sewa Lal (R1W1), it is apparent that it is he who hit the scooter being driven by the deceased on the back side, resulting in the deceased losing his balance and falling down, resulting in the death of the deceased. He submits that, in fact, the learned Tribunal has erred in



attributing 40% contributory negligence to the deceased. He submits that the Claimants have filed their own appeal/cross-objections seeking enhancement of the compensation by setting aside the finding of the learned Tribunal on attribution of contributory negligence to the accident on the deceased.

17. He submits that learned Tribunal has erred in granting lesser amount of compensation under the head of non-pecuniary damages. He further submits that even the future prospects should be given at 30%, and not at 25% as held by the learned Tribunal.

18. The last challenge of the learned counsel for the claimants is to the quantum of compensation awarded under the heads of Funeral Expenses at Rs.15,000/-, Loss of Estate at Rs. 15,000/- and Loss of Consortium at Rs.40,000/-.

ANALYSIS AND FINDING

19. I have considered the submissions made by the learned counsels for the parties.

On the question of the vehicle being planted

20. It is not in dispute that the deceased died as a result of the injury suffered in a motor accident on 27.06.2013. The question before this Court is whether the Claimants have been able to establish the identity of the Offending Vehicle as the one which caused the accident. As noted hereinabove, much reliance has been placed by the learned counsel for the Insurance Company on the closure/dismissal of the Criminal



complaint filed by the Claimant No.1 before the learned Metropolitan Magistrate, and the said order being upheld by the learned Additional Sessions Judge by dismissing the Criminal Revision filed by the Claimant no.1 against such order. I, however, do not find much substance in such challenge.

21. In **N.K.V Bros** (Supra), the Supreme Court has observed as under:-

“2.....The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to reopen the holdings on culpability and compensation.

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.....”

22. In **Sunita and Ors** (Supra), the Supreme Court re-emphasized that the Tribunal/Court should not adopt a hyper technical and trivial approach in case of compensation under the Motor Vehicles Act, 1988



(hereinafter referred to as the ‘Act’). It was held that the Tribunal in *stricto sensu* is not bound by the pleadings of the parties, as its function is to determine the amount of fair compensation. The Court held as under:-

“22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

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27. The Tribunal’s reliance upon FIR 247/2011 (Ext. 1) and charge-sheet (Ext. 2) also cannot be faulted as these documents indicate the complicity of Respondent 2. The FIR and charge-sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the Respondent 2 in causing the said accident. Even if the final outcome of the criminal proceedings against Respondent 2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act. This Court in Mangla Ram (supra), noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability.

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30. Clearly, the evidence given by Bhagchand withstood the respondents’ scrutiny and the respondents were unable to shake his evidence. In

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turn, the High Court has failed to take note of the absence of cross examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (AD 2) evidence from the viewpoint of him not being named in the list of eye witnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation (as set out in Parmeshwari and reiterated in Mangla Ram) that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross-examine the witness concerned. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross-examination, for which opportunity was granted to the respondents by the Tribunal."

(Emphasis supplied)

23. In **Anita Sharma and Ors** (Supra), the Court was again confronted with a case where an FIR was registered against an unknown truck. The Court reiterated that it was common place for most people to be hesitant about being involved in legal proceedings and, therefore, not volunteer to become witnesses. The Court should not, however, draw an adverse inference against the witness for his failure to report the matter to the



Police. The High Court must be sensitive to the Claimant's hardship in tracing witnesses and collecting information for an accident which took place.

24. In *Janabai WD/O Dinkarrao Ghorpade* (Supra), the Supreme Court reiterated that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Act, which is summary in nature. The application under the Act has to be decided on the basis of the evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial.

25. Applying the above principles to the facts of the present case, it is to be noted that the Claimants, immediately on the filing of the untraced report by the Police before the learned Metropolitan Magistrate, protested against the same claiming that Shri Amit Kumar (PW-2) had disclosed to them the identity of the Offending Vehicle. They filed a Protest Petition before the learned Metropolitan Magistrate on which the learned Metropolitan Magistrate ordered further inquiry by the Police. The Police discarded the statement of Shri Amit Kumar (PW-2) only on the pretext that his mobile phone, as per the CDR, was not at the location of the accident. The learned Additional Sessions Judge, in his order dated 04.06.2015, however, held that this was not a sufficient ground for discarding the statement of PW2.

26. Though it may be correct that Shri Amit Kumar (PW-2) is not the eye-witness to the accident, as admitted by him, his statement is relevant to the fact that the accident had taken place with the involvement of the



Offending Vehicle. His statement to this effect could not be seriously challenged by the Insurance Company before the learned Tribunal. It was also not shown as to why he would depose falsely in favour the Claimants or against the owner of the Offending Vehicle.

27. In fact, the owner of the Offending Vehicle- Shri Sewa lal (R1W1) himself admitted that the accident had taken place by him driving the Offending Vehicle. In the course of the cross-examination, nothing was brought out as to why he would depose falsely in favour of the Claimants and get himself involved in this case.

28. The Claimant no.1 (PW-1), Smit. Sunita Rani, in her the statement, had stated that it was on her own personal inquiries and efforts that she traced out Shri Amit Kumar (PW-2) as a witness to the accident who disclosed the identity of the Offending Vehicle. She was not cross-examined on this aspect at all.

29. Merely because the Police did not investigate the accident properly and, thereafter, through the efforts of the family of the deceased, the identity of the Offending Vehicle is traced out, is not sufficient to cast a doubt on the involvement of the Offending Vehicle in the accident. It cannot be said that the claim filed by them is false or should be dismissed on this account alone. Each case has to be judged on its own facts.

30. In the present case, there is no connection shown between the Claimants and/or the deceased with either Shri Amit Kumar or Shri Sewa Lal. It is not shown why they would falsely support the Claimants. In fact, the Claimants were pursuing even the criminal case against Shri



Sewa Lal with full rigour. Equally, it is not shown why Shri Sewa Lal would admit to the accident having taken place by him driving the Offending Vehicle, when he stood exonerated/not summoned in the criminal case. If anything, his statement is truthful of the accident having taken place by his vehicle.

31. As noted hereinabove, merely because the learned Metropolitan Magistrate did not find sufficient evidence to summon Shri Sewa Lal as an accused in the case, it cannot be a ground for dismissing the present Claim Petition; the standard of proof being totally different in the two proceedings, that is, the criminal case and the Claim Petition before the learned Tribunal.

On the question of Contributory negligence

32. Shri Sewa Lal has described the manner of the accident in his affidavit by way of evidence (Ex.R1W1/A), as under:-

“3. I say that on the alleged date of accident i.e. 27.06.2013 the deponent was coming from Sonipat side on his motorcycle bearing Registration No. DL-7SBN-3537. One person was driving his scooter No. DL-1SM-0261 ahead of the deponent on G.T. Road. When the deponent reached near Hanuman Mandir, Budhpur, Delhi on G.T.K. Road, suddenly the driver of the said scooter applied sudden brakes without giving any signal. Due to applying of sudden brakes the driver of the scooter lost his control over the scooter. The deponent applied maximum brakes, but by the time the motorcycle of the deponent stopped, it had reached near the said scooter and hit on the back side of the said scooter towards



right side. Since the driver of the scooter had already lost the control over his scooter, therefore, due to the impact of the motorcycle of the deponent, the driver of the scooter lost his balance and fell down on the road. The deponent immediately stopped his motorcycle and reached near the said person. By that time the said person had got up and was sitting on the side of the road/footpath. The deponent inquired from him as to whether he was alright and he responded in affirmative. Thereafter, the deponent started his motorcycle and left the said place. Thus, the allegation of the Petitioners that the motorcycle bearing Regn. No. DL-7SBN-3537, being driven by the deponent in a very high speed, in rash and negligent manner without observing the traffic rules is unfounded."

33. Though the Mechanical Inspection Report did not show any damage to the scooter on the back side, in my view, the same pales into insignificance once Shri Sewa Lal himself admits that his motorcycle had hit the scooter driven by the deceased on the back side, though at the same time, trying to explain that it was because of the deceased applying brakes on his scooter without any indication.

34. In view of the above testimony of Shri Sewa Lal, the learned Tribunal has rightly attributed contributory negligence of 40% to the deceased for determining the compensation payable. I do not see any reason to interfere with the same.

On the challenge to the award of future prospects

35. The claimants further challenge the Impugned Award on the compensation awarded towards loss of future prospects at 25%. The



learned counsel for the Claimants submits that the same should have been awarded at 30%.

36. It was established before the learned Tribunal that the age of the deceased at the time of the accident was 48 years. It was the own case of the Claimants that the deceased was working as an accountant with two different firms and also doing part time accounts work. It was further claimed that the deceased was also an agent of Life Insurance Corporation. The learned Tribunal has, therefore, rightly awarded 25% towards Future Prospects in favour of the Claimants by placing reliance on the judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, wherein it has been held as under:-

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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



37. In view of the above, I find no reason to interfere with the finding of the learned Tribunal.

On the challenge to the amount awarded towards funeral expenses, loss of estate, and loss of consortium

38. The claimants in their cross-appeal have further challenged the Impugned Award inasmuch as it grants loss of estate at Rs.15,000/-, loss of consortium at Rs.40,000/- and funeral expenses at Rs.15,000/-. They pray the same to be enhanced to Rs.1,00,000/-, Rs.1,00,000/- and Rs.50,000/-, respectively.

39. In ***Pranay Sethi*** (Supra), the Supreme Court, on the award of non-pecuniary compensation, has held as under:-

“59.8. 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 aforesaid amounts should be enhanced at the rate of 10% in every three years.”

40. In view of the above, the amount awarded by the learned Tribunal towards loss of estate and funeral expenses is justified, and therefore, is not required to be enhanced.

41. As far as the question of loss of consortium is concerned, the learned Tribunal has awarded Rs.40,000/- only to Smt.Sunita Rani (PW-1).

42. In ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and Others***, (2018) 18 SCC 130, the Supreme Court



has opined that loss of Consortium is also to be given in case of premature death of parents on account of loss of parental consortium. The parents shall also be entitled to Filial consortium. I may reproduce the relevant direction of the Supreme Court, as under:-

“21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads loss of consortium. 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. With respect to a spouse, it would include sexual relations with the deceased spouse:

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other a in every conjugal relation”.

21.2. 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”.

21.3. 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, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium exceeds the economic value of the compensation awarded in the case of the death of





a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where 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 awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium."

(Emphasis supplied)

43. Subsequently, the Supreme Court in ***United India Insurance Company Limited v. Satinder Kaur alia Satwinder Kaur*** (2021) 11 SCC 78, again reiterated that the children are also entitled to get parental consortium; and the parents' Filial consortium, as per the guidelines laid down in ***Pranay Sethi*** (Supra), and re-determined the compensation in the said case to award the same to each of the Claimants separately. I may quote from the judgment, as under:

"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 It is 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.

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, has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General, 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.

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37.12. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi and Magma General, the following amounts are awarded under the conventional heads:

(i) Loss of estate: Rs 15,000

(ii) Loss of consortium:

(a) Spousal consortium: Rs 40,000

*(b) Parental consortium: 40,000 x 3
= Rs 1,20,000*

(iii) Funeral expenses : Rs 15,000”

44. In light of the above judgements, the Impugned Award shall stand modified to the extent that compensation towards loss of consortium is re-determined as under:-

Loss of consortium: Rs.40,000/- x 3= 1,20,000/-

45. The claimants are entitled to the above re-determined amount in terms of the schedule of payment.

CONCLUSION:

46. In view of the above, I find no merit in the above appeal filed by the Insurance Company (MAC.APP. 778/2018). The same, along with all pending applications, is accordingly dismissed.

47. The statutory amount deposited by the Insurance Company be returned to the Insurance Company along with interest accrued thereon.



48. As far as the appeal filed by the Claimants (MAC.APP. 130/2019) is concerned, the same is partially allowed, enhancing the compensation awarded in their favour towards Loss of Consortium to Rs.1,20,000/-. The enhanced amount shall carry interest at the rate awarded by the learned Tribunal in its Impugned Award.

49. In terms of the order dated 31.08.2018, the Insurance Company was directed to deposit the awarded amount along with interest with the learned Registrar General of this Court. The Insurance Company shall now deposit the enhanced compensation, along with interest, with the learned Registrar General of this Court, within a period of six weeks from today. The compensation already deposited, along with the enhanced compensation on its deposit by the Insurance Company, shall be released in favour of the Claimants in accordance with schedule of disbursement stipulated by the Impugned Award.

50. The parties shall bear their own costs of appeal(s).

NAVIN CHAWLA, J

SEPTEMBER 6, 2023/rv/rp