

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present: -Hon'ble Mr. Justice Subhendu Samanta

F.M.A No. – 805 of 2023

Nurselem Sekh @ Nur Selim Sk. & Anr.

Vs.

Bajaj Allianz General Insurance Company. Ltd. & Anr.

**For the Appellant/claimants : Mr. Motiul Islam , Adv.,
Mr. Ashique Mondal, Adv.
Mr. Sujit Saha**

**For the Ins. Com. : Mr. Indradip Das, Adv.
Mr. Preetam Majumdar**

Reserved on : 01.05.2024

Judgment on : 24.05.2024

Subhendu Samanta, J.:-

1. Instant appeal has been preferred against the judgment and award dated 05.01.2023 passed by the learned Judge Motor Accident Claims come ADJ 3rd Court Berhumpur, Murshidabad in MV Case No. 228 of 2012

2. The brief of fact of the case is that on 23.03.2012 at about 6:00 a.m. when the victim of this case namely Adam Ali Sekh was proceeding by his motor cycle towards Kandi through the left side of Kandi, Berhampur State Highway and reached near Bhatpara More at that time a vehicle bearing no. WB 57/9072 (mini track) which was running towards Kandi in a very high speed and rash and negligent manner dashed the motor cycle of the victim from the backside. As a

result the victim sustained saviour injuries all over his body. He was shifted to the Berhampur New General hospital but succumbed to his injuries.

3. The widow, minor son, mother and daughter of the victim filed an application before the Learned Tribunal u/s 166 MV Act for getting compensation on the ground that the victim died due to the rash and negligent driving of the driver of the offending vehicle duly ensured under the policy of the Insurance Company. The claim case was contested by the Insurance Company by filing written statement.

4. The Learned Tribunal after hearing the parties and after receiving evidences, has awarded a sum of Rs. 5,16,500/- as a compensation of this case and directed the Insurance Company to pay the compensation together with 5% simple interest.

5. The Insurance Company has satisfied the award through the office of the Learned Tribunal. The claimants being aggrieved by and dissatisfied with the said award filed the instant appeal for enhancement of the award.

6. Learned Advocate for the appellant Mr. Mandal submits that the award was challenged regarding the quantum of compensation as follows:

i) Income of the deceased

ii) Deduction towards personal expenses

iii) Future Prospects

iv) Non- pecuniary damages

v) Interests

vi) Award of Parental and filial consortium.

Income of the Deceased

Mr. Mondal submits that the income of the deceased was calculated by the Learned Tribunal as Rs. 4,000/- per month. He submits that the claim application stated the income of the deceased to Rs. 5,000/- per month and the name of the employer was mentioned as cook of Basantapur Education Society. He submits that the evidence laid before the Learned Tribunal to prove that the deceased was a cook by profession and used to earn Rs. 5,000/- per month but the Learned Tribunal by ignoring the evidences on record has awarded the compensation by fixing monthly income to be the deceased is 4,000/- i.e. He pointed the evidence of PW 1 the daughter of the victim, who started that her father used to earn Rs. 5,000/- per month as a cook. Mr. Mandal argued that the said evidence was remained uncontroverted in cross-examination of the Insurance Company. Mr. Mandal also argued the piece of oral evidence cannot be disregarded by the Learned Tribunal by virtue of decision of Hon'ble Division Bench of this court reported in **Smt. Bilasini Mandal Vs. National Insurance Company Limited (2003) 2 TAC 435**. Mr. Mandal further argued that the income of the deceased was

specifically proved by the appointment letter issued by the employer in favour of the deceased, which was marked as Exhibit 6. The Exhibit 6 was proved before the Learned Tribunal by PW 3. Mr. Mandal further argued that, above all, notification of Government of West Bengal vide circular dated 25.06.2020 issued by the office of Labour Commissioner of the Government of West Bengal mentioned minimum wages of an unskilled labour working in hotel and restaurant Sector as kitchen helper in the year 2012 under Zone B was Rs. 5,115/- per month.

7. Learned Advocate, Mr. Indradip Das appearing on behalf of the Insurance Company submitted that the Learned Tribunal has correctly disbelieved the evidence of PW 3. He submits that there are no positive evidence of this case that the deceased was a helper and has joined in the said school for cooking. Mr. Das further pointed out the cross-examination of the PW 3 wherein PW 3 has admitted that he did not produce any document to show the deceased received Rs. 5,000/-per month as a salary.

8. Heard the Learned Advocates. Perused the evidence of PW 3 as well as Exhibit 6 it appears that the Exhibit 6 has been specifically tendered to the author who admitted that this is the document which was signed by him however, no document was placed or tendered to PW 3 to show that the deceased received Rs. 5,000/-

9. In deciding the issue the observation of the Hon'ble Division Bench of this court in **Bilasini Mandal (supra)** is required to be set out (P-6).

6 we are of the view that that oral evidence is also a piece of evidence and that was overlooked by the learned Judge. Merely because no documentary evidence in support thereof can be produced, such oral evidence cannot be rejected outright unless it is found unreliable for any other reason.

Thus following the principle, I am of a view that the claimants have a positive case which they have successfully demonstrated the materials and proved the income of the deceased. The Learned Tribunal without giving any cogent reason disregards evidentiary value of PW 6 which it is not permissible in the eye of law. In this case the monthly income of the deceased was successfully proved by the claimants to Rs. 5,000/- per month so in this case the observation of the Learned Tribunal is erroneous. The monthly income of the deceased should be calculated at the rate of Rs. 5,000/- per month.

Deduction towards the personal expenses

Mr. Mandal submits that in this case the Learned Tribunal has awarded the compensation by deducting 1/3rd of his income towards the personal expenses of the deceased. He submits that according to the observation of Hon'ble Apex Court in **Sarala Verma Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121**, when the number of dependant of deceased in a claim case is 03 the deduction towards personal expenses would be 1/3rd; when the number of

dependants are 04 to 06, the deduction towards the personal expenses would be $1/4^{\text{th}}$. He submits that in this case the Learned Tribunal deducted $1/3^{\text{rd}}$ towards the personal expenses though the family members of the deceased are 04.

Learned Advocate for the Insurance Company submits that married daughter is not dependent. So the deductions would be $1/3$.

10. Heard the Learned Advocate. Perused the claim application it appears that in the instant case 04 dependants filed the claim application claimants No. 1 is the son, claimant No. 2 is the widow, claimant No. 3 is the mother, claimant No. 4 is the daughter of the deceased.

11. The Insurance Company has not produced any evidence to show that married daughter was not the dependant of the deceased. Considering the social statute of the poor claimants it can be presumed that married daughter was always dependent upon the deceased.

12. Considering the observation of the Hon'ble Apex Court in **Sarala Verma (supra)** it appears that the observation of Learned Tribunal is erroneous. In this case the deduction towards personal expenses would be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$. Although ultimately two legal representatives of the deceased i.e. the widow and the mother expired during the pendency of this case and only two legal representatives are survived; by virtue of the decision of Hon'ble Apex

Court in **Kirti and Anr. Vs. Oriental Insurance Company Ltd. (2021) 2 SCC 166**, at the time of arising of cause of action of this case the number of claimants are 04 thus the deduction towards the personal expenses would be 1/4th.

Future Prospects

Mr. Mandal Learned Advocate submits that the Learned Tribunal has failed to award the future prospects in this case by virtue of decision of Hon'ble Apex Court passed in **National Insurance Company Ltd. Vs. Pranay Sethi** He submits that in this case the deceased was within the age of 40 years thus the future prospects would be 40% of his established income.

13. Mr. Das Learned Advocate for the Insurance Company submits that there are no evidence in this case that the deceased was with the age of 40 years thus the future prospects cannot be awarded.

14. Heard the Learned Advocates. Perused the post mortem report. The post mortem report disclosed that the deceased was 40 years at the time of accident so in this case according to the law laid down of the Hon'ble Apex Court in **Pranay Sethi (supra)**, the claimants are entitled to get the future prospects which would be 40% of the established income of the deceased.

General Damages

It appears that the Learned Tribunal has awarded a sum of Rs. 4,500/- towards the general damaged under the heading of funeral

expenses and loss of estate. According to the observation of the Hon'ble Supreme Court in **Pranay Sethi (supra)** the general damages would under the head of funeral/burial expenses Rs. 15,000/-, loss of estate Rs. 15,000/- loss of consortium Rs 40,000/- totalling of which appears to Rs 70,000/-. According to the observation of the Hon'ble Apex Court the general damages would be enhanced 10% after each 03 years of pronouncement of **Pranay Sethi. The Pranay Sethi (supra)** has been pronounced by the Hon'ble Apex Court in the year 2017, Three years has already been elapsed so the claimants are entitled to get more 20% of the general damages. Thus the general damages goes to Rs. 70,000/-+ 20% of 70,000/-= 84,000/-

Interests

It appears that the Learned Tribunal has awarded compensation and directed that the compensation shall carry 5% simple interest per annum from the date of application. Learned Advocate for the appellant submits that the award of interest is on lower side in this case at least 09% interest may be awarded.

15. Learned Advocate for the Insurance Company submits that the award of interest is the discretion of the Learned Tribunal so in this case, there is no ground to interfere with the discretion of the Learned Tribunal.

16. Heard the Learned Advocates. It appears that in all appeals are disposed of by this court by awarding interest of 6% the same view

is adopted here. In this case the compensation shall carry 6% interest per annum of the date of filing of the claim application.

Issue of awarding parental and filial consortium

Mr. Mandal Learned Advocate for the appellants submitted that there are conflicting views of the Co-ordinate Benches of this court. Thus the point of awarding filial and parental- Consortium can be referred to the Hon'ble the Chief Justice to solve conflicting decisions by different coordinate benches of this court.

17. Mr. Mandal Learned Advocate submits that awarding filial and parental consortium has been considered by the Hon'ble Apex Court in **Magma General Insurance Company Limited and Ors Vs. NanuRam** reported in **(2018) 18 SCC 150**. The same view was adopted by the Hon'ble Apex Court in **New India Assurance Company Limited Vs. Somwati and Ors** with some other branches of civil appeal reported in **(2020) 9 SCC 644**. He further argued that the Hon'ble Apex Court finally in **United India Insurance company Limited Vs. Satinder Kaur Alias Satwinder Kaur and Ors reported in (2021) 11 SCC 670** has allowed the parental consortium. The view of the Hon'ble Apex Court was also considered by the Co-ordinate Bench of this Court in **Dibyajoti Dutta Vs. M/s. Oriental Insurance Company Ltd and Ors in FMA 279 of 2009** as well as the **Oriental Insurance Company Limited and Ors. Vs. Swapna Ghosh** in **FMA 38 of 2008 with COT 6 of 2008** the Same Co-ordinate Bench of this

Court in **Shahin Banu Vs. National Insurance Company ltd.**
Reported in **(2023) 3 TAC 517** allowed the filial consortium.

18. Mr. Mandal further argued that another co-ordinate bench of this court refused to award parental or filial consortium in **Banashri Banerjee Alias Banashree & Anr. Vs New India Assurance Company Limited and Ors in FMA 3200 of 2016**. Mr. Mandal Also fairly submits that this court has also differed the view of **Nanuram (supra)** in **National Insurance Company Ltd. Vs. Sohna Sing And Ors** reported in **(2020) 1 TAC 73**. This court also differed **Nanuram (supra)** in another judgment in **Magma HDI General Insurance Company Limited Vs. Mandira Ash and Ors**. Mr. Mandal also submits that another Co-ordinate Bench of this court has allowed the filial consortium in the following cases.

Hamida Khatoun Vs IFCO TOKIOGeneral Insurance Company Limited 2023 SCC Online 3631

Nihar Roy Vs. IFCO TOKIO General Insurance Company Limited 2023 SCC ONLINE CAL 4684

Rina Chakrabarty Vs. Oriental Insurance Company Limited 2024 SCC ONLINE CAL 749

Sheikh Kader Vs. Oriental Insurance Company Limited 2024 SCC Online 2055

19. Mr. Mandal further submits that the Bombay High Court also in recent judgment allowed the sub judita, parental and filial consortium in the following judgments.

Anjali Vilas Deshpandey and Ors. Vs. Mrs. Prabha Rajendra Gupta and Anr. (2023) 1 TAC 334

Divisional Manager, NEKSRTC Vs. Sushila and Ors. (2023) SCC Online Bombay 2618

Lourdina Fernandez and Anr. Vs. Kemevy and Ors 2024 SCC Online Bombay 452.

Mr. Mandal further cited some judgment of Hon'ble Madras High Court wherein the sub judicial parental and filial consortium was allowed

Managing Director, Tamilnadu State Transport Corporation (Kumbakonam) Limited Versus C.V. Jayvilasinee & Anr. reported in 2019 SCC OnLine Mad 21285;

Managing Director, Tamilnadu State Transport Corporation Versus Sathya & Ors. reported in 2021 SCC OnLine Mad 7362;

Managing Director, KSRTC, Shanthi Nagar Versus Vijayalakshmi & Ors. reported in 2023 SCC OnLine Mad 2663;

Reliance General Insurance Co. Ltd. Versus Manju reported in 2023 SCC OnLine Mad 4142;

Mr. Mandal further stated some decisions of Hon'ble Delhi High Court wherein also the sub judicial, parental and filial and consortium was allowed

National Insurance Co. Ltd. Versus Arjun Singh & Ors. reported in 2023 SCC OnLine Del 7970;

The Oriental Insurance Co. Ltd. Versus Shamshad Begum & Ors. reported in 2023 SCC OnLine Del 8100;

Mr. Mandal Further argued that in the recent times the Hon'ble Apex Court in following the **Nanuram** passed some judgments allowing parental and filial consortium as follows

Harpreet Kaur & Ors. Versus Mohinder Yadav & Ors. reported in 2022 SCC OnLine SC 1723;

Janabai WS/O Dinkarrao Ghorpade & Ors. Versus

ICICI Lombard general insurance Co. Ltd. reported in (2022) 10 SCC 512;

Anjali & Ors. Versus Lokendra Rathod & Ors. reported in 2022 SCC OnLine SC 1683;

20. By showing the above judgments Mr. Mandal submits that the it is clearly established there are differing judgments on the same subject matter which is contrary to judicial discipline. The differing judgments apart from defeating from the judgments of Hon'ble Supreme Court of India, which is binding under article 141 of

Constitution of India. Mr. Mandal submits that it is the judicial discipline that the judgment of earlier co-ordinate bench of High Court is binding of another Co-ordinate Bench of the same High Court. He argued that, at this prevailing situation, it would be required to referred this matter before the Hon'ble the Chief Justice for deciding the issue by a larger bench. In support of his contention he cited the decision of Hon'ble Apex Court in **Tribhubandas Purshottamdas Thakur Vs. Ratilal Motilal Patel** reported in **AIR 68 Supreme Court 372** also the another judgment of Hon'ble Apex Court in **Mary Pushpam Vs. Telvi Curusumary and ors** reported in **(2024) SCC Online SC 9**.

21. Let me consider the entire issue. Mr. Mandal demonstrates that loss of consortium as awarded by the Hon'ble Apex Court in **National Insurance Compnay Limited Vs. Pranay Sethi [(2017) 16 SCC 680]** is Rs. 40,000/- towards the spouse. In the case of **Nanuram (supra)** the Hon'ble Apex Court has extended the view and is of opinion that the loss of consortium can be redefined as loss of parental consortium, loss of filial of consortium as well as spousal consortium. The Hon'ble Apex Court in the case of **Satinder Kaur (supra)** has also adopted the same view of **Nanuram**. It has been further demonstrated before this court that two co-ordinate benches of this court has awarded parental and filial consortium though this bench as well as other co-ordinate bench denied to provide filial consortium or parental consortium in favour of the claimants.

22. Let me consider the acceptable history of legislation of Hon'ble Apex Court in awarding the loss of consortium in a claim case u/s 166 of MV Act. Initially in **Sarala Verma Vs. DTC [(2009) 6 SCC 121]** The Hon'ble Apex court awarded Rs 10,000/- towards loss of consortium. In **Santosh Devi Vs. National Insurance Company Ltd. (2012) 6 SCC 421**, the Division Bench of the Hon'ble Apex Court has also awarded Rs. 10,000/- towards the loss of consortium. In **Rajesh Vs. Rajbir Singh (2013) 9 SCC 54** The Hon'ble Apex Court granted Rs. 1,00,000/- towards the loss of consortium and also granted further Rs. 1,00,000/- towards the loss and care of guidance of minor children. The observation of **Rajesh (supra)** is required to be noted to determine the purpose of Hon'ble Apex Court in deciding the issue of consortium.

"17.... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

To settle the divergence of opinions and legal principles of Hon'ble Apex Court in several judgments in awarding compensation . It is required to set up a thumb rule in these matters. Thus, the Hon'ble Apex Court constituted a Constitutional Bench comprising 5 judges of Hon'ble Apex Court to decide the issue in **Pranay Sethi (supra)**.

23. Considering the **Rajesh , Sarala Verma and Santosh Devi (supra)** the Constitution Bench of **Pranay Sethi** has determine the issue of compensation towards the loss of consortium as follows :-

51. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh². It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh² refers to Santosh Devi²⁰, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same band unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact- centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on

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

So it is clear that the observation of **Rajesh (supra)** has been revisited by the Hon'ble Apex Court in **Pranay Sethi** and it was restricted to Rs. 40,000/-

In **Nanuram (supra)** the Hon'ble Division Bench of Hon'ble Supreme Court has again considered the issue of awarding compensation with respect to the loss of consortium as follows:-

20. MACT as well as the High Court have not awarded any compensation with respect to loss of consortium and loss of estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognised by the Constitution Bench in Pranay Sethi². The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant. In exercise of our power under Article 142, and in the interests of justice, we deem it appropriate to award an amount of Rs 15,000 towards loss of estate to Respondents 1 and 2.

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 is 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 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 far 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.

So it is clear from the observation of **Nanuram** that Hon'ble Division Bench of Supreme Court has considered the issue in exercise their extra-ordinary power under Article 142 of the Constitution for interest of Justice in attending facts and circumstances of the particular case.

The three Judges Bench of Hon'ble Supreme Court in **Satinder Kaur (supra)** has again revisited the observation of the Constitutional Bench of **Pranay Sethi** as well as the Division Bench in **Nanuram** as follows

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 of 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 14**, 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.

Thus the three judges Bench of Hon'ble Apex Court in **Satinder Kaur (supra)** has held that the amount of compensation towards the loss of consortium include spousal consortium. Mr. Mandal also argued that Co-ordinate Bench of this court and several other High Courts passed the several judgments wherein the observation of **Nanuram (supra)** as well as **Satinder Kaur** were followed and consortium was awarded including the spousal consortium, parental consortium and filial consortium.

24. In considering the opinion of this Court it appears to me that initially this issue was raised before the Division Bench of this court in **Magma HDL General Insurance Company Limited Vs. Mandira Ash and Ors (FMAT 332 of 2019)** wherein the Hon'ble Division Bench of this court has decided the issue as follows:-

On a conjoint reading of paragraph 46 and paragraph 52 of the report in **Pranay Sethi**, it is evident that the head "loss of consortium" is confined only to the spouse. In **Nanu Ram**, the two-judge Bench referred to other forms of consortium, including parental and filial consortium, in addition to spousal consortium, but accepted that the amount of compensation to be awarded as consortium "will be governed by the principles as laid down in **Pranay Sethi ...**". The additional quantum on account of filial consortium and love and affection as awarded in **Nanu Ram** has, per force, to be seen to have been allowed in exercise of the authority under Article 142 of the Constitution or such award would otherwise clearly fall foul of the dictum in the Constitution Bench judgment of **Pranay Sethi**.

As a consequence, the prayer made on behalf of the claimants to enhance the quantum of compensation by awarding additional amounts on forms of consortium other than spousal consortium, cannot be acceded to and is repelled.

The same issue was again decided by the another division Bench of this court in **National Insurance Company Limited Vs. Sohan Singh and Ors. (FMA 464 of 2017)** as follows:-

35. Therefore, the Hon'ble Supreme Court has clearly held in **Nanu Ram (supra)** that the peculiar facts of that case, where a parent or parents lost their minor child or unmarried son or daughter, they were allowed to be awarded loss of consortium. In the present case, the parent claiming amounts for loss of consortium admittedly was not the parent of an unmarried son or minor son for whose death due to the accident the compensation is payable. In such view of the matter, taking aid of the structured formula for the calculation of the amount of compensation as laid down in **Pranay Sethi (Supra)** is binding on us.

So far as the principle of awarding loss of consortium in a claim case u/s 166 of MV Act the view of Division Bench of this court in **Saham Singh** as well as **Mandira Ash (supra)** are followed by the different Co-ordinate Benches having determinations. In **Debajyoti Dutta (supra)**, **Swpan Ghosh (supra)** as well as in **Sahinbanu (supra)**

a Co-Ordinate Bench of this court allowed parental consortium as well as filial consortium. Another Co-ordinate Bench of this court in **Banasri Banerjee (Supra)** followed the view of Hon'ble Division Bench of this Court in **Mandira Ash and Sohan Singh** and did not award the consortium or filial consortium. Another Division Bench in **Hamid Khatoom and Nihar Ray (supra)** has awarded filial consortium of Rs. 40,000/- but in this case the general damages was not enhanced more than Rs. 70,000/-

25. Now it has been submitted by Mr. Mandal that there are divergent views of different Co-ordinate benches of this court so, the matter can be referred before the Hon'ble the Chief Justice to decide the matter by a Larger Bench.

26. Learned Advocate appearing on behalf of the Insurance Company Mr. Das, submits that the recent view of Hon'ble Supreme Court is not followed the principle of law laid down in **Nanuram, & Satinder Kaur (Supra)**. He cited a decision of Hon'ble Apex Court in **Vethambal Vs. Oriental Insurance Company Limited 2024 SCC Online SC 24** wherein the Supreme Court has awarded general damages of Rs 70,000/- He also referred the judgment of three judges bench of Hon'ble Supreme Court passed in **Sangita Arya and Ors. Vs. Oriental Insurance Company Limited (2020) 5 SCC 327** wherein the general damages was awarded Rs 70,000/- He also pointed out the Co-ordinate Benches wherein the general damages was awarded Rs. 70,000/-. He submits that the observation of Co-ordinate Bench

of this court in **Debajyoti Dutta, Swapna Ghosh Sahinbanu** are stray observations and no principle of law has been decided in the said judgments as to why the parental consortium or filial the consortium was awarded; so, the observation of a co-ordinate bench in **Debajyoti Dutta, Swapan Ghosh and Sahinbanu** has no binding effect.

27. Furthermore, he argued that in the recent decision the Hon'ble Apex Court of March 27,2023, in **Sriram General Insurance Company Limited Vs. Bhagat Singh Rawat and Ors (Civil Appeal No. 2410-2412/2023)** has decided the issue after considering **Nanuram, Pranay Sethi (supra)** that the general damages would be Rs. 70,000/- under the conventional head namely loss of estate, loss of consortium and funeral expenses. Mr. Das further argued that however the issue of conflict in awarding the consortium whether it would be in favour of the spouse only or in favour of parents and children, is under active consideration of the Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Ramesh Chand and Ors [SLP (suit) No 11709/2020]**, wherein the Ho'ble Division Bench of Supreme Court has passed the observation as follows:-

UPON hearing the counsel the Court made the following

ORDER

Application for exemption from filing attested affidavit is allowed.

Delay condoned.

There are two aspects urged by learned counsel for the petitioner: (a) in terms of National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680, the total amount which can be given for loss of consortium is Rs.40,000/- and it cannot be Rs.40,000/- for each of the persons dependent on the deceased. He mits that there is an apparent conflict in this behalf vis-a-vis judgment in Magma General Insurance Company Limited Vs. Nanu Ram & Ors. (2018) 18 SCC 130 and also; (b) the loss of love and affection cannot be granted as a separate head and loss of consortium will be granted and thus, the impugned order which grants Rs.50,000/- and Rs.40,000/- respectively is erroneous because the total amount cannot be more than Rs.40,000/- even if each of the siblings was to be paid without prejudice to what is stated hereinabove is the first question. He submits that this aspect stands settled by a recent judgment in United India Insurance Co. Ltd. V. Satinder Kaur Satwinder Kaur & Ors. [Civil Appeal No.2705 of 2020] decided on 30th June, 2020.

Before we consider whether the issue is liable to be referred to a larger Bench since Magma General Insurance Company's case (supra) is a Two Judges Bench judgment, we would like to first issue notice and hear the other side. We may even consider appointing an amicus curiae to assist the Court in this behalf dependent upon whether representation is there on behalf of the respondents or not.

Issue notice.

In the meantime, the impugned order to the extent it grants separately loss of love and affection apart from loss of consortium to the extent of Rs.5,00,000/- is stayed. will be released forthwith to the respondents. The remaining amount will be released forthwith to the respondents.

28. Having heard the Learned Advocates, and also considering the observation of Hon'ble Apex Court and recent development on the

issue of awarding compensation under the head of Loss of consortium, it appears to me that the matter in dispute is under consideration of the Hon'ble Apex Court for referring the matter to a Larger Bench. It further appears to me that the observation of Co-ordinate Bench of this Court in **Debajyoti Dutta, Swapna Ghosh, Sahin Banu** did not assign any reason as to why the parental consortium or filial consortium was awarded. The above mentioned observations of the Co-ordinate Bench has not decided any law, so it has no binding effect upon other co-ordinate bench. Thus at this juncture if the matter is again placed before the Hon'ble the Chief Justice for forming a Larger Bench, it would call for a conflicting decision. It further appears that the same Co-ordinate bench has decided issue of awarding consortium otherwise to his earlier decision in **Debajyoti Dutta, Swapna ghosh** and **Sahin Banu**. It is the admitted principle of law, the judicial discipline envisaged that a co-ordinate bench must follow the decision of earlier Co-ordinate bench. The observation of the Co-ordinate Bench was not followed the decision earlier division Bench of this court (same determination) in **Sohan Singh and Mandira Ash**. Thus in my view it would not be justified at this juncture to refer this matter before the Hon'ble the Chief Justice to form Larger Bench to settle said the issue. I make it clear that the Hon'ble Apex Court has already considering the issue regarding awarding filial and parental consortium. Thus at this juncture I refrain myself to pass a favourable order according to the argument advance by Mr. Mandal.

29. Considering the above observation the point No. 6 is decided against the appellant. The general damages required to be awarded according to the law laid down in **Pranay Sethi (supra)**.

30. Considering the entire facts and circumstances of this case the award passed by the learned Tribunal required modification.

CALCULATION OF COMPENSATION

HEADS OF COMPENSATION	AMOUNT IN INR
Monthly income =	5,000/-
Annual income (x 12)=	60,000/-
Less: 1/4th personal expenses=	15,000/-

	45,000/-
Add: 40% future prospect=	18,000/-
	
	63,000/-

Multiplier (x 15)=	9,45,000/-
General Damage	Rs. 84,000/-

	Rs. 10,29,000/-

After calculation the award comes to Rs 10,29,000/-. The claimants has already received the amount of Rs. 5,16,500/- the balance award comes to Rs. 5,12,500/-. The Insurance Company is directed to pay the balance award together with 06% interest per annum from the date of filing of the claim application i.e. from 21.06.2012 till actual realisation. The Insurance Company is further directed to comply the order through the Office of the Learned Registrar General High Court, Calcutta within 08 weeks. After such compliance the office of the Learned Registrar general High Court Calcutta shall disburse the amount in favour of the claimants in equal share.

31. The payment of compensation is subject to the ascertainment of payment of deficit Court fee if any.

32. The office of the Learned Tribunal shall act upon certified copy of this order to receive the deficit Court fee if any.

33. LCR be sent down at once.

34. FMA with Connected CRAN Applications are disposed of.

35. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)