

**FAO-1740-2006****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****205****FAO-1740-2006 (O&M)****Date of Decision: September 19, 2024****Roshan Lal and others****.....Appellants****Vs.****Mohsm and others****.....Respondents****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Sanjay Jain, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent-Insurance company.

SUDEEPTI SHARMA J. (ORAL)

None has put in appearance on behalf of the Insurance Company.

2. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.

3. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

4. On the asking of the Court, Mr. Suvir Dewan, Advocate accepts notice on behalf of respondent No.3-Insurance Company.

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5. Learned counsel for the appellants has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent No.3- Insurance Company.

6. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate, the counsel engaged by this Court in the present case.

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1. The present appeal has been preferred against the award dated 28.09.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 10.6.2002, Smt.Bimla Devi (deceased) alongwith her family members was returning to her Village Shahzadpur from Haridawar, in Maruti car bearing registration No. HR-04A-951 being driven by its driver on correct left hand side of the road. When they reached near Hindon river bridge, ahead of village Gagalheri towards Saharanpur side and had already covered the bridge and reached the main road i.e. Haridwar Saharanpur road, at about 3.00 p.m, a truck bearing registration No.UP-20-F-1706, driven by respondent No.1-Mohsm in a very rash and negligent manner came from the opposite direction i.e. from Saharanpur side and by bringing the truck on wrong side of the road hit against the car due to which all the occupants of the car received injuries and were



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taken to Tara Wati Hospital, Saharanpur in a car. Smt. Bimla Devi was also taken to the Tarawati Hospital, Bajoria Road, Saharanpur and from there she was referred to PGI, Chandigarh, where she succumbed to the injuries on 16.6.2002.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1) Whether the death of Bimla Devi took place due to rash and negligent driving of truck No.UP-20-F-1706 by respondent No.1? OPP

2) Whether the claimants are the only legal representatives of the deceased and entitled to compensation. If so, how much and from whom? OPP.

3) Whether respondent. No.1 was not holding a valid driving licence at the time of the accident ? OPR.

4) Whether the Tribunal at Ambala does not have the territorial jurisdiction to try the petition? OPR-3.

5) Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimants-appellants contends that the claim petition filed by the appellants/claimants was dismissed on the ground of delay of 02 days in lodging the FIR. He further contends that when the truck



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reached at the police station information was given when no statement was given to the police by 12.06.2002 regarding the involvement of truck in the accident.

ii) neither the driver of truck nor the owner thereof was examined and they were proceeded against *ex parte* vide order dated 26.04.2004.

Therefore, he prays that the present petition be allowed and compensation be granted to the appellants/claimants.

7. *Per contra*, learned counsel for the respondent argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Trial Court.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

“8. In order to prove this issue, Vinod Kumar, one of the claimants and son of the deceased, appeared as PW-1 and deposed that on 10.6.2002, he alongwith his father Roshan Lal, mother Smt. Bimla Devi, his 'Bhabhi' Prem Lata and his child Akhil was returning towards Village Shahzadpur from Haridwar in maruti car No. HR-04A-051, which was being driven by Banta Ram driver at a moderate speed. He further deposed that at about 3.00 P.M. they crossed Hindon river bridge when a truck bearing No. UP-20-F-1706, which was being driven by its driver in a rash and negligent manner, came from the opposite direction. He further deposed that after seeing the truck their driver had taken the car on the 'kacha' portion of the road, however the driver of the truck hit against the driver side of the car and the truck could be stopped after covering about ten paces from the place of accident. However, his statement was recorded on 12.6.2002. In the cross-examination, he deposed that name of driver of the truck was told



to him by the police in the police station. He did not know about the name of owner of the truck. He deposed that he had not told his lawyer the name of driver of the truck at the time of filing of this petition. He further deposed that he did not give statement to the police before 12.6.2002 and that the truck was already present in the police station when he reached there.

9. *Claimants also examined Banta Ram, driver of the car, who appeared as PW-2 and corroborated the version of one of the claimants Vinod Kumar. However, in the cross-examination, he deposed that the truck driver had disclosed his name to him and that thereafter he fled away after leaving the truck at the place of accident.*

10. *Claimants have also tendered in evidence copy of site plan of the alleged place of accident as Ex. PA prepared by the Investigating Officer. copy of charge-sheet Ex.PB, copy of FIR Ex.PC, copy of inquest report Ex PD and copy of post-mortem report Ex.PE.*

11. *It has been argued by learned counsel for the claimants that evidence adduced by the claimants on the point remains unrebutted and hence, it is argued that there is nothing as to why the same be disbelieved.*

12. *On the other hand, it has been argued by learned counsel for respondent no3. Insurance Company that no reliance can be placed upon the testimony of one of the claimants and a procured witness and that in fact truck No. UP-20-F-1706 was not at all involved in the accident and that the truck was later on falsely implicated in this case by the claimants in collusion F with the police and respondents no.1 and 2 just to claim compensation from the Insurance Company. It has also been argued that there is two days delay in lodging the FIR and that the said delay has not at all been explained by the claimants.*

13. *It was for the claimants to prove by adducing cogent evidence that the accident was cause due to rash and negligent driving of truck No. UP-20-F- 1706 being driven by Mohsin*



respondent no.1. On the point, we are having deposition of one of the claimants Vinod Kumar, who was also allegedly travelling in the car involved in the accident and driver of the car namely Banta Ram PW-2. However, perusal of report u/s 173 Cr.P.C. Ex.PB, on which reliance has been placed by the claimants, shows that Banta Ram has not been cited as one of the witnesses by the police. If Banta Ram was driving the car at the time of alleged accident, there is nothing as to why he has not been cited as a witness by the police and as to why he did not give any statement to the police. It shows that Banta Ram is a procured witness of the claimants.

14. The accident allegedly took place at about 3.00 P.M. on 10.6.2002 and immediately thereafter the injured was removed to a private hospital at Saharanpur. However First Information Report was lodged with Police Station, Saharanpur, on 12.6.2002 at 5.00 P.M. Vinod Kumar PW-1 simply deposed that he did not give any statement to the police before 12.6.2002. He nowhere explained as to why he did not lodge report with the police on the same day. Further according to him the truck was already present in the police station when he reached there. He did not explain even as to how the truck reached the police station when he did not give statement to the police before 12.6.2002 regarding involvement of the truck in the accident. According to him, even name of driver of the truck was told to him by the police in the police station. On the other hand, Banta Ram, alleged driver of the car, PW-2 has deposed that driver of the truck had fled away after leaving the truck at the place of accident. He further deposed that driver of the truck had himself disclosed his name to him as Mohsin Khan. Hence, it is also not explainable that when the driver of the truck had left the truck at the place of accident as has been deposed by Banta Ram PW-2, as to why report was not lodged about the accident with the police on the same day.

15. Some material documents have also been withheld by the claimants from the court. Copy of memo, vide which the truck was



taken into possession by the police has not been produced. Hence, claimants have failed to prove as to from where and when the truck was taken into possession by the police. Claimants have also not placed on record copy of mechanic report of the truck to show as to whether any damage was caused to the truck or not. As per case of the claimants, it was "head-on-collision" between car and the truck. Hence, if the truck was involved in the accident, some damage must have been caused to the truck. Withholding of the said documents only goes to show that the truck was not involved in the accident and the same was falsely implicated later on by the claimants in collusion with the police and respondents no.1 and 2.

16. It may also be mentioned here that the claimants have given address of respondent no.2, owner of the truck, as resident of Mohalla Jattan, Bijnaur, Distt. Bijnaur. Statement was also given by learned counsel for the claimants before my learned predecessor on 25.2.2003 that he had noted down the address of respondent no.2 from the copy of policy of insurance, as summons were received with the report that address was incomplete and however, perusal of copy of policy of insurance Ex.RA shows that address of owner of the truck has been mentioned as "Care of Saral Motor & Gen Finance, A-128 TP Nagar, Meerut". Summons were not got served on the address of respondent no.2 as mentioned in Ex.RA. Rather service was got effected by publication with incorrect address of respondent no.2 by counsel for the claimants. One of the claimants when appeared as PW-1 deposed that he had not disclosed the name of driver and owner of the truck involved in the accident to his counsel at the time of filing of this petition. Hence, this fact also creates doubt in the veracity of case of the claimants that truck No. UP-20-F-1706 was involved in the accident.

17. In view of my above discussion, I am of the view that there is force in the argument of learned counsel for respondent no.3 Insurance Company that truck No. UP-20-F-1706 was not involved in the accident and that the same was falsely involved in



this case by the claimants in collusion with the police and respondents no.1 and 2. The collusion is to the extent that neither respondent no.1 nor respondent no.2 appeared to contest the petition. Even written statement was not filed.

18. Hence, claimants have failed to prove that the accident was caused due to involvement of truck No. UP-20-F-1706 being driven by Mohsm respondent no.1. Rather in view of aforementioned facts, this Tribunal is having no hesitation in reaching the conclusion that truck No. UP-20-F-1706 has been falsely involved in this case by the claimants in collusion with the respondents no.1 and 2 and the police just to claim compensation from the Insurance Company as the truck was insured with respondent no.3 Insurance Company on the date of alleged accident. This issue accordingly, stands decided against the claimants and in favour of respondent no.3.”

10. A perusal of the record shows that the owner and driver i.e. respondents No.1 and 2 did not appear to contest the petition and they were proceeded against *ex parte* vide order dated 26.04.2004.

11. The evidence brought on record as per the claimants was Ex.PA which is site plan of the alleged place of occurrence prepared by the Investigating Officer, report under Section 173 Cr.P.C. Ex.PB, Copy of FIR Ex. PC, copy of Inquest Report Ex.PD and copy of post-mortem report Ex. PE. The evidence adduced by the appellants/claimants remained un rebutted. The reasoning given by the Ld. Tribunal regarding delay of 2 days in lodging of the FIR for dismissing of the claim petition is not acceptable to this Court in view of law laid down by Hon'ble the Supreme Court in **Ravi Vs. Badrinarayan and others, 2011(4) SCC 693.**

12. Further after perusing report under Section 173 Cr.P.C. Ex. PB,



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alleged accident and he should have been cited as one of the witnesses by the police. When the factum of accident is proved, in such kind of cases wherein Banta Ram has been examined as PW-2, who narrated the whole incident of the accident and his testimony could not be shaken in his cross examination.

13. Further reasoning given by Ld. Tribunal in dismissing the claim petition is that as per the case of the claimants, it was “head-on-collusion” between car and the truck and some damage should have caused to the truck as well. There was no document to show that there was damage to the truck.

14. A perusal of the record shows the factum of accident which is proved by the examination of the witnesses. The record shows that the evidence with respect to treatment of deceased from Tarawati Hospital Mark A, Mark B, Mark C and Mark D, site plan Ex.PA, charge-sheet Ex.PB, copy of the FIR Ex. PC, police investigation report Ex.PD and copy of post mortem report Ex.PE. All these documents proves the factum of accident and the negligence on the part of the driver of the offending vehicle who never came forward as his own witness for his examination and was proceed against *ex parte*.

15. So far as the delay of 02 days in lodging the FIR is concerned, Hon’ble Supreme Court has settled the law in the case of ***Ravi Vs. Badrinarayan and others, 2011(4) SCC 693***, wherein it has been held that delay in lodging of FIR should not be treated as fatal for motor accident claim proceedings, if the claimant is able to demonstrate satisfactorily and with cogent reasons for such delay. The relevant para is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they



give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

16. In view of above referred to judgment of Hon’ble the Apex Court, it is a settled law that even if there is delay in lodging of FIR, the claim cannot be rejected.



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17. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 28.09.2005 passed by Ld. Tribunal, Ambala stands vitiated by a complete absence of judicial application of mind.

SETTLED LAW ON COMPENSATION

18. Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation and Another** [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will

either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

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42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

19. Hon’ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;



- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

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

* * * * *

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.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

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.”

20. Hon'ble Supreme Court in the case of **National Insurance**



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law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

*“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 Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of*



estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on 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.

** * * * **

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.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.



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.”

21. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi² 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.

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 is 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 which 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 Sethi². 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.

CONCLUSION

22. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 28.09.2005 is set aside. The appellants-claimants are entitled to grant of compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2500/-
2	Future prospects @ 25%	Rs.625/-(25% of Rs.2500/-)
3	Deduction towards personal expenditure 1/3rd	Rs. 1042/- [1/3 of (2500+625)]
4.	Total Income	Rs.2083/-(3125-1042)
4	Multiplier	13
5	Annual Dependency	Rs. 3,24,948/- (2083 x 12 x 13)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs. 48,000/- x 2 Spousal : Rs. 48,000/- x 1 Filial :	Rs.1,44,000/-
	Total Compensation	Rs.5,04,948/-

23. So far as the interest part is concerned, as held by Hon’ble Supreme Court in Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma 2019 ACJ 3176 and R.Valli and Others VS. Tamil Nandu State Transport Corporation (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.

24. The Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two

months from today. The claimant No.1 is entitled to receive the amount of

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compensation to the extent of 60% whereas the claimants No.2 and 3 are entitled to remaining amount of compensation in equal shares. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the accounts of all the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

25. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter.

26. Disposed off accordingly.

27. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

September 19, 2024
sonia arora

Whether speaking/reasoned:	Speaking
Whether reportable	Yes