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....Appellant

....Respondents

245 Gaba Hospital, Yamuna Nagar in a three wheeler by Gurmit Singh son of Rattan



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Singh, who was also following the deceased on his bicycle. However, the deceased succumbed to the injuries in the hospital on the same day. Post mortem examination on his body was conducted. He was 30 years of age at the time of death.

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

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

“ 1. Whether the accident occurred due to rash and negligent driving of truck No.HR-45-0675 by respondent No.1? OPP.

2. If issue No.1 is proved, then to what amount of compensation, the petitioner is entitled to and from whom? OPP.

3. Whether the respondent No.2 has willfully violated the terms and conditions of the insurance policy, if so, its effect? OPR.

4. Relief.”

5. After hearing learned counsel for the parties and perusing the whole record, the learned Tribunal dismissed the claim petition. Hence the claimant appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. (i) The learned counsel for the claimant-appellant contends that the learned Tribunal erred grossly in dismissing the claim petition and holding that the present appellant failed to prove the accident with Truck No.HR-45-0675 driven by respondent No.1 in a rash and negligent manner. He has relied upon the judgments of this Court, which are as follows:-



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In Girdhari Lal versus Radhey Shyam and others, 1993 (2) PLR 109, wherein, it has been held that if the driver is facing trial on account of rash driving, the prima facie conclusion is that the accident occurred due to rash and negligent driving.

In Universal Sampo General Insurance Ltd. Vs. Lakhwinder Kaur and others, 2022 (3) RCR Civil 477, wherein, it has been held that even if no FIR is registered, the claim petition cannot be thrown away only for the reasons that FIR was not registered.

In Go Digit General Insurance Company Ltd. Vs. Harwinder Kaur and another, 2023 (3) Law Herald 2224, wherein, it has been held that delay in lodging the FIR cannot be a ground to doubt the claimant's case.

In Ram Kishan and others vs. Himachal Road Transport Corporation Shimla and another, 2015 (11) RCR Civil 27, wherein, it has been held that FIR is not a prerequisite for seeking compensation. Even where neither the name of the driver nor registration number of the vehicle was mentioned in the FIR, the claim cannot be rejected. The Tribunal ought to see the evidence led before it.

In New India Insurance Company Ltd. Vs. Manpreet Bagga and others, 2023 (1) RCR Civil 148, wherein, it has been held that the omission of an eye witness from the list of witnesses in the chargesheet presented by the police does not, by itself, negate the veracity or credibility of the eye-witness testimony.

(ii) He further contends that the claim petition was dismissed but the compensation was assessed by the Tribunal which was also on the lower side.



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7. Per contra, learned counsel for the respondent-Insurance Company contends that the claimant failed to prove the involvement of the truck bearing HR-45-0675, therefore, the learned Tribunal has rightly dismissed the claim petition.

8. I have heard learned counsel for the parties and perused the whole record of this case. Relevant portion of the judgment is reproduced hereunder:-

“8. The burden to establish the mode of accident was upon the claimant. In order to establish that the present accident has taken place due to rash and negligent driving of truck No.HR-45-0675 by respondent No.1, the claimants examined Gurmit Singh, a witness of the occurrence as PW2, Jaswinder Singh another witness of the occurrence appeared as PW3. Ajay Vashisth, Criminal Ahlmad to the court of C.J.M., Jagadhri was examined as PW4, who has produced the record of the criminal case.

9. Besides the aforesaid oral evidence, the claimant has also placed on file the certified copy of the report U/S 173 Cr.P.C. Ex. P1, certified copy of the recovery memo Ex. P2, certified copy of the mechanical report of truck No.HR-45-0675 Ex.P3, certified copy of order dated 25.1.2006 passed by the C.J.M., certified copy of the order dated 10.2.2006 Ex. P5 passed by C.J.M., Jagadhri, certified copy of the application moved by the learned Public Prosecutor for correction of the registration number of the truck in the charge sheet Ex. P6 and copy of the post mortem report Ex. P7.

10. In rebuttal to above evidence, the respondents examined Des Raj, Clerk, Distt. Transport Office, Yamuna Nagar as PW1. He has



proved the report Ex.R1 regarding vehicle No.HR-45-0675. Sewa Singh, Assistant 0/0 D.T.O., Rohtak appeared as RW2. He has proved the certificate Ex.R2 in respect of vehicle No.HR-46-8247. Mustkeen, respondent No.1, the driver of the truck No.HR-45-0675 appeared as PW3. The respondents have also placed on file the copy of the F.I.R. Mark RA.

11. Sh.K.B.Mehta, learned counsel for the claimant initiating the arguments contended that from the statement of PW2 Gurmit Singh and PW3 Jaswinder Singh, which is fully corroborated from the documents of the criminal case, it is established that the present accident has been caused by the respondent No.1 by driving the truck No.HR-45- 0675. He contended that there was some mistake in the F.I.R. about the registration number of the truck but the same was corrected in the supplementary statement of the witnesses recorded on 12.1.2003. PW2 Gurmit Singh who has got registered the F.I.R. could not properly note down the registration number of the truck due to which the mistake occurred. He further contended that the respondent No.1 has not moved any application to any authority to the effect that he has been falsely implicated in this case. Thus, mere mentioning of wrong registration number in the F.I.R. does not create any doubt about the involvement of truck No. HR- 45-0675 in the present accident. To support his contentions he relied upon cases United India Insurance Co.Ltd. Vs. Maya Ran Debnath and another I (2004) ACC 233 (DB), Virat Sama Vs. Mohan Dal 1994 (2) Recent Revenue



Reports 18 and Nikki and others Vs. Darshan Singh and another 2006

(1) S.L.J. 183.

12. He further contended that as respondent No.1 in facing trial for causing this accident, so he is negligent for causing this accident. To support his contentions, he relied upon the case Girdhari Lal Vs. Radhey Shyam & others 1993 (2) P.L.R.109.

13. On the other hand, learned counsel for the respondents contended that the accident has taken place on 28.12.2002 at 8.30 A.M. i.e. in the broad day light at a busy place. The eye witnesses have mentioned the registration number of the truck in his statement to the police on the basis of which the F.I.R. has been registered. The presence of Jaswinder Singh is not shown in the F.I.R. His statement is fully unnatural. It is not possible that his neighbour has met with an accident and he will not bother even to come to the hospital to inquire about him for such a lapse of time. It is not explained that Jaswinder Singh remained out of Yamuna Nagar/Jagadhri for a period of 14 days after the accident. All the witnesses belong to the same community. Thus, they contended that the fabricated evidence has been produced before the court in order to involve truck No. HR-45-0675. In fact no accident has been caused by this truck.

14. Shri S.C. Jindal, learned counsel for the respondent No.3 further contended that truck No. HR-45-0675 and truck No.HR-46-8247 are owned by one and the same person namely Fateh Mohammad. Truck No.HR-46-8247 was not insured and due to this



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reason truck No. HR-45-0675 has been falsely implicated just to grab the amount of compensation from the Insurance company. In fact, no accident has been caused by truck No. HR-45-0675.

15. I have duly considered the aforesaid contentions. On the point of occurrence, the claimants have examined two witnesses namely PW2 Gurmit Singh who has deposed that on 28.12.2002 he and Satnam Singh were going towards Jagadhri on their cycles. Satnam Singh was ahead. At about 8.30 A.M. when they reached near Sant Nishchal Singh School on main Jagadhri-Yamuna Nagar road, a truck bearing registration No. HR-45-0675 came from behind and struck against Satnam Singh. The driver of the truck was driving the truck in a rash and negligent manner. Due to the accident Satnam Singh had fallen down on the road and was run over under the rear tyre. He took Satnam Singh to Gaba Hospital in an auto where treatment was provided to him for about 24 hours. Thereafter he succumbed to the injuries. He died at about 1.15/1.30 P.M. in Gaba Hospital, Yamuna Nagar. He further deposed that the police arrived in Gaba Hospital and recorded his statement at about 11.00/11.30 A.M. Thereafter on 12.1.2003 and 13.1.2003 the police had got identified the driver Mustkeen from him at I.T.I. Chowk, Yamuna Nagar. He identified him as the person responsible for causing the accident. His supplementary statement was recorded by the police twice i.e. on 12.1.2003 and on 13.1.2003. The photocopies of the supplementary statements are Mark A & Mark B. The police had also



taken into possession the driving licence of Mustkeen as well as the registration certificate of the offending truck in his presence. The accident had taken place due to rash and negligent driving of Mustkeen respondent No.1.

16. PW3 Jaswinder Singh, the another witness of the occurrence, has stated that on 28.12.2002 he was going towards Yamuna Nagar from village Gobindpuri on scooter No. HRX-6801 at about 8.30 A.M. When he reached near Sant Nishchal Singh School on the main Jagadhri-Yamuna Nagar road, he saw two cyclists coming from Yamuna Nagar bye pass side. A truck bearing registration No. HR-45-0675 also came there from Yamuna Nagar bye pass side which was being driven by its driver in a rash and negligent manner. The truck hit against one of the cyclists who sustained the injuries. Thereafter he went away. The accident in question had taken place due to rash and negligent driving of the truck driver. His statement qua this accident was recorded by the police on 11.1.2003 again said on 12.1.1003. Later on he came to know the name of the said cyclist as Babu Ram alias Satnam Singh and he has died because of the accident in question. He further said that he had noticed the registration number of the truck at the place of accident itself. He had also seen its driver. He was not Sikh gentleman.

17. PW4 Ajay Vashisth has produced the record of the criminal case No. 19/1 of 2003 titled as State Vs. Mustkeen bearing F.I.R. No. 605 dated 28.12.2002 u/s 279/304-A I.P.C. P.S. City Yamuna Nagar.



He deposed that the charge against accused Mustkeen in the case has been framed on 26.8.2003 for the offences punishable u/s 279/304-A I.P.C. Later on the prosecution has moved an application for correction of the vehicle number in the charge sheet on 23.12.2005 and now the case is fixed for 25.1.2006. He has proved the certified copy of the report u/s 173 Cr.P.C. Ex. P1, certified copy of the recovery memo Ex. P2 and the copy of mechanical report of truck No. HR-45-0675 Ex. P3.

18. Des Raj, clerk from the office of D.T.O., Yamuna Nagar has appeared as RW1. He has deposed that as per their record, the registration number HR-46-0675 was allotted to heavy goods vehicle which was issued to one Haji Fateh Mohammad S/o Mauju Deen R/o Village Bombaypur, Distt. Yamuna Nagar. He has proved the report Ex. R1 to this effect.

19. RW2 Sewa Singh has deposed that he has brought the record regarding registration certificate of the vehicle No. HR-46-8247 and as per his record this vehicle stands in the name of Fateh Mohammad S/o Rahman Khan r/o Sham Lal Market, Hisar Road, Rohtak. He has proved the certificate Ex. R2, issued from their office.

20. Respondent No.1 Mustkeen driver of the truck has appeared as RW3 and he deposed that on 28.12.2002 he was employed as a driver of truck No. HR-45-0675. On that day no accident with said truck had taken place within the area of Yamuna Nagar. On that day he along with said truck was away to Punjab. After about 15/20 days he came to



know that his truck has been falsely implicated in a road side accident and he was arrested in that case.

21. *From the perusal of the report u/s 173 Cr.P.C. Ex. P2, it comes out that the criminal case bearing F.I.R. No. 605 dated 28.12.2004 u/s 279/304-A I.P.C. P.S. City Yamuna Nagar was recorded on the statement of PW2 Gurmit Singh. In the F.I.R. PW2 Gurmit Singh has mentioned that the accident had been caused by the truck bearing registration No. HR-46- 8247 which was driven by a clean shaven driver and he can identify him. The copy of the F.I.R. Mark RA shows that the F.I.R. was got registered by PW2 Gurmit Singh, an eye witness of the occurrence on the same day i.e. 28.12.2002 at about 1.50 P.M. i.e. after five hours of the occurrence and in the F.I.R. It is categorically mentioned that had been caused by truck No. HR-46-8247.*

22. *PW2 Gurmit Singh has categorically stated in the cross-examination that on 28.12.2002 at the time of recording his statement, he had narrated the manner of accident as well as the registration number of the offending truck. He further stated that it was day light when accident had taken place and he does not use the spectacles. He further stated that he is educated upto Matric. He can read and write Hindi and English. He further admitted that he has mentioned the number of offending vehicle as MR-46-9247 in the F.I.R. From the aforesaid admissions in the cross- examination of PW2 Gurmit Singh it comes out that the accident has taken place in the broad day light.*



PW2 Gurmit Singh was having good eye sight and he was not using the spectacles. He was an educated person and could read and write Hindi and English. He has also admitted that he has mentioned the number of the offending vehicle as HR-46-8247 In the F.I.R. In his examination-in-chief this witness has not given any explanation as to why the wrong registration number was mentioned by him in the F.I.R. His supplementary statement has been recorded by the police on 12.1.2003 1.0. after 15 days of the occurrence wherein it is mentioned that due to accident he was perplexed and he has mentioned the registration number of the truck as HR-46-6247 instead of HR-45-0675. If PW2 Gurmit Singh could not correctly mention the registration number of the truck only because he was perplexed, it is not believable that he would have taken 15 days to reconcile and compose and to mention the correct registration number of truck. It is nowhere mentioned in the supplementary statement Mark A that from which source he came to know about the correct registration number of the truck. So there is absolutely no satisfactory explanation in the statement of PW2 Gurmit Singh as to how he has substituted the registration number of the truck in question from HR-46-8247 to HR-45-0675.

23. The presence of PW3 Jaswinder Singh is extremely doubtful at the place of occurrence. First of all his name is nowhere mentioned in the F.I.R. i.e. the statement of PW2 Gurmit Singh that PW3 Jaswinder Singh had also witnessed the occurrence. The statement of this



witness has been recorded by the police for the first time on 12.1.2003, i.e. after 15 days of the occurrence. In the cross-examination he said that he made effort to stop the truck by bringing the scooter slightly in front of it. He further said that he had not noted down the registration number of the truck on any paper and he stayed there only for 2/3 minutes as he was in hurry to go to Punjab and he left that place. He further stated that before going to Punjab he had not disclosed the factum of witnessing the accident to any one. He further admitted that the claimant also belongs to his community and they are doing the same profession of carpenter. He further admitted that the house of petitioner is at a distance of about 10/15 yards i.e. after interfering 2/3 houses from his house. So PW3 Jaswinder Singh is also the resident of the same locality rather his house is situated in the neighbourhood of the house of the petitioner and it is not believable that an accident before his sight and he did not prefer to take care of the injured and even did not bother to report the matter to the police or to any body else and had left for Punjab.

24. The version of PW3 Jaswinder Singh that he had left for Punjab on 28.12.2002 i.e. on the day of occurrence itself is also totally unbelievable. He has deposed in the cross-examination that his maternal uncle is in Punjab. He went to his maternal uncle in Punjab on 28.12.2002 to attend the marriage of his cousin which was to be held on 3.1.2003. It is a fact of common knowledge that nowadays the marriage are only one day's affair and it is not believable that PW3



Jaswinder Singh had gone six days before the date of marriage that too to attend the marriage of a cousin. He further stated that he continued to enjoy the company of the relations upto 11.1.2003. It means he stayed in Punjab for a period of 14 days just to attend the marriage of his cousin. He further admitted that there is no other person in his family to earn livelihood except him. He further stated that there is no source of income including that of rent. Thus, it is not believable that a person who has to daily earn his livelihood by doing the job of a carpenter having no other source of income will water 14 days just to attend the marriage of a cousin when he has four children to support. It shows that the version of PW3 Janwinder Singh that he remained in Punjab from 28.12.2002 to 11.1.2003 in order to attend the marriage of his cousin is totally unreliable and such type of witness is not worthy of credence. Thus, the presence of PW3 Jaswinder Singh at a place of occurrence is extremely doubtful.

25. *Hence the registration number of truck No. HR-45- 0675 was first time mentioned in the supplementary statement of PW2 Gurmit Singh on 12.1.2003. There is absolutely no explanation as to why the wrong registration number of the truck was mentioned in the F.I.R.*

26. *Respondent No.1 Mustkeen has appeared as RW3 and he has totally denied the involvement of truck No. HR-45-0675 in the present accident. He has deposed that on day of accident the truck was away to Punjab.*



27. *The fact that respondent No.1 Mustkeen is facing the criminal trial for causing this accident by truck No. HR-45-0675 in a rash and negligent manner is itself not a ground to hold the involvement of truck No. HR-45-0675 in the present accident as truck in question has been impounded by the police on 13.1.2003 as per the supplementary statement of PW2 Gurmit Singh i.e. after 16 days of the occurrence. However, no date of taking into possession the truck in question is mentioned in the memo Ex. P2. It shows that truck NO. HR-45-0675 has been implicated later on due to the reasons best known to the petitioner and the witnesses of the occurrence. Thus, there is no escape from the conclusion that the petitioner has failed to establish that truck No. HR-45-0675 was involved in the present accident. Cases relied upon by the learned counsel for the claimant are quite distinguishable on facts. In case United India Insurance Co. Ltd. Vs. Maya Rani Debnath & another (supra) the F.I.R. was lodged by a person who was not an eye witness to the occurrence. Due to this reason the discrepancy regarding the identity of the vehicle as per the version in the F.I.R. was not considered fatal. But here in this case the F.I.R. has been registered on the statement of PW2 Gurmit Singh an eye witness of occurrence and he has categorically mentioned in his statement that accident has been caused by truck No. HR-46-8247. The registration number later on introduced i.e. HR-45-0675 is totally different and it is not believable that a person can be mistaken regarding such a distinct registration number. In case Virat Sama Vs.*



Mohan Lal (Supra) no negligence was attributed to the auto rickshaw driver in the F.I.R. whereas the plea of negligence was taken in the amended petition. The Tribunal has not taken into consideration the amended petition and has not awarded the compensation to the claimant. Thus, in that case also there was no dispute regarding the identity of the vehicle involved in the accident. The question was only regarding negligence and the accident was not disputed. In case Nikki & Others Vs. Darshan Singh and another, the F.I.R. was recorded after 45 minutes of the occurrence wherein the registration number of the truck as well as the name of the driver was clearly mentioned. The truck in question was impounded from the spot. In those circumstances, the Hon'ble High Court held that minor discrepancies in the statements of the witnesses are bound to occur and the omission of their names in the F.I.R. is insignificant to arrive at that conclusion. The Hon'ble High Court has mainly relied upon the fact that the F.I.R. was prompt and the vehicle in question was impounded from the spot itself. Thus, in that case the registration number of the offence vehicle and the name of its driver was clearly mentioned in the F.I.R. and the vehicle itself was impounded from the spot but in the instant case the truck in question had been impounded after 16 days of the occurrence. Registration number HR-45-0675 was not mentioned in the F.I.R. Rather the registration number of the truck involved in the accident was mentioned as HR-46-8247. Even the



name of the driver has not been mentioned in the F.I.R. So this authority is totally distinguishable on facts.

28. *Case Girdhari Lal Vs. Radhey Sham & Others (Supra) is also of no help to the claimant because in that case also, the respondent has admitted that claimant Girdhari Lal has met him and asked for a compromise and demanded the compensation. So, on these facts, there was no doubt regarding the occurrence.*

29. *In case Ram Karan & Ors. Vs. Zile Singh & Ors. II (2002) ACC 15, our Hon'ble High Court has laid down that mentioning of the number in the statement of the witnesses is an improvement and said version cannot be relied upon. In the instant case also, the registration number of truck as HR-45-0675 has been mentioned in the supplementary statement by way of improvement and those statements, which are totally without any explanation and base, cannot be relied upon.*

30. *Thus, in these circumstances, in my opinion, the claimant has failed to establish that the present accident has been caused due to rash and negligent driving of truck No. HR-45-0675 by respondent No.1. Consequently, this issue is hereby decided against the claimant and in favour of the respondents."*

9. While deciding issue No.2, learned Tribunal assessed the compensation to the tune of Rs.2,67,000/- but held that the claimant is not entitled to receive the same since issue No.1 is decided against the claimant.



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ANALYSIS OF RECORD

10. A perusal of the record shows that on 28.12.2002, the deceased Satnam Singh was going to Sector 17, HUDA, Jagadhri on his bicycle and when he reached near Sant Nishchal Singh School, Yamuna Nagar, a truck bearing registration No. HR-45-0675 being driven by respondent No.1 in a rash and negligent manner came from behind and without blowing any horn hit the bicycle of the deceased. Due to the impact, the deceased fell down on the road and was run over by the truck. He received multiple and serious injuries.

11. Gurmeet Singh, who was examined as PW-2, was also following the deceased on his bicycle. He is the author of the FIR and he has specifically stated in his statement that the truck bearing No. HR-45-0675 came from behind and struck against the bicycle of the Satnam Singh. He took the deceased in a three-wheeler to Gaba Hospital, Yamuna Nagar where the deceased succumbed to his injuries on the same day. He further stated that respondent No.1 was driving the truck in rash and negligent manner. He further stated that the police arrived in the Gaba Hospital and recorded his statement. Thereafter, driver Mustkeen - respondent No.1 was identified by him under Police supervision at ITI Gate Yamunanagar. His supplementary statements were recorded by the police on 12.01.2003 and 13.01.2003. It is admitted that the truck No. HR-46-8247 was erroneously mentioned in the FIR but was later on corrected in his subsequent statement. He denied the suggestion put to him that truck No.HR-45-0675 was falsely implicated at the behest of Jaswinder Singh in connivance with the police.

12. Jaswinder Singh, who was examined as PW-3, is an eye witness of the accident. He admitted in his statement that he saw two cyclists coming from the



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Yamuna Nagar bypass side and truck bearing No. HR-45-0675 came from Yamuna Nagar bypass side while driving in a rash and negligent manner and hit one of the cyclists. He further stated that his statement Mark-'C' was recorded by the police. In his cross-examination, he stated that the deceased was not from his relation but he is from his community and residing in the colony. He also admitted that the claimant and Jaswinder Singh are Dhiman by caste and also doing the job of Carpenter.

13. Ajay Vashishth, Criminal Ahalmad of the Court of CJM was examined as PW-4. He brought the record pertaining to criminal case No.91/1 of 2003 titled as State vs. Mustkeen arising from FIR No. 605 dated 28.12.2002 registered under Section 279, 304A of the Indian Penal Code Police Station City, Yamunanagar. He stated that charges were framed against Mustkeen under the under Sections 279, 304-A of the Indian Penal Code. He further stated that prosecution has moved an application dated 25.01.2006 Mark-'D' seeking correction of the vehicle number in the charge sheet. He also produced final report under Section 173 of Cr.P.C. marked as Ex.P-1, recovery memo marked as Ex.P-2, certified copy of mechanical report of Truck No. HR-45-0675, marked as Ex.P-3.

14. It is settled proposition of law as held in **Girdhari Lal's case (supra)** that if the driver is facing trial on account of rash driving, the prima facie conclusion is that the accident occurred due to rash and negligent driving.

15. Mustkeen was examined as RW-3, who stated that he was employed as driver on Truck No. HR-45-0675 and no accident had taken place and his truck was falsely implicated. He produced the driving license Ex.R-3 and stated that there was a route permit as well as registration certificate of the truck. He admitted



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that he was facing a criminal trial for the accident in question. He also admitted that he had not filed any application before any higher authority challenging his alleged false implication in the accident case. He further conceded that his truck was taken into possession by the police 15 days after the incident. He further admitted that the truck was subsequently released on Sapurdari from the Court by the owner.

16. On the touchstone of hereinabove discussed findings and judicial precedent, the award dated 03.08.2006 passed by learned Tribunal, Jagadhri stands vitiated by a complete absence of judicial application of mind.

SETTLED LAW ON COMPENSATION

17. 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.

* * * * *



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.

18. 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.”

19. 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

20. 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 appellant-claimant is entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.6000/-
2	Future prospects @ 40%	Rs.2400/- (40% of 6000)
3	Deduction towards personal expenditure	Rs.2800/- [1/3 of (6000+2400)]
4.	Total Income	Rs.5600/- (8400-2800)
4	Multiplier	16
5	Annual Dependency	Rs.10,75,200/- (Rs.8234/- x 12 x 16)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Spousal : Rs.48,000/-x1	Rs.48000/-
	Total Compensation	Rs.11,59,200/-

21. 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 appellant-claimant is granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.

22. The Insurance Company is directed to deposit the amount of compensation along with interest with the Tribunal within a period of two months

from today. The Tribunal is further directed to disburse the amount of



compensation along with interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish the bank account detail to the Tribunal.

- 23. Disposed of accordingly.
- 24. Pending applications, if any, also stand disposed of.

August 30, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No