



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO-3304-2006 (O&M)
Reserved on 21.11.2024
Decided on: December 03, 2024**

Smt. Darshna Devi and others

.....Appellant(s)

Vs.

Union of India and another

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vipin Mahajan, Advocate
for the appellants.

Mr. Vikram Bajaj, Sr. Panel Counsel
for respondent No.1.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 14.03.2005 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Gurdaspur (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased-Jaswinder Pal, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 02.09.2002, at about 4.15 p.m., Jaswinder Pal was coming back to his village Talwandi from Jugial on his bicycle. When he reached near KLM School, Karoli Maur (turning), a Military Vehicle No.T-99-013833K, which was being driven by respondent No. 2, Shiv Singh, rashly and negligently hit



the bicycle of Jaswinder Pal. As a result, of which Jaswinder Pal fell down alongwith his bicycle on the road and received multiple grievous injuries on his person. The driver of the offending vehicle came down from the vehicle and took away Jaswinder Pal in his vehicle and got him admitted in the Military Hospital, Pathankot for treatment where Jaswinder Pal succumbed to the injuries at about 6 a.m. on 3.9. 2002. This accident took place due to rash and negligent driving of Military Vehicle by respondent No. 2, Shiv Singh. The matter was reported to the police. The police recorded Rapat No.27 dated 03.09.2002 at Police Station Shahpur Kandi. The appellant came to know about non-registration of criminal case under Section 304-A IPC against respondent No.2.

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

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

1. Whether Jaswinder Pal died due to the rash and negligent driving of Vehicle by Respondent No.2? O.P.A.

2. To what amount the claimant is entitled by way of compensation and from whom? OPA

3. 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 LEARNED COUNSELS FOR THE PARTIES**

6. Learned counsel for the appellants contends that the claim petition was dismissed only on the ground that the appellants failed to prove that the accident took place with Army vehicle No. T-99-013833K in the area near KLM Karoli turning, Pathankot and that army vehicle was being driven by respondent No.2 Shiv Singh who is not the driver in the Army Department. He further contends that claim-petition was dismissed on the ground that no vehicle was involved in the accident. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants as per settled law.

7. Per contra, learned counsel for the respondent has vehemently argued that claim petition has rightly been dismissed. Therefore, he prays for dismissal of the appeal.

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

9. The relevant portion of the award is reproduced as under:-

“7. Onus to prove this issue was on the applicants claimants. In this regards, the claimants-applicants examined Hans Raj (PW. 1) one of the applicant, father of deceased Jaswinder Pal, who deposed the on 2.9.2002, he and his son Jaswinder Pal on their separate bicycles, were coming from village Karoli to their village Talwandi. His son Jaswinder Pal was going ahead of him. At about 4.30 p.m, when they reached near KLM School Karoli, a Military vehicle No.T-99-2-013833K which was being driven by Shiv Singh, respondent No. 2, very rashly & negligently at a high speed came from back-side and struck into the bicycle of Jaswinder Pal, as a result of which Jaswinder Pal fell down on the ground and suffered injuries he became unconscious, Said Shiv



Singh, driver of the army vehicle stopped the army vehicle and then put Jaswinder Pal in the army vehicle and took him to Military Hospital, Pathankot, where he succumbed to the injuries on 3.9.202 at about 6 am. He deposed that this accident took place due to rash and negligent driving of Military vehicle by Shiv Singh, respondent No. 2, The police came at the spot and took his signatures on some blank papers Later on, this witness came to know that police did not register my case against the driver of the army vehicle because of fear of Indo-Pak, war, The claimants also tendered in evidence, DDR No. 27 dated 3.9.2002, Ex.A1

8. Whereas, case of the respondents, Union of India and Shiv Singh, is that no accident took place with any army vehicle nor respondent No. 2 Shiv Singh (wrongly stated by claimant as Ram Shiv Singh), is driver of any army vehicle, he is a Radar operator/Assistant Instructor in Gunnery. on 2.9.2002, he was sitting in the army vehicle bringing back equipment to Unit location at Mamun Cantt, and to proceed with AD firing on the way, he saw a cyclist falling down from his cycle, He on humanitarian grounds got stopped military vehicle to give help to the cyclist. He stopped a private vehicle passing on that road, and took injured/cyclist who was unconscious at that time, to Military Hospital, Pathankot, The injured/cyclist was not taken to Military Hospital by Shiv Singh in his own army vehicle as alleged by the claimants because this could not have been possible as the vehicle in which Shiv Singh was sitting was towing on L/70 Gun. In this regard, respondents examined, R. 1 Shiv singh, respondent No.2, who also deposed that he is not the driver in the army. He is an Assistant Instructor in Gunnery, No. 28, A.D. Regiment, c/o 56 APO. He was never driving any vehicle of the army on 2.9.2002 or before/after 2.9.2002. He is also doing the work of Radar operator. No accident took place with the army vehicle on 2.9.02. Even army vehicle No.T-99-013833K- had not gone to the side of KLM School, Karoli turning, Pathankot. He had seen a cyclist falling



down from his cycle. He came to the cyclist who had become unconscious and purely on humanitarian grounds, he took the injured to Military Hospital, Pathankot in a private vehicle passing on that side which this witness stopped on request. No army vehicle was involved in the accident. He does not know driving. Respondent also examined RW2, Subedar Satbir Singh No. JC-298066-N-10, A.D. Regiment c/o 56 APO who deposed that he was the Incharge of the army vehicles on 2.9.2002 in which Shiv Singh was sitting. He was also sitting in the back vehicle. On 2.9.2002, no accident took place with any army vehicle of unit. This witness further deposed that vehicle bearing No.T-99-2-013833K had not gone to the side of KLM School, Karoli turning Pathankot on 2.9.2002 nor any accident took place with this vehicle on that day nor any accident took place with any other army vehicle under the control of his Unit. This witness has further deposed that the duty of Shiv Singh in the army is not of driver but he is a Radar Operator-cum-Assistant Instructor in Gunnery. He is working under this witness, Subedar Satbir Singh. Shiv Singh never drove any army vehicle because he was not a driver in the "my Department. on 2.9.2002, Shiv Singh was not driving any Army vehicle. The respondents also produced on record the identity card of Shiv Singh Ex. R3/C and Certificate issued by the Army Unit Ex. R4/D. This Certificate Ex R4/D states that JC-298698 Naik Subedar Shiv Singh of 28 AIR Defence Regiment is not a driver nor he is trained in driving. He is Assistant Instructor in Gunnery and he has been trained in gunnery only.

9. The learned counsel for the applicants submitted that this accident took place due to rash and negligent driving of vehicle No.T-99-B-01383 by respondent No. 2, Ram Shiv Singh as a result of which Jaswinder Pal suffered injuries. He was taken to Military Hospital, Pathankot by Ram Shiv Singh on the Military vehicle where he succumbed to the injuries on the next day i.e. on 3.9.2002 at about 6a.m. So, respondents are liable to pay compensation to



the claimants, He further argued that the police recorded written statement of Hans Raj father of deceased and proceeded under section 174 of Cr.P. C. as per DDR Ex. A1. The police did not record the statement of Hans Raj, father of the deceased properly whereas he has deposed in the court against the driver of the army vehicle. In this regards he relied upon ruling of our on Hon'ble High High in case "Viret Sama Vs. Mohan Lal & Others, 1994(2), Civil Court cases 22(P&H) in which it has been held that in accident cases FIR is often lodged in a haste and the same cannot be a substitute for the evidence giving exhaustive version of the occurrence, The statements before the Tribunal are made on solemn affirmation, whereas the FIR is never lodged on solemn affirmation, He, therefore prayed that DDR Ex A1, may be ignored whereas as per the statement of Hans Raj, PW 1, eye witness of this accident, this accident took place due to rash & negligent driving of the army vehicle by its driver, respondent No. 2, Ram Shiv Singh alias Shiv Singh.

10. Whereas, learned counsel for the respondents submitted that name of respondent No. 2, is Shiv Singh and not Ram Shiv Singh. He is an Asstt. Instructor in Gunnery. He is not a driver nor he ever drove any Military vehicle. Moreover, this vehicle No 99-2-013833K never came to that side on 2.9.2002 i.e. KLM School near Karoli More, Pathankot, as deposed by the Incharge of the vehicles "RW-2, Subedar Satbir Singh. The Statement of these RWs are also supported by the statement of Hans Raj, father of deceased given to the Police on 3.9.2002, which is Ex.A-1. So no accident has taken place with the army vehicle and Jaswinder Pal died due to falling from his cycle and the Military official took the injured/cyclist to Military Hospital, Pathankot only on humanitarian grounds.

11. From the perusal of the entire above discussed evidence, it is clear that Jaswinder Pal died in Military Hospital, on 3.9 2002 because of injuries as is evident from Post-mortem report of



Jaswinder Pal, Ex A2 In this regard, statement of Hans Raj, the only eye witness of this accident produced by the claimants, who is none else but father of deceased, Jaswinder pal, which was recorded by the Police i.e. by SI Ved Parkash on 3.9 2002 in which Hans Raj himsaf has reported to the Police on 3,9.2002 i.e. that his son Jaswinder Pal was working in Punjab Small Industries Export Corporation, at Jugial On 2.9.2002, he alongwith his son Jaswinder Pal were coming on their cycles from village Karoli to village Talvandi. His son was ahead of him and this witness was following Jaswinder Pal on his own cycle. At about 4:15 p.m., when they reached near KLM School, Karoli More, so many vehicles of Military came from back side. His son Jaswinder Pal became nervous and fell down from the cycle as a result of which he suffered injuries on his head while falling on the road Jaswinder Pal became unconscious. Then, one army vehicle was stopped and one army personnel whose name he later on came to know as Shiv Singh No. 14377425, arranged a private vehicle which was going on that road and took his son Jaswinder Pal to Military Hospital, Pathankot for medical treatment. But on 3.9.2002, at about 6 a.m. his son Jaswinder Pal had expired, He further stated that this happened all due to nervousness of Jawinder Pal as a result of which he fell down from his cycle on the road as a result of which he suffered head injury. No one is at fault and he does not want to lodge report against any person. This statement was read over and explained to Hans Raj and he thumb marked the same in token of its correctness on 3.9.02 at about 8.35 pm. so, this statement of Hans Raj recorded by the Police which was produced by the claimants themselves, as Ex.A-1, cannot be said to be recorded in haste immediately after the accident but this statement of Hans Raj was recorded on the next day and that too at 8.35 P.M. on 3.9.2002, whereas this accident took place on 2.9.2002 at 4.30 P.M. Not only this, Hans Raj in his cross-examination has stated that when army vehicle was stopped at the



spot, he noted the number of the offending army vehicle in writing and kept the same in his pocket, whereas, in the claim petition filed by the claimant on 3.10.2002 was not bearing any army vehicle number. Rather, the claimants have filed application under order 11 rule 14 CPC on 21.4.2003 asking the respondents to disclose the name of the driver of the offending vehicle and the number of the offending vehicle of the army. So statement of Hans Raj, the only alleged eye witness produced by the claimants, cannot be believed that he had noted down the number of the offending army vehicle at the spot on the day of accident but even up to 21.4. 2003, he was not aware as to who was the driver of the offending vehicle and what was the number of the offending vehicle of the army when he filed application under order 11 rule 14 CPC dated 21.4.2003 asking the respondents to provide these particulars in the FIR i.e. DDR Ex.A-1, this witness himself has stated that no accident took place with any army vehicle nor he mentioned the number of any army vehicle nor he stated that respondent No. 2, Shiv Singh was driving that army/offending vehicle. Not only this, this witness has admitted in his cross-examination that he did not file any representation to the higher authorities against the concerned officials of the Police station, for not lodging the FIR against the driver of the of offending vehicle, whereas respondents have proved on record through Certificate dated 1.1.2005, Ex R. 4/D, issued by Major/ Officer Commanding, 106/28, AIR defence, Regiment, that NK/Subedar(AIG) Shiv Singh of 28 AIR defence, Regiment i.e. respondent No. 2 is not a driver and he is not trained in driving. He is an Assistant Instructor in Gunnery and he has been trained in gunnery only. Therefore, as per Certificate, Ex R.4/D, respondent No. 2, Shiv Singh cannot drive any army vehicle. So, it stands fully proved on record that respondent No. 2, Shiv Singh was not driving any army vehicle on 2.9 .002 Further, it has been proved by RW2, Subedar Satbir Singh Incharge of army vehicles at the relevant time i.e. on 2.9.2002, that



this vehicle bearing No.T-99-01383K did not come to the side of KML School Karoli More, Pathankot on 2.9.2002. No accident took place with this vehicle or any other vehicle under the control of his Unit. This witness has also deposed that respondent No. 2, Shiv Singh is working with him in the same Unit and he is Asstt. Instructor in gunnery and is a Radar Operator, He never drive any army vehicle because he was not a driver in the army. So it stands fully proved on record that no accident took place on 2.9.2002 with this army vehicle No.T-99-E-13833K-and that is why Hans Raj father of deceased, Jaswinder Pal did not mention any number of the army vehicle nor the name of the driver in his report lodged to the Police on 3.9.02 at about 8.30 P.M. which is EX. A1. It has been held by our own Hon'ble High Court in case "Sarli Devi Vs. Mool Chand & Others, 204, ACJ, 363 that where the claimant herself had lodged FIR but neither the name of driver nor number of vehicle and name of the independent witness find mention therein. The claimant was unaware of these particulars when she appeared in the witness box. Police had given untraced report in the criminal case. It was held that Tribunal was justified in dismissing the claim petition.

12. In the light of my above discussion, I hold that the applicants have failed to prove on record that any accident took place with army vehicle No.T-99-E-13833K on 2.9.2002 in the area near KLM School, Karoli Turning, Pathankot and that the army vehicle was being driven by respondent No. 2, Shiv Singh who is not a driver in the army Department. Therefore, this issue No. 1 is decided against the applicants."

10. A perusal of the record shows that in the claim petition, the appellants have given the cause of accident by stating therein that on account of rash and negligent driving of Shiv Singh, driver of military vehicle hit against the bicycle of deceased-Jaswinder Pal, as a result of which, vehicle



went off the road to its left side and Jaswinder Pal fell down alongwith his bicycle on the left side of the road and received multiple injuries on his person.

11. A perusal of the record further shows that the claim-petition was filed under Section 166 of the Act. Further shows that Rapat No.27 dated 03.09.2002, at Police Station Shahpur Kandi was also registered.

12. A perusal of the reply of respondents No.1 and 2 proves the admission of accident by them since in para 24 of the reply, it is stated as under:-

“No accident has taken place with the Army Vehicle and a cyclist, RHM Shiv Singh respondent No.2 is not the driver of the army vehicle, he is a Radar Operator was sitting in the army vehicle 'bringing back 'equipment to unit location at Mamun Cantt and to proceed for AD firing. RHM Shiv Singh had seen a cyclist falling down from his cycle and had stopped to give help totally on humanitarian grounds and had evacuated the injured cyclist who was unconscious at that time to MH Pathankot, in a private vehicle passing on that road which was stopped by RHM Shiv Singh and had requested the driver of private vehicle to help the injured. The injured cyclist was not evacuated to MH by RHB Shiv Singh in his own Army vehicle as mentioned in the claim application. This could not have been possible as the vehicle in which RHM Shiv Singh was sitting was towing an L/70 Gun. The matter was reported to the Police Station Shahpur Kandi by the answering respondent, but no F.I.R was lodged as no army vehicle was involved in the accident. However, the police lodged a report under section 174 of Cr.P.C. on 03 Sep 2002. It is specifically denied that the police station did not register the criminal case against the driver with the pretext of fear of war with Pakistan. In realty no accident has taken place with the Army Vehicle. ”



13. A perusal of above shows that respondents No.1 and 2 are admitting the factum of accident. Further by admitting that the respondent No.2 is not a driver but a radar operator and was bringing back equipment to unit location by not naming the driver, shows that he himself was driving the military truck. Further, it is admitted that a police report under Section 174 Cr.P.C. was lodged on 03.09.2002.

14. A perusal of the statement of Hans Raj in the record shows that he is the eye witness of occurrence who stated that he and his son both were going on their separate cycles from Village Karoli to Village Talwandi. That he was coming behind his son and he further stated that at about 4:30 p.m., when they reached near school Karoli Maur, one military vehicle bearing No.T-99-013833K being driven by Shiv Singh-respondent No.2 in a rash and negligent manner hit his military vehicle on the back side of the cycle of his son and his son fell down alongwith cycle. Because of the impact of the accident and after receiving multiple injuries, he became unconscious. Thereafter, Shiv Singh driver saw his son and gave signal to army jeep and took his son to military Hospital, Pathankot, where on the next day at 6:00 a.m., his son expired. He further stated that this accident took place because of the negligent driving of military vehicle by the driver Shiv Singh. He stated that after that police came and got his signatures on blank papers.

15. Cross examination of Shiv Singh who was examined as RW-1 further proves the factum of accident. The relevant part is reproduced as under:-

“There were five persons again said vehicle No.T-99 E-013833-K was not gone out-side on 2.9.2002. On 2.9.2002 the



vehicle above stated was in the Regiment at Nagrota. I have not brought any record nor I can produce any record regarding this vehicle. I was sitting in the Army vehicle whose number I do not remember. I do not know the driver, who was driving that vehicle on that day. I have not bought any record to prove that I was working as Assistant Instructor in Gunnery. There were five persons in the vehicle in which I was traveling but I do not know the names of those persons. I was sitting on the left side of the driver.

I took the injured to the Hospital(Military Hospital) and stayed there till 10.00P.M. I do not know where the vehicle gone with which I was traveling. After that I went to my Unit at Pathankot. No entry was corporated on the Gate. It is incorrect that on 2.9.2002 I was driving Military vehicle No.T-99E-013833K.

It is also incorrect to suggest that at about 4.15 p.m. when the said vehicle reached near K.L.M.School near Purani Karoli Mour, I caused the accident with the result that Jaswinder Pal deceased received multiple grievous injuries. It is also incorrect to suggest that I took the injured Jaswinder pal in Military Hospital in a private vehicle. It is incorrect to suggest that not I am a radar operator. It is wrong to suggest that I have deposed falsely.”

16. A perusal of the above shows that this witness is trying to make a false story. Further it cannot be believed that he was not aware about the name of the driver and the registration number of vehicle. Further, he is stating that no entry was made on the gate.

17. Ex. RW-2/B is the affidavit of Satbir Singh who stated that he was Incharge of army vehicle on 02.09.2002 in which, Shiv Singh was sitting and he was sitting in the back vehicle. Further no accident took place with the army vehicle of their unit on 02.09.2002 and the vehicle bearing T-99-013833K did



not come to the side of the KLM School Karoli Maur, Pathankot on 02.09.2002. Further that no accident took place with this vehicle or any other vehicle under the control of their unit. He further stated that Shiv Singh is not a driver but Radar operator-cum Investigator in gunnery.

18. A perusal of the above statement shows that it is again contradictory since eye witness has admitted the case of Shiv Singh that he saw Jaswinder Pal and took him to military hospital in a private vehicle and on the other hand, Satbir Singh is stating that the vehicle bearing No.T-99-013833K never went to the side of KLM school Karoli Maur, Pathankot on 02.09.2002 which is the place of accident. Therefore, the statement of Satibir Singh is unbelievable.

19. Satbir Singh in his cross examination stated that on 02.09.2002, he was sitting in the vehicle No. T-99-013833K, and that time the driver of the said vehicle was another Satbir Singh. Further that Shiv Singh RW-1 was not sitting in his vehicle. He further stated that he did not bring any record to show that Shiv Singh was working as a Radar operator with him on 02.09.2002.

20. In Post Mortem report against the column of information furnished by police, it is written “alleged to have died of any accident”.

21. The cause of death is shown to be due to hemorrhage and shocking on account of the injuries to the vital organs of the body. In the medical certificate, cause of death is shown “severe head injury”.

22. A perusal of the record shows that the claim petition was filed under Section 166 of the Act, whereas, Ld. Tribunal has decided the claim petition under Section 163-A of the Act, this shows non-application of judicial mind by the Ld. Tribunal.



23. A bare reading of whole record shows that the factum of accident is proved. The vehicle involved in the accident is also proved, therefore, the finding given by Ld. Tribunal while dismissing the claim petition on the ground of non-involvement of any vehicle is not acceptable to this Court. Ld. Tribunal dealt the claim petition filed by the appellant under Section 166 of the Act, under 163-A of the Act which itself shows non-application of judicial mind by the Ld. Tribunal while deciding the claim petition. It further shows that the Ld. tribunal did not take into consideration any document which is very much on record as referred to above while dismissing the claim petition.

24. This Court in ***FAO No.195 of 2006***, titled as ***“Mamta and others Vs. Happy and others”***, has held that Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The relevant extract of the same is reproduced as under:-

1. *The learned Tribunals upon receiving the application under Sections 140, 163-A of the Motor Vehicles Act, 1988 (pre-amendment i.e. 2019 amendment w.e.f. 01.04.2022), Sections 164 and 166 (post- amendment i.e. 2019 amendment w.e.f. 01.04.2022), shall thoroughly appreciate the evidence and exercise their judicial discretion;*
2. *The learned Tribunals after applying their judicial mind to the evidence led as well as all relevant facts and circumstances of the case and the extent of loss to be compensated, shall, before announcing the award, shall apprise the claimants of their right to seek compensation, under the best available remedy to them, under the Motor Vehicles Act, 1988;*



3. *Even if the claim petition is filed under Sections 140, 163-A of the Motor Vehicles Act, 1988 (pre-amendment i.e. 2019 amendment w.e.f. 01.04.2022) or Sections 164, learned Tribunal shall after appreciation of the evidence and before passing the award, if it finds that respondents negligence is established should advice the claimant, in the interest of justice, to opt for Section 166 of the Motor Vehicles Act, 1988. The learned Tribunals shall then grant compensation under Section 166 of the Motor Vehicles Act, 1988 (post-amendment i.e. 2019 amendment w.e.f. 01.04.2022), keeping in view the law settled by the Hon'ble Apex Court in the case of Sarla Verma (Supra), Pranay Sethi (Supra) and Magma Insurance Company Ltd. (Supra);*
4. *It is further clarified that with the 2019 amendment (w.e.f.01.04.2022) Section 164 is introduced where the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and half lakh rupees in case of grievous hurt to the legal heirs of the victim, as the case may be, and the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person. Therefore, the claim petition originally filed under Section 164 of the Motor Vehicles Act, 1988 (post-amendment i.e. 2019 amendment w.e.f. 01.04.2022), can also be converted to Section 166 of the Motor Vehicles Act, 1988, with due diligence, after considering the case's facts, circumstances and evidence led by both the parties.*



5. *The Judge should not go into the technicalities of the provisions, specially in motor vehicle cases, under which the application or petition is moved but should apply his judicial mind, since these are only the irregularities and not illegalities which cannot be cured. The Hon'ble Supreme Court in the above mentioned judgments have analysed that the Court should make every effort to fill the loss of the victims/legal-representatives/claimants/relationship. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically.*
6. *Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.*

25. In view of the above, the claim petition filed by the appellants before the Ld. Tribunal is treated to be filed under Section 166 of the Act since the claim petition was filed under Section 166 of the Act but Ld. Tribunal treated it under Section 163-A of the Act.

26. With respect to determination of compensation, the record contains evidence of hospital admission, the deceased earning and his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on the record as per settled law.

SETTLED LAW ON COMPENSATION

27. 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 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 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.

28. 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 *Rajesh*². 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.”



29. 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.



RELIEF

30. 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 14.03.2005 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5000/-
2	Future Prospects @ 50%	Rs.2500/-(50% of 5000)
2	Deduction towards personal expenditure 1/4th	Rs.1875/- (1/4th of 7500)
3.	Total Income	Rs.5625/-
4	Multiplier	16
5	Annual Dependency	Rs.10,80,000/- (5625X16X12)
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. 48,000/- X 2	Rs.2,40,000/-
	Total Compensation	Rs.13,56,000/-

31. 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 Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.



32. The respondent-Union of India is directed to deposit the awarded amount of compensation alongwith interest with the Tribunal within a period of two months from today.
33. The respondent-Union of India is further directed to disburse the amount of compensation alongwith interest equally in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.
34. Disposed off accordingly.
35. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

December 03, 2024
sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes