

FAO-4556-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209
FAO-4556-2006 (O&M)
Date of Decision: September 02, 2024

Ram Diya and anotherAppellant(s)

Vs.

Sanjay @ Sanjeev Kumar and othersRespondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Jagdish Manchanda, Advocate
for the appellants.

Mr. Sanjiv Pabbi, Advocate
for the respondent-Insurance Co.

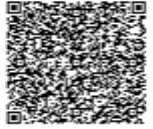
SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 20.07.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Jagadhri (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the parents of the deceased, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that the deceased-Shiv Kumar @ Parveen Kumar was working as servant with respondent No.2. On 19.07.2004, Shiv Kumar was travelling on the tractor trolley make Mahindra bearing Engine and Chasis No.4260 owned by respondent No.2-Jasbir Singh and driven by respondent No.1-Sanjay @ Sanjeev Kumar who was driving it in a rash and negligent manner. In that process Shiv Kumar @ Parveen Kumar fell down and suffered grievous injuries on his body. He was taken to the hospital where he was

declared brought dead.

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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 accident occurred due to rash and negligent driving of tractor troelly bearing Engine & Chasis No.4260 by respondent No.1? OPP.*
- 2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom ?OPP.*
- 3. Whether the insured has willfully violated the terms and conditions of the insurance policy, if so, to what effect? OPR.*
- 4. Relief.*

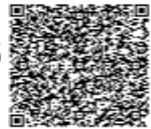
5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS

6 The learned counsel for the appellants contends that the claim petition was dismissed by ignoring oral as well as the documentary evidence produced by the appellants. Therefore, he prays that present appeal be allowed.

7. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that since the involvement and negligency of the driver is not proved, therefore, claim petition has rightly been dismissed. He further contends that

- i) if a person is sitting on the mudguard, then the Insurance Company is not liable to pay the compensation
- ii) there are contradictions in the statements of all the witnesses.



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iii) He further contends that though F.I.R was registered against the driver but it has not come on record that whether he has been acquitted or convicted in the said criminal case.

iv) Reliance has been made by him to the judgment of Hon'ble the Supreme Court of India in a case of **Oriental Insurance co. Ltd. vs. Prem Lala Shukla and others, passed in Civil Appeal No. 2526-2007 (arising out of SLP (C) No. 2427-2006 and judgment of this Court in a case of Manjay and others vs. Lalit and others, 2017(4) PLR 225.**

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

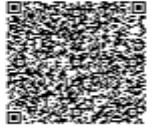
9. The relevant portion of the award dated 20.07.2006 is reproduced as under:-

“ISSUE NO.I:

9. *In order to establish the mode of the accident, the claimants examined PW1 Ajay Vashishth, criminal Ahlmad, court of learned Chief Judicial Magistrate, Jagadhari, who has produced the record of the criminal case. Suresh s/o Ram Sarup, an alleged eye witness to the accident was examined as PW4.*

10. *In addition to the aforesaid oral evidence, the claimants have also placed on file the certified copy of the charge sheet Ex.P1, certified copy of report U/S 173 Cr.P.C. Ex. P2, site plan copy Ex. P3 and certified copy of post mortem report of deceased Shiv Kumar alias Parveen Kumar Ex. P6. Certified copy of the statement of one Parveen Kumar s/o Hukam Chand Ex.P4, on the basis of which F.I.R.Ex. P5 was registered, has also been tendered.*

11. *In rebuttal to above evidence, the respondent insurance company has placed on file the statement of Ram Diya, one of*

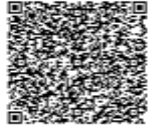


the claimants as Ex.R 2 and copy of the statement of the sarpanch Ex. P3.

12. Initiating the arguments, Sh.S.P.Saini, learned counsel for the claimants contended that from the statement of PW1 Ajay Vashishth, Ahlmad, it comes out that respondent No.1 is facing the trial for causing this very accident fully supported the version of the claimant. Present accident has occurred due to rash and negligent driving of the tractor in question by respondent No.1. The case of the claimants is also corroborated from the documents of the criminal case placed on record. He contended that documents Ex.R2 & Ex.R3 placed on file by the respondent insurance company cannot be read into evidence as those documents have not been formally proved.

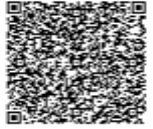
13. On the other hand, learned counsel for the respondent contended that in fact no accident has taken place with the tractor owned by respondent No.2. The present petition has been filed on concocted story. In fact, PW4 Suresh is a professional witness. Sh.Parmod Gupta, learned counsel for the respondent-insurance company contended that this very witness has appeared as an eye witness of the occurrence in MACT Case No.1 of 2005 titled as Nasran Vs. Sweety etc. He contended that in fact he was not present at the spot. His name is not mentioned in the list of witnesses of the criminal case or in the F.I.R. In fact, the accident has taken place with the tractor owned by Amar Gujjar, which is evident from the statement Ex. P2 and in order to extract the compensation from the respondents, this false petition has been filed.

14. I have duly considered the aforesaid contentions. No doubt the provisions of the Motor Vehicles Act are beneficial to the victims but at the same time before awarding the compensation, it has to be seen that the claim lodged by the petitioners is valid and genuine. The petitioners have to establish their case by leading cogent, convincing and reliable evidence.



In the instant case, whole case of the claimants about the mode of accident based on the statement of PW4 Suresh. This witness deposed that on 19.7.2004 at about 7.00 P.M. he was going to village Ballewala and when he reached within the area of that village, he saw a tractor of make Mahindra of red colour being driven by its driver namely Sanjay in a rash and negligent manner and also at a very high speed. All of a sudden, the driver of the tractor took his tractor on kacha berm of the road and the tractor became slight turtled and one boy who was sitting on the left side mudguard fell down. He sustained multiple injuries. They after coming from the back side picked up that injured boy. In the meanwhile, the tractor driver fled away from the spot alongwith the tractor. So many persons gathered over there. He alongwith the assistance of others took the injured to Civil Hospital, Khijrabad, where the doctor declared him dead. The said tractor was belonging to one Mam Chand of village Darba. The deceased was the son of Ram Diya of village Lakubpur. His statement qua the accident in question was recorded by the police. The accident in question took place due to rash and negligent driving of Sanjay respondent No.1. In the cross-examination he said that he had seen the accident from a distance of 2 acres. Police had recorded his statement qua the accident in question on the same day in Civil Hospital, Khijrabad. Ram Dia, the father of the deceased, was earlier known to him. Similarly, Sanjay was also not known to him. The claimants have also placed on file the documents of the criminal case. The copy of Charge sheet Ex. P1 shows that one Sanjeev Kumar S/o Raj Pal is facing the trial for the offence punishable u/s 279/304-A I.P.C.

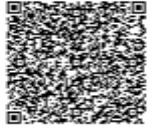
15. *The claimants have also examined A.S.I. Ramesh Chand, the investigating Officer of the criminal case as PW2. He has deposed that 20.7.2004 he was posted as A.S.I. in police station Khijrabad. On that day, he recorded the statement of Parveen Kumar s/o Hukam Singh r/o Bahadurpur qua the accident in question. The photocopy of*



the same is Ex. P5. He took in possession the offending vehicle i.e. one tractor trolley as well as its documents and the same have been tagged with the challan presented before the court. In the cross-examination by learned counsel for respondent No.3, he stated that a chit issued by the Registration Authority bearing registration No.HR-021-3516 in the name of Jasbir Singh was produced before him and the photocopy of the same was tagged with the challan. He also stated about the taking into possession of the original sale letter. He further stated that he had not gone to the authority to verify the chit.

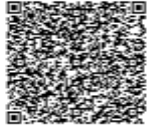
16. From the perusal of the statement Ex.P4, it comes out that the criminal case has been registered on the statement of one Parveen Kumar s/o Hukam Chand r/o Bahadurpur and this statement has been recorded by RW2 A.S.I. Ramesh Chand on 20.7.2004 at 7.00 A.M. at bus stand Khijrabad. Parveen Kumar has not been produced in the witness box by the petitioners. The registration of the case on the basis of the statement Ex. P4 of Parveen Kumar itself falsified the presence of PW4 Suresh at the spot. PW4 Suresh has stated that he has taken the injured to the hospital and his statement was recorded by the police in Civil Hospital, Khijrabad, then the criminal case must have been 'registered on 19.7.2004 itself on the statement of PW Suresh whereas the present case has been registered on 20.07.2004 i.e. on the next day of the accident that too in the statements of Parveen Kumar.

17. The name of PW4 Suresh is nowhere meritioned in the statement of Parveen Kumar Ex. P4 rather he has mentioned that at the time of accident, he was accompanied by one Jitender KumarS/o Ram Maruti r/o Khijrabad. Said Jitender Kumar has also not been examined by the claimants. So the statement of Parveen Kumar Ex. P4 totally rules out the presence of PW4 Suresh at the place of occurrence.



18. *The certified copy of the report U/S 173 Cr.P.C. Ex. P2 has also been placed on file by the claimants report, it is mentioned that the list of witnesses is attached but the said list of witnesses has also been withheld from the court and in my opinion the same has been deliberately withheld in order to conceal the fact as to whether Suresh Kumar has been cited as a witness or not in the criminal case. In order to make the position clear, I have called for then file of the criminal case titled as State Vs. Sanjeev Kumar from the court of learned Chief Judicial Magistrate, Jagadhari and from the perusal of the list of witnesses lying in that file, it comes out that PW4 Suresh S/o Ram Sarup is not cited as a witness in that criminal case. Even in the copy of site plan Ex. P3, only the name of Parveen kumar and Jitender Kumar have been mentioned as witness of occurrence. The name of PW4 Suresh is nowhere mentioned in the site plan from where he might have seen the occurrence. I have also scanned the file of the case and there is no statement of PW4 Suresh recorded by police on record. Only the statements of Mam Chand s/o Molu ram, ILam Singh Lambardar, Jitender Kumar s/o Ram Murti, Ram Dia, s/o Ram Sarup, Jasbir Singh s/o Mam Chand, Rajesh Kumar slo Ram Chand and C. Subhash Chand are on record. Hence, from the aforesaid circumstances, it comes out that in fact no statement of PW4 Suresh was recorded by the police and he was not present at the spot. Thus, the statement of PW4 Suresh cannot be relief upon to establish the mode of accident.*

19. *Moreover, the respondent -insurance company has placed on file the statement of Ram Diya claimant Ex. R2 and the certificate of the sarpanch of village Yakubpur Ex.R3. In the statement of Ex.R2, it is mentioned that the accident had occurred with a tractor owned by Amar Gujjar and the name of the driver was Parveen. Even in the certificate of the sarpanch Ex.R3, it is mentioned that the name of the driver of the tractor was disclosed by Ram Dia as Parveen. So, these*



documents placed on file also contradict the version of the claimants.

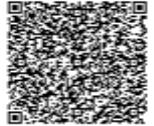
20. Ram Dia, one of the claimants, has not stepped into the witness box. Obviously, he wanted to avoid the confrontation with his statement Ex.R2.

21. Thus, keeping in view of my above discussion, PW4 Suresh has been falsely introduced as Witness of occurrence by the claimants. His presence at the spot is not established at all. Learned counsel for the claimants has also not been able to rebut the contentions of learned counsel for respondent No.3 that PW Suresh has also appeared as a witness in MACT Case No.1 of 2005 titled as Nasran Vs. Sweety & Ors. The documents of the criminal case relief upon by the claimants also rule out the presence of PW4 Suresh. There is no other substantive evidence on file on the mode of accident. Thus, in these circumstances, in my opinion, the claimants have failed to establish that the present accident has been caused by respondent No.1 by driving the tractor trolley in question in a rash and negligent manner and consequently this issue is hereby decided against respondents.”

10. A perusal of the record shows the factum of accident due to rash and negligent driving of respondent No.1-Sanjay @ Sanjeev Kumar.

11. A perusal of the award shows that in FIR No.71 dated 20.07.2004 registered under Section 279, 304-A IPC charges were framed vide order dated 10.01.2005, copy of which has been placed on record as Ex.P1.

12. As per the post-mortem report which is placed on record as Ex.P6, cause of death is due to haemorrhage and shock due to injuries on vital organs and injuries are ante mortem in nature and sufficient to cause death in normal course of events.

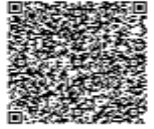
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13. Ajay Vashisth, Criminal Ahlmad, Court of Judicial Magistrate, Jagadhri was examined as PW-1. He stated that he brought the summoned file of case titled as State Vs. Sanjeev Kumar in FIR No.71 dated 20.07.2004, under Sections 279, 304 IPC, pertaining to the Police Station Khizrabad. He further stated that charges against the accused in this case have been framed on 10.01.2005 for the offence under Section 279, 304A, IPC.

14. Jagwati mother of the deceased-Parveen Kumar @ Shiv Kumar was examined as PW3 who stated that Parveen Kumar @ Shiv Kumar died in a road accident and was employed as agriculturist servant with one Mam Chand of Village Darba and was earning Rs.3000/- per month from that job. There is no discrepancy in her cross-examination.

15. Suresh was examined as PW-4 who stated that he was going to village Ballewala and when he reached within the area of the village, he saw a tractor of Make Mohindra, red coloured (New) being driving by Sanjay in a rash and negligent manner at a high speed. All of sudden driver of the tractor took his tractor on *kacha* berm of the road and due to that act, the tractor became slight turtled and because of that one boy who was sitting on left side of the mudguard had fallen down and sustained multiple injuries. Then they picked up the injured boy and in the meanwhile the tractor's driver fled away from the spot alongwith the tractor. In his cross-examination, he stated that he had seen the accident from a distance of 2 acres. Police recorded his statement qua the accident on the same day in Civil Hospital, Khizrabad. He further stated that Ram Diya (father of the deceased) was not known to him.

16. In view of the evidence as referred to above, this Court is not satisfied by the reasoning given by the Ld. Tribunal in dismissing the present claim petition filed by the appellants-claimants.



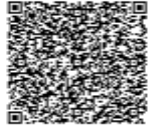
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17. Hon'ble the Supreme Court in case titled as "***Shivraj Vs. Rajendra and another***", 2018(10)SCC432 held that tractor is not meant for passenger and if a person sitting on the mudguard falls and suffers a fatal accident, the claim against the Insurance Company would not be maintainable and claim would only be maintainable against the driver and owner of the offending vehicle. The relevant portion of the judgment is reproduced as under:-

"10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. v. Swarna Singh & Ors., 2004(2) RCR (Civil) 114: (2004) 3 SCC 297, Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656, Rani & Ors. v. National Insurance Co. Ltd. & Ors., 2018(3) RCR (Civil) 979: 2018 (9) Scale 310 and including Manuara Khatun and Others v. Rajesh Kumar Singh And Others, 2017(2) RCR (Civil) 108: (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).

18. Further Hon'ble the Supreme Court in case titled as "***Kalim Khan and others Vs. Fimidabee and other***", 2018(7) SCC 687, held as under"-

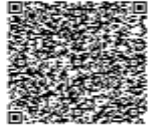
25. Presently, we shall scrutinise the factual score in the case at hand. As is evincible, the battery was installed in the tractor and the explosives were charged by the battery. The purpose was to dig the well in the field. In such an obtaining factual matrix, it would be an erroneous perception to say that the vehicle was not in use as stipulated under Section 165 of the



Act. Hence, we have no hesitation in holding that the Division Bench has fallen into error on the said score.

26. Having said that, we have to presently analyse on whom the liability should be mulcted. As is evident, the insurer has advanced the plea that the tractor was insured under "Farmer Package Policy for agriculture purpose by the owner of the vehicle. However, it was used for commercial purpose by mounting a blasting machine thereon. That use was in breach of insurance policy and, therefore, the insurer was not liable to pay the compensation. The insurer also examined its employee, namely, Mr. Chararkar to establish the fact that the owner of the vehicle had committed breach of insurance policy by using it for commercial purpose and for transporting the blasting machine. The tribunal has adverted to the plea of the insured that the vehicle was used for digging of the well in the field of respondent No. 1 (Fimidabee w/o Abdul Gaffar) which obviously was for irrigation and incidental to agricultural activity and not in breach of the insurance policy. The rival contention in this behalf has been considered by the tribunal in the following words:-

"29. The Respondent No.2 has admitted the fact that Insurance Policy of offending tractor was for the agricultural purpose. The insurance of offending tractor was taken at Jaipur, Rajasthan. It was brought for commercial activity namely the blasting work. The blasting machine was found on the tractor. No permission from Competent Authority was taken for the blasting work and therefore, the Respondent No.2 has used tractor for commercial purpose and consequently there was fundamental breach of the Insurance Policy. The Respondent No.2 committed fundamental breach of the Insurance Policy allowing the use of tractor for commercial purpose and therefore, the decision cited supra is inapplicable."



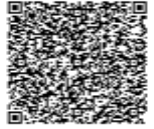
And again in paragraphs 35, 36 and 37, the tribunal has observed:

"35. The Respondent No. 1 has come with the case that digging work with blasting operation was given with sole responsibility of Respondent Nos. 2 and 3. The Respondent Nos. 2 and 3 have come with the case that blasting work for digging of well was taken at the risk of Respondent No.1 to 3 have not produced documentary evidence showing that digging work of well with blasting operation was being done on the sole responsibility either of Respondent No.1 or of the respondent Nos. 2 and 3. In absence of such evidence, the Respondent Nos. 1 to 3 are jointly and severally liable to pay compensation.

36. It was submitted on behalf of Respondent No.4 that Respondent No.2 committed fundamental breach of Instruction Policy by using the tractor for commercial purpose and therefore, Respondent No.4 cannot be directed to make the payment to petitioners and recover the same from the owner of offending tractor.

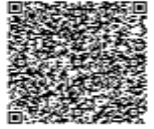
37. The Respondent No.2 allowed the use of offending tractor for doing the blasting work and therefore there was fundamental breach of the Insurance Policy. Since there was fundamental breach of the Insurance Policy for using the offending tractor for commercial purpose and consequently, Respondent No. 4 is not liable to pay the compensation and directed to pay the same and recover the same from Respondent No. 2 owner of offending tractor.

The High Court, however, has not analysed this issue at all, for it took the view that as the vehicle was not used for causing explosion, it could not be said that the accident had arisen out of use of motor vehicle as defined under Section 165 of the Act.



27. *From the factual position as already analysed earlier, it is noticed that the battery of the tractor was used for digging of well in a field used for agricultural purpose. The insured had contended that the work of digging of well in a field used for agricultural purpose would embrace an activity associated with agriculture for irrigating the field and we have answered the same in the affirmative. We may immediately state that our answer does not help in fastening the liability because there has been no analysis as regards the terms and conditions of the policy and its fundamental character. The High Court, as we notice, has not dealt with any of these matters, the adjudication whereof has now become inevitable to answer the issue about the liability to be borne by the insurer, the owner of the vehicle (insured) or otherwise. This adjudication requires analysis of relevant material including the insurance policy and evidence of concerned witnesses, for understanding the terms and conditions of the policy regard being had to nature of policy and the extent of the liability of the insurer, if any. As the High Court has not considered this aspect at all, we deem it appropriate to relegate the parties to the High Court for determining the singular issue about fastening of the liability on the insurer or the owner of the vehicle. Under these circumstances, we are of the considered opinion that until that issue is finally decided, the insurance company must pay the compensation amount payable to the claimants as determined by the tribunal in terms of the award dated 5th January, 2008 which payment will be subject to the outcome of the remanded appeals to be decided by the High Court. Needless to state that the claimants need not contest the remanded proceedings before the High Court as it is remitted only for limited purpose to determine the liability amongst the insurer (United India Assurance Co. Ltd.) and owner of the vehicle, Kanhaiyalal.*

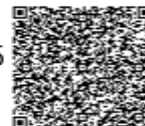
28. *In view of the aforesaid analysis, we partly allow both the appeals, set aside the judgment of the High Court dated*



10th October, 2013 in First Appeal Nos. 494 of 2013 and 437 of 2008 and restore both the First Appeals to the file of the High Court to their original numbers for being decided on the question as to who should be made liable to pay the compensation amount as determined by the tribunal to be paid to the claimants. We request the High Court to decide the First Appeals expeditiously, with reference to the limited issue of liability to pay compensation. In terms of this order, the insurance company is directed to deposit the compensation amount before the tribunal within eight weeks hence, which will be without prejudice to the rights and contentions of the insurance company in the remanded First Appeals. In the event the insurance company succeeds, it will have the right to recover the same with interest accrued thereon from the owner of the vehicle. The amount deposited by the insurance company shall be disbursed by the tribunal keeping in view the law laid down in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and others (1994) 2 SCC 176.”

19. In view of the above referred to judgments of Hon’ble the Supreme Court in “**Shivraj and Kalim Khan** (supra), the question of liability is no longer *res integra* as it had been held that since the deceased was a gratuitous passenger sitting on the mudguard of tractor (offending vehicle), the Insurance Company would be liable to recover the amount of compensation from the driver and owner of the offending vehicle.

20. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 20.07.2006 passed by Ld. Tribunal, Jagadhri stands vitiated by a complete absence of judicial application of mind.

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21. Since Issue No.2 i.e. *“If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom ?”* was not decided by the Ld. Tribunal, therefore, this Court decides as follows:-

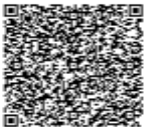
i) A perusal of the record reveals that the deceased-Shiv Kumar was working as a domestic servant with his income asserted to be Rs.3000/- per month. However, under the prevailing facts of the present case, his income is to be assessed as Rs. 2500/- per month in accordance with the minimum wages prescribed for unskilled worker in the State of Haryana.

SETTLED LAW ON COMPENSATION

22. 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



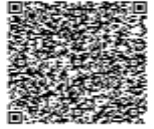
getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as 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.

23. 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

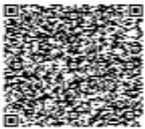
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Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (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.

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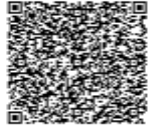
59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. 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.”

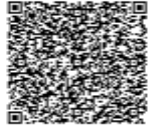
24. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as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

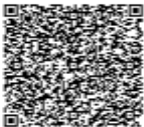


and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

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.



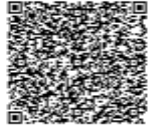
CONCLUSION

25. 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 20.07.2006 is hereby set aside. The appellant-claimant is entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2500/-
2	Future prospects @ 40%	Rs.1000/- (40% of 2500)
3	Deduction towards personal expenditure	Rs.1750/- [1/2 of (2500+1000)]
4.	Total Income	Rs.1750/- (3500-1700)
4	Multiplier	18
5	Annual Dependency	Rs.3,78,000/-(1750 x 12 x 18)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- Spousal : Rs. 48,000/- Filial : Rs. 48,000/-x2	Rs.96,000/-
	Total Compensation	Rs.5,10,000/-

26. 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 compensation amount from the date of filing of claim petition till the date of its realization.

27. The Insurance Company is directed to deposit the awarded amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of

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compensation alongwith interest in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish the bank account details to the Tribunal.

28. Respondent No.3-Insurance Company is directed to pay the compensation in the first instant and liberty is granted to respondent No.3 to recover the same from respondents No.1 and 2.

29. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 02, 2024

G.Arora/sonia arora

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