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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 22nd August, 2024.**

+ **MAC.APP. 1045/2013**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORTION

.....Appellant

Through: Mr. Shadab Khan, Advocate (through
VC).

versus

ANIL NARAIN SAXENA & ANR

.....Respondents

Through: Mr. Shrey Chathly, Advocate.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present appeal has been filed on behalf of the appellant under Section 173 of the Motor Vehicles Act, 1988 ('MV Act' hereinafter) against the impugned judgment and award dated 3rd August, 2013 passed by the learned Presiding Officer, Tis Hazari Courts, New Delhi, in case bearing No. 1045/13, seeking setting aside of the same.

2. The relevant facts that led to the filing of the instant appeal are as under:

- i) On 3rd October, 2009, at about 11:15 A.M, the deceased Smt. Radha @ Reena along with her son, Master Rahul Saxena, brother in-law, Sh. Deepak Narain Saxena and minor daughter, Amisha Saxena, was travelling from



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Delhi to Dayapur Joya in a U.P Roadways bus bearing registration No. UP25T9428, owned by the appellant ('offending bus' hereinafter).

- ii) The aforesaid offending bus rammed into one truck bearing registration no. HR38K4748 ('truck' hereinafter), coming from the side of Muradabad, near Garh on Delhi-Garh National Highway.
- iii) Pursuant to the above, Master Rahul Saxena, Sh. Deepak Narain Saxena, died on the spot whereas Smt. Radha @ Reena and baby Amisha Saxena sustained grievous injuries. Thereafter, they were rushed to Meerut Government Hospital by public persons, for their urgent treatment, where Smt. Radha @ Reena ('the deceased' hereinafter) was declared, brought dead.
- iv) Subsequently, the claimants, i.e., the husband and daughter of the deceased, filed a claim petition under Section 166/140 of the Motor Vehicles Act, 1988, wherein, the learned Tribunal passed a judgment and award dated 3rd August, 2013, ('impugned award' hereinafter) in favor of the respondents/claimants, thereby, granting a compensation to the tune of Rs. 11,24,380/- along with interest @ 9% per annum with effect from the date of the claim petition till the date of realization of award.



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v) Being aggrieved by the aforementioned award, the appellant has filed the instant appeal seeking setting aside of the same.

3. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal erred in holding the driver of the offending vehicle liable for driving in a rash and negligent manner since the driver of the bus was driving at a normal speed and on the correct side of the road.

4. It is submitted that the learned Tribunal failed to appreciate the fact that it was the driver of the truck who was driving on the wrong side of the road that caused the accident.

5. It is further submitted that the pleadings and evidence filed before the learned Tribunal prove that the accident was caused due to the sole negligence of the truck driver, therefore, the finding of the learned Tribunal that the driver of the offending vehicle was solely negligible for the accident is erroneous and in contradiction to the evidence on record.

6. It is submitted that while calculating the quantum of compensation, the learned Tribunal erred by taking the monthly income of the deceased as per the minimum wages, i.e., Rs. 3,953/-, since it is an admitted fact that the deceased was not working for gain anywhere.

7. It is submitted that the learned Tribunal erred in not deducting the amount towards personal expenses and maintenance of the deceased as the deceased is survived by two dependants. It is further submitted that as per the settled position of law in terms of the judgment of the Hon'ble Supreme Court passed in *Kirti v. Oriental Insurance Co. Ltd.*, (2021) 2 SCC 166, a



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deduction of 1/3rd of the income ought to be made towards personal expenses of the deceased.

8. It is submitted that the learned Tribunal erred in granting a 25% increase in the income of the deceased after holding that the deceased was not employed anywhere as the same was neither pleaded nor prayed by the claimants.

9. It is submitted that the learned Tribunal grossly erred in awarding excessive compensation of Rs. 1,00,000/- towards loss of love and affection, Rs. 1,00,000/- towards the loss of consortium and Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards the loss of estate, as the same is against the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.***

10. It is further submitted that as per the aforementioned judgment, the quantum of compensation under non-pecuniary heads is fixed at Rs. 15,000/- towards loss of estate, Rs. 40,000/- towards loss of consortium and Rs. 15,000/- towards funeral expenses and the learned Tribunal ought to have awarded the same.

11. It is submitted that the learned Tribunal erred in granting the interest @ 9% per annum on the compensation amount which is against the provisions of Section 34 of Code of Civil Procedure, 1908 as the present rate of interest given by the nationalized banks on fixed deposit for one year is not more than 6%.

12. Therefore, in view of the foregoing submissions, it is submitted that the present appeal may be allowed and the reliefs be granted as prayed.



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13. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant appeal submitting to the effect that the same is liable to be dismissed being devoid of any merit. It is pertinent to mention here that the respondents were directed to file their reply as well as written submissions, however, the same is not on record, therefore, this Court has taken the submissions from the material available on record including the Lower Court's Record.

14. It is submitted that the impugned award has been passed after taking into consideration the entire facts and circumstances of the case and there is no illegality or irregularity *qua* the same.

15. It is submitted that the learned Tribunal meticulously examined all six witnesses and it was observed that only two witnesses, i.e., the respondent no.1 himself (PW-1) and the eyewitness of the accident, i.e., Sh. Kuldeep Kumar Sharma (PW-4) are of utmost importance.

16. It is submitted that the eyewitness of the accident, Sh. Kuldeep Kumar Sharma (PW-4), in his examination-in-chief testified about the occurrence of the accident on 3rd October, 2009 as he along with his wife, Smt. Mamta Sharma and their children, were travelling in the offending bus, from Delhi to Garhmukhteshwar for a holy bath.

17. It is further submitted that PW-4 also testified about the injuries of his wife and 20 other passengers, along with the death of two other passengers, and the said fact was also informed to the police by him. Moreover, in his cross-examination, PW-4 denied the suggestion that the accident took place due to the rash and negligent driving of the truck driver. Furthermore, he



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denied the suggestion that the offending bus was proceeding on the correct side of the road and the truck driver came from the wrong side which caused the incident.

18. It is submitted that the learned Tribunal perused all the evidence placed on its record and thereafter rightly derived upon its findings by holding the driver of the offending bus liable for the rash and negligent driving which caused the accident and death of Smt. Radha @ Reena. Thus, the liability of the appellant and the driver has been determined in accordance with the law, and the instant appeal is nothing but a gross misuse of process of law.

19. It is submitted that there is no error in calculating the quantum of the compensation and the same has been rightly ascertained. The argument advanced by the appellant *qua* the same is baseless and without any substantial evidence.

20. Therefore, in view of the foregoing submissions, it is prayed that the instant appeal may be dismissed.

21. Heard the learned counsel for the parties and perused the material placed on record.

22. The appeal is admitted.

23. It is the case of the appellant that the learned Tribunal has wrongly held the driver of the offending bus liable for rash and negligent driving which caused the accident. It has been submitted that the learned Tribunal erred by failing to appreciate that it was the negligent driving on part of the truck which was being driven on the wrong side of the road and rammed into



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the offending bus. It has been contended that it was the sole negligence on part of the truck driver which has been duly proved by way of pleadings and evidence on record, and the allegations with regard to rash and negligent driving on part of the driver of the offending bus are baseless.

24. Furthermore, it has been contended by the appellant that the learned Tribunal wrongly took the monthly income of the deceased on the basis of minimum wages amounting to Rs. 3,953/- per month, whereas it is admitted that the deceased was not working for gain anywhere and the learned Tribunal further erred in not deducting any amount towards personal expenses as the deceased is survived by two dependants. It has been argued that the learned Tribunal has wrongly awarded an addition of 25% in the assumed income after holding that the deceased was unemployed and even the compensation granted under the non-pecuniary heads has been wrongly determined as the same is not in consonance to the law laid down in the judgment of *Pranay Sethi (Supra)*. It has also been argued on behalf of the appellant that the learned Tribunal even erred in fixing the rate of interest @9% per annum as the same is exorbitant and contrary to the provisions of Section 34 of the Code of Civil Procedure, 1908 as well as the current bank rates.

25. In rival submissions, the learned counsel for the respondents rebutted the aforesaid arguments by stating that the appellant has been rightly held liable for the payment of compensation as the deceased died due to the accident caused by the rash and negligent driving of the driver of the offending bus, owned by the appellant. It has also been contended that the



driver of the offending bus has been arrested, charge-sheeted by the police and is facing trial which *prima facie* shows his rashness and negligent act, and the same has also been corroborated by PW-4 (eye witness).

26. After considering the averments made in the foregoing paragraphs, the following issues arise for determination by this Court:

- 1) **Whether the learned Tribunal erred in holding the driver of the offending bus negligent?**
- 2) **Whether the learned Tribunal erred in determining the monthly income of the deceased as per the minimum wages?**
- 3) **Whether the learned Tribunal erred in awarding compensation under non-pecuniary heads and by not awarding deductions towards personal expenses of the deceased?**
- 4) **Whether the learned Tribunal erroneously awarded interest @ 9% per annum?**

27. At this stage, this Court deems it appropriate to peruse the impugned award. The relevant extracts of which are as under:

“Certified copy of criminal case (comprising copy of chargesheet, FIR, site plan, Postmortem report) placed on record clearly shows that respondent No.2/Driver of the offending vehicle i.e. Bus has been arrested, charge-sheeted by the police and is facing trial. All this also prima facie goes to show rashness and negligence of Respondent No.2/driver of the offending vehicle.



In these circumstances according to the settled law on the subject as laid down by their Lordships of the Hon'ble High Court in National Insurance Company Ltd. Vs. Pushpa Rana, reported as 2009 ACJ, the petitioners have proved rash and negligence of respondent No.2/Driver of the offending vehicle.

*As such in view of testimonies of the petitioner as PW-1 and eyewitness of the accident Sh.Kuldeep Kumar Sharma as PW-4 (who only are relevant for the present claim petition) read with and certified copies of criminal record produced, no doubt is left in respect of the deceased having suffered fatal injuries in road traffic accident on 03.10.2009 due to rash and negligent driving of the vehicle No. UP 25 T9428 by respondent No.2/Driver of the offending vehicle. **Issue No. 1 is accordingly decided in favour of the petitioner and against the respondents.***

10. Now we come to consider various important factors relevant to calculation of the amount of compensation, consequent to accidental death of the deceased as follows:

(a) Criteria for taking income of the deceased;

Petitioner No.1 Sh.Anil Kumar Saxena in his affidavit Ex.PW1/X has testified that his wife was a house wife and was also a Graduate. However, he has also not placed on record any document to prove the educational qualifications of the deceased. Therefore, I am inclined to consider her as a housewife only and minimum wages of unskilled will be taken to assess loss of service rendered by her. On the date of accident i.e. on 03.10.2009, the minimum wages of unskilled labour was Rs.3,953/-. In Royal Sundaram Alliance Insurance Co. Ltd. V/s Master Manmeet Singh &Ors.. in MAC.APP. bearing No. 590/2011 &Ors. Hon'ble Justice G.P. Mittal of the Hon'ble High Court of Delhi laid down the following guidelines to calculate the loss of dependency on account of gratuitous



services rendered by a housewife: -

- (i) Minimum Salary of a Graduate where she is a Graduate.*
- (ii) Minimum Salary of a matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*

There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the home maker is upto 40 years.

As per the claim petition the age of deceased was 35 years. Petitioner No.1 has placed and proved on record Election I-card of the deceased as Ex.PW1/C. As per the same the age of deceased was 29 years as on 01.01.2003. The date of accident was 03.10.2009. Therefore, I am inclined to consider age as on the date of accident as 36 years (i.e. 35 years 9 months) Therefore as per the judgment of Justice G.P. Mittal of the Hon'ble High Court of Delhi There will be an addition of 25% in the assumed income which comes to Rs.6,598/-(Rs.3,953/- + 25% of Rs.3,953/-=Rs.4,941/-).

(b) Selection of multiplier:

As the deceased was 36 year of age at the time of accident and consequently for the determination of compensation as per Sarla Verma's Judgment, the multiplier of 15 is to be adopted.

On the question whether any deduction is to be made from the value of gratuitous services rendered by a home maker, Hon'ble Justice G.P. Mittal in Royal Sundaram (Supra) observed as follows:-

While awarding compensation for loss of gratuitous services rendered by a homemaker the Claim Tribunals or the Court simply value the services. It goes without saying that the husband looks after the wife and some amount is definitely spent on her maintenance but whether that amount is liable to



be deducted from the value of the gratuitous services rendered by her?

As held in Gobald Motor Service Ltd. and Helen C. Rebello that while estimating damages, the pecuniary loss has to be arrived at by balancing on the one hand the loss to the Claimants of the future pecuniary benefits, that would have accrued to him with the gain of the pecuniary advantages which comes to him from whatever sources by reason of the death.

In, Regna V. Williamson, the Ld. Judge found that the expenditure on the deceased housewife was Rs.10/- per week. While the value of gratuitous services rendered by her was Rs.22.50 per week. The figure on dependency of Rs. 12.50 per week. The figure on dependency of 12.50 (22.50-10.0) was taken as 21.50 per week. Thus, the amount spent on personal living expenditure was not really deducted in Regan V. Williamson.

Even on the basis of Gobald Motor Service Ltd. and Helen C. Rebello, the pecuniary advantages which the Claimant gets on account of accidental death is only liable to be deducted. Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this pecuniary advantage does not become receivable only on account of accidental death. In my view, the portion of the husband's income (spent on the deceased's maintenance) cannot be deducted.

Accordingly, there has to be no deduction towards personal and living expenses.

Therefore, annual loss of financial dependency accordingly will be Rs,4,941/- X 72 X15 which comes to Rs.8,89,380/-. Therefore, the total loss of financial dependency will be Rs.8,89,380/- per annum.

(c) Compensation under non-pecuniary heads:



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*No amount of money can compensate the loss of wife to her husband and loss of mother to her daughter. No amount of money can wipe the tears, the trauma of the petitioners and the feeling that the petitioners must be feeling each day having lost their wife and mother. The trauma is for the lifetime. Therefore, **the petitioners/claimants, who are intimate family members of the deceased are also entitled to get non-pecuniary compensation towards loss of love and affection, funeral expenses, loss of estate and loss of consortium to her husband.** In my view, the petitioners/claimants are entitled to get a sum of Rs. 1,00,000/- (**Rupees One Lac only**) towards loss of love and affection, a sum of Rs.25,000/- towards funeral expenses and a sum of Rs. 1,00,000/- towards consortium to her husband and a sum of Rs.10,000/- towards loss of estate as laid down by their Lordships of Hon'ble Supreme Court of India in case of "Rajesh &ors. V/s Rajbir Singh &ors.(Supra).*

Having discussed as above, I record my findings on issue no.2 accordingly.

11. Relief

In view of the above discussion, the petitioners/claimants are entitled to get the following amount of compensation:

<i>Loss of dependency</i>	
<i>(as calculated in para No.11(b))</i>	<i>Rs.08,89,380/-</i>
<i>Loss of Love and affection</i>	<i>Rs. 01,00,000/-</i>
<i>Funeral Expenses</i>	<i>Rs.00,25,000/-</i>
<i>Loss of Consortium</i>	<i>Rs.01,00,000/-</i>
<i>Loss of Estate</i>	<i>Rs.00,10,000/-</i>
<i>Total</i>	<i>Rs. 11,24,380/-</i>

(Rupees Eleven Lac Twenty Four Thousand Three Hundred and Eighty only).



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12. The claimants/petitioners are also entitled to get interest @9% p.a. from the date of initial filing of petition i.e. w.e.f. 08.02.2010 till realization.

Petitioner no.1 Sh. Anil Narain Saxena (**husband of the deceased**) is entitled to 50% and petitioner No.2 Amisha Saxena (**daughter of the deceased**) is entitled to 50% of the award amount and interest thereon.

The amount of interim award if any, shall however, be deducted from the above amount, if the same has already been paid to the petitioners.

Respondent No.1 being owner, respondent No.2 being driver are jointly and severally liable to make the payment of compensation to the petitioner/claimant.

Respondent No.1&2 are directed to deposit the award amount with the Nazir of this Court within 30 days under intimation to the petitioners, failing which the Insurance Company shall be liable to pay interest @12% per annum for the period of delay beyond 30 days..."

28. Upon perusal of the above extracts of the impugned award, it is made out that the learned Tribunal decided the issue of negligence by placing reliance on the affidavit by way of evidence placed on its record and the testimony of the eye-witness (PW-4) as well as the certified copy of criminal case comprising of the copy of the FIR, charge-sheet, site plan and the postmortem report. On the basis of the said evidence, the learned Tribunal observed that the same shows the rash and negligent act of the driver of the offending bus due to which the accident was caused and therefore, the issue of negligence was decided in favour of the respondents/claimants.



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29. On the aspect of computation of compensation, the learned Tribunal dealt the same by taking the income of the deceased as per the minimum wages of an unskilled labour, which on the date of the incident was Rs. 3,953/-. Further, an addition of 25% in the assumed income was also granted by the learned Tribunal by placing reliance on the judgment of this Court passed in ***Royal Sundaram Alliance Insurance Co. Ltd. vs. Master Manmeet Singh & Ors.***, in **MAC.APP. bearing No. 590/2011**. Taking into consideration the ratio of the said judgment, the learned Tribunal decided the assumed income of the deceased to the tune of Rs. 4,941/- and it was held that no deduction towards personal and living expenses of the deceased is liable to be made.

30. Vide the aforementioned award, the learned Tribunal also awarded compensation under the non-pecuniary heads as Rs. 1,00,000/- towards loss of love and affection, Rs. 1,00,000/- towards the loss of consortium and Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards loss of estate to the respondents, by placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Rajesh v. Rajbir Singh, (2013) 9 SCC 54***.

31. In view of the above, learned Tribunal vide its impugned award dated 3rd, August, 2013, decided the claim petition in favour of the respondents/claimants by granting a total compensation of Rs. 11,24,380/- along with interest @ 9% per annum from the date of initial filing of the claim petition till realization.

32. Now adverting to the adjudication of the issues framed hereinabove.

Issue No.1 - Whether the learned Tribunal erred in holding the driver of



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the offending bus negligent?

33. It has been contended on behalf of the appellant that the learned Tribunal erred in holding the driver of the offending bus liable for rash and negligent driving whereas it was the sole negligence of the truck driver which caused the accident.

34. Before delving into the merits of the case, it is imperative to state the settled position of law as per which the claimants have to show on a *prima facie* basis that the driver of the offending vehicle has committed a negligent act. It is also a settled position of law that strict rules of evidence are inapplicable under motor vehicle claim cases and standard of proof in such matters is preponderance of probabilities rather than beyond reasonable doubt, such as in criminal cases. With respect to the same, a Motor Accident Claim Tribunal only needs to consider whether or not the claimant's version of the case is probable.

35. Further, the statement of an accused defending himself cannot be solely relied upon if it fails to be substantiated by any other credible evidence being placed on record. It is also established that evidence given by way of statement on affidavit cannot be termed as evidence until the same is corroborated by some other piece of evidence. Further, as per Section 3 of the Indian Evidence Act, 1872, an affidavit is not included in the definition of evidence and at best is merely a sworn statement made before a competent authority.

36. In light of the matter in hand, it is observed by this Court that during his cross-examination, the driver of the offending bus, RW-2 is merely



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refuting the allegations made against him without placing on record any substantive evidence in support of his claims. Moreover, he has admitted the fact that even after the alleged accident, he did not take any steps or action to prove his innocence as he neither filed any case neither against the truck driver nor before any other competent authority.

37. For the above said reason, this Court finds no imperative reason to take into consideration the statement of the driver of the offending bus as the same is already perused and decided by the learned Tribunal.

38. At this juncture, this Court finds it imperative to mention that the issue of negligence was decided against the appellant by this Court, in a connected matter, arising out of the same incident dated 3rd October, 2009, in **Uttar Pradesh State Road Transport Corporation vs. Himanshu Saxena in MAC. APP. No. 1059/2013 decided on 5th January, 2015**. The relevant extract of the said judgement is as follows:

“I have before me the record of criminal case FIR No.874/2009 P.S. Garhmukteshwar registered under Section 279, 379 AND 204A IPC. The site plan clearly reveals that the Appellant’s driver had come on the right side of the carriage way and had struck against the truck. Admittedly, the other carriage way was closed. Thus, PW-4’s testimony is amply supported by the site plan. It may be noted that in a claim petition under Section 166 of the Motor Vehicles Act, 1988, negligence has to be proved on the test of preponderance of probability which has been amply done by Respondent no.1. The finding on negligence therefore, cannot be faulted.”

39. Upon perusal of the above extract, it is noted by this Court that even the Coordinate Bench of this Court, while perusing the FIR and the site plan,



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observed that the allegation of negligence against the driver of the offending bus is being duly corroborated by the testimony of the eye-witness of the incident, i.e., Sh. Kuldeep Kumar Sharma.

40. Further, the learned Tribunal, in the instant case as well, while holding the driver of the offending bus liable of the negligent act, has taken into consideration the statement given by the PW-1, i.e., the respondent No.1/claimant along with one eye witness, i.e., PW-4, Sh. Kuldeep Kumar Sharma. This evidence was further corroborated with the record of the certified copy of the criminal case, comprising of copy of the chargesheet, FIR, site plan and postmortem report on the basis of which the driver of the offending bus was found guilty for rash and negligent driving.

41. Upon perusal of the testimony of the eyewitness, i.e., PW-4 (Sh. Kuldeep Kumar Sharma) in his examination-in-chief, it is noted that he has deposed that the driver of the offending bus was driving in a rash and negligent manner, resulting into the accident that caused the death of the wife of the respondent no. 1. Further, in his cross-examination, he denied the suggestion that the accident took place due to the negligence of the truck driver, instead he testified that it was the offending bus which was being driven negligently, and on the wrong side which caused the accident. The relevant portion of the cross examination has been reproduced below for reference:

“....The bus was full in capacity. I did not see the truck which came from the opposite direction. The bus was going with the left edged of the road. The truck dashed against the driver side of the bus. Again said the bus dashed against the truck. About



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20 passengers in the bus had sustained injuries. It is wrong to suggest that the accident took place due to rash and negligent driving of driver of truck. It is further wrong to suggest that the bus was proceeding on his correct side and the truck came on the wrong side and had caused the accident....”

42. Upon a bare reading of the above, it is also observed that the eye-witness particularly states that the driver of the offending bus was driving on the left edge of the road. On the aspect of negligence in the said collusion, he has further testified that the accident was caused due to the rash and negligent driving of the driver of the bus only and not the truck driver.

43. The evidence so produced by the appellant is inconclusive in nature because the appellant has failed to corroborate its testimony with any other substantive piece of evidence or witness to prove its case. However, on the other hand, the evidence placed on record by the respondents/claimants stands duly corroborated and was therefore seems to be a probable one.

44. Thus, by no stretch of imagination it may be assumed from the material available on record that it was the truck driver and not the driver of the offending bus, whose act caused the accident. Therefore, this Court finds no reason to disbelieve the testimony of the eyewitness PW-4 as the same stands corroborated with the testimony of PW-1 and registration of a criminal case.

45. Reliance in this regard can be placed upon the judgment passed by the Division Bench of Madhya Pradesh High Court in ***Basant Kaur v. Chatarpal Singh***, 2001 SCC OnLine MP 450, wherein, it was held that



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registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the said driver is responsible for causing the accident.

46. Accordingly, this Court finds no merit in the contention of the appellant that the learned Tribunal erred in ignoring the evidence of the driver of the offending bus along with the pleadings and as a result of which, held him liable for rash and negligent driving which caused the accident.

47. Therefore, this Court is of the view that the respondents/claimants have succeeded in proving their claims on the principle of preponderance of probabilities. In light of the same, this Court is inclined to agree with the reasoning given by the learned Tribunal to hold that the driver of the offending bus was driving in a rash and negligent manner.

48. Looking into the facts and evidence placed on record, and the settled position of the law, it is held that the learned Tribunal rightly held the appellant liable for the driver's (of the offending bus) rash and negligent act of driving causing the death of Smt. Radha @ Reena.

49. Accordingly, issue no.1 stands decided in favor of the respondents/claimants.

Issue no 2 - Whether the learned Tribunal erred in determining the monthly income of the deceased as per the minimum wages?

50. The appellant has contended that the learned Tribunal erred in taking the monthly income of the deceased as per the minimum wages amounting to Rs. 3,953/- per month despite the admitted fact that she was not working for gain anywhere, and has also erred in law by failing to make deductions



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towards personal expenses from the assumed income of the deceased.

51. It has been submitted on behalf of the appellant that the learned Tribunal wrongly assumed the income of the deceased as minimum wages for a non-matriculate worker by relying on the judgment of this Court in ***Royal Sundaram Alliance Insurance Co. Ltd. (Supra)*** wherein it was held that it is a trite law that in the absence of any concrete evidence in support to establish the income of the injured, the Courts have to determine the assumed income on the basis of the minimum wages notified under the Minimum Wages Act, 1948.

52. In view of the above, a catena of judgments have been passed by the Hon'ble Supreme Court as well as various High Courts stating that in the event there is no evidence to support the quantum of the income of the injured, it is just and fair to assume the notional income of the injured in terms of the Minimum Wages Act, 1948.

53. This Court has referred to the judgments of the Hon'ble Supreme Court passed in the case of ***Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197*** and ***Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar, (2015) 4 SCC 237***, wherein, it was held that it is difficult to ascertain the domestic work done by a housewife/mother in monetary terms and thus, it is only reasonable to fix the income of the deceased homemaker at Rs. 3,000/- per month for the computation of compensation.

54. In the above said judgment, it was also observed by the Hon'ble Supreme Court that Courts have recognized the multifarious services of a housewife/mother in being the pillar of a family which is invaluable and that



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it cannot be computed in terms of money. It is necessary to bear in mind such services rendered by a housewife/mother, in computing the compensation for loss of dependency as she does not only work by the clock but she is in constant support and reliance of the family members without fail. Thus, the situation in the instant case is no different as the deceased herein is also wife/mother of the respondent/claimants.

55. In so far as the law is concerned, this Court is of the view that the nature of work done and the sacrifices made by a housewife/mother for the wellbeing of a family is necessary to be acknowledged while computing the notional income of the deceased housewife.

56. The legislative intent behind the MV Act is to benefit the victim and his/her family, and the death of a housewife/mother causes not only emotional trauma but also disrupts the functioning of a family. Therefore, on the basis of the foregoing discussions on facts and the aforementioned decisions of the Hon'ble Supreme Court, this Court is of the considered view that the learned Tribunal has rightly taken the income of the deceased housewife at Rs. 3,953/- per month in terms of the minimum wages of an unskilled laborer.

57. It is pertinent to state here that in paragraph no. 10 of the impugned award, the learned Tribunal, under the sub-heading “(a) criteria for taking the income”, has mentioned the amount of Rs. 6,598/- as total assumed notional income of the deceased housewife. The relevant portion is reproduced below for the reference:

“Therefore as per the judgment of Justice G.P. Mittal of the



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Hon'ble High Court of Delhi There will be an addition of 25% in the assumed income which comes to Rs.6,598/-(Rs.3,953/- + 25% of Rs.3,953/-=Rs.4,941/-). ”

58. This Court finds the calculation of income, as represented in the impugned award as ‘Rs. 6,598/-’ to be an inadvertent error as the correct value Rs. 4,941/-.

59. At this juncture, this Court finds it apposite to discuss another limb of the instant issue, wherein, the appellant herein has contended that the learned Tribunal erred in awarding 25% increase in the aforesaid assumed income of the deceased housewife.

60. The learned Tribunal while awarding an increase of 25% in the assumed income of the deceased has relied upon the judgment of **Royal Sundaram Alliance Insurance Co. Ltd. (Supra)** which laid down certain guidelines to calculate the loss of dependency on account of gratuitous services rendered by a housewife. The relevant extract of which is as follows:

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be: -

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years;”

61. Upon perusal of the above extract, it is made out that the learned



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Tribunal by relying on the aforesaid judgment, assumed the income of the deceased as per the minimum wages for a non-matriculate worker and granted a 25% increase in the said assumed income.

62. This Court is of the view that since the deceased was the age of 36 years at the time of her premature death and in the interest of “just compensation”, an addition of 40% in the assumed income is liable to be granted, instead of 25% awarded by the learned Tribunal.

63. This Court is bound by the judgment of *Pranay Sethi (Supra)* wherein it was categorically laid down that an addition of 40% is to be made in the income of the deceased towards future prospects keeping in view the cumulative factors such as the passage of time, changing society, escalation of price, change in price index and the human attitude to follow a particular pattern of life.

64. The reasoning for the abovementioned *dicta* is based on the surmise that in case the deceased housewife would have survived, her skills as a matured and skilled housewife in contributing to the welfare and upbringing of her family and children would have only been enhanced with the passage of time. A similar view has been taken by the Hon’ble Supreme Court in *Rajendra Singh v. National Insurance Co. Ltd., (2020) 7 SCC 256*, and also by the Coordinate Bench of this Court in *National Insurance Co. Ltd. v. Sukhbir Singh, 2023 SCC OnLine Del 408*.

65. By following the aforementioned judgments, in the interest of justice, this Court is inclined to enhance the income of the deceased by making an addition of 40% in the same instead of 25% as awarded by the learned



Tribunal.

66. Accordingly, issue no. 2 stands decided in view of the aforesaid extent.

Issue No.3 - Whether the learned Tribunal erred in awarding compensation under non-pecuniary heads and by not awarding deductions towards personal expenses of the deceased?

(Issue of deduction)

67. In the instant case, the learned Tribunal granted the relief to the respondents/claimants which is as follows:

Loss of dependency: Rs. 8,89,380/-

Loss of love and affection: Rs. 1,00,000/-

Funeral Expenses: Rs. 25,000/-

Loss of Consortium: Rs. 1,00,000/-

Loss of Estate: Rs. 10,000/-

Total: Rs. 11,24,380/-

68. On the aspect of deduction of personal expenses for the maintenance of deceased, the learned Tribunal held:

“Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this pecuniary advantage does not become receivable only on account of accidental death. In my view, the portion of the husband's income (spent on the deceased's maintenance) cannot be deducted.

Accordingly, there has to be no deduction towards personal



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and living expenses.”

69. It is the contention of the appellant that the learned Tribunal erred in not deducting the amount towards personal expenses of the deceased. In this regard, learned counsel for the appellant placed reliance upon the judgment passed by the Hon’ble Supreme Court in ***Kirti (Supra)***. The relevant extract of which is as follows:

“10.Thus, the appropriate deduction for personal expenses for both Vinod and Poonam ought to be 1/4th only, and not 1/3rd as applied by the tribunal and the High Court, more so when there were four family members dependent on the deceased.”

70. The aforesaid judgment relied upon by the appellant is in tune with the law laid down by the Hon’ble Supreme Court in the case of ***Sarla Verma v. DTC, (2009) 6 SCC 121*** which has also been upheld by the Constitutional Bench of the Hon’ble Supreme Court in the judgment of ***Pranay Sethi, (Supra)*** wherein, it was held in paragraph no. 59.5 that the Courts shall be guided by paragraph nos. 30 to 32 of the case of ***Sarla Verma (Supra)*** for determination of the deduction for personal and living expenses of the deceased. Upon perusal of the said paragraphs, this Court is of the view that it is a mandate of the Hon’ble Supreme Court to make deductions towards living expenses of a married deceased while calculating the compensation, and in light of the instant case, the learned Tribunal ought to have made 1/3rd deduction as the deceased was survived by two legal dependants, i.e., the husband and minor child.



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71. The view so taken by the learned Tribunal while computing the compensation is in contradiction *qua* the principles laid down in the case of ***Pranay Sethi (Supra)***. The reliance in this regard can also be placed upon the judgment passed by the Coordinate Bench of this Court in the case of ***Reliance General Insurance Co. Ltd. v. Murgan, 2016 SCC OnLine Del 6694***, wherein, the following was held:

“4. It is noted that in taking above view in Royal Sundaram Alliance Insurance Co. Ltd. (supra), the learned Single Judge did not consider the dictum in Sarla Verma (supra). Therefore, there is no reason why in calculation of loss of dependency in a case arising out of death of housewife there should be no deduction towards personal and living expenses. The general rule will have to apply to such cases as well.”

72. In view of the aforementioned extract, it is noted that the principles laid down in the case of ***Sarla Verma (Supra)*** in calculation of loss of dependency will apply to all cases, including the cases arising out of the death of a housewife. Accordingly, the quantum of compensation awarded under the head of “loss of dependency” stands modified in below terms:

Monthly income – Rs. 3,953/-

Addition – 40%

Income after addition – Rs. 3,953/- + 40% = Rs. 5,534/-

1/3rd deduction towards personal and living expenses – Rs. 5,534/- –

1/3rd (Rs. 1,844/-) = Rs. 3,690/-

Annual income – Rs. 44,280/- (3,690 x 12)

Multiplier – 15



Loss of dependency – Rs. 6,64,200/- (Rs. 44,280/- x 15)

Loss of dependency after deduction: Rs. 6,64,200/-

(Issue of compensation awarded under other non-pecuniary heads)

73. The settled position of the law as per the case of ***Pranay Sethi (Supra)***, which dictates the guidelines for quantum of compensation under non-pecuniary heads, observes as follows:

“52.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.”

74. The compensation awarded by the learned Tribunal, under the non-pecuniary heads in the present case is as under:

Funeral Expenses: Rs. 25,000/-

Loss of Consortium: Rs. 1,00,000/-

Loss of Estate: Rs. 10,000/-

75. The judgment of ***Pranay Sethi (Supra)*** was rendered in the year 2017, wherein, the figures for the non-pecuniary heads were fixed at Rs.15,000/- towards loss of estate, Rs. 40,000/- towards loss of consortium and Rs. 15,000/- towards funeral expenses and held that an enhancement at the rate of 10% is to be made after every three years.



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76. Therefore, in light of the aforesaid, the compensation granted under the head of 'loss of estate' and 'loss of funeral expenses' stands modified. Accordingly, the sum of Rs. 10,000/- awarded under the head of 'loss of estate' is modified to the tune of Rs. 18,150/- and the sum of Rs. 25,000/- awarded towards 'funeral expenses' stands modified to the tune of Rs. 18,150/-.

77. Under the head for 'loss of consortium', it is pertinent to refer to the judgment of the Hon'ble Supreme Court passed in ***Magma General Insurance Co. Ltd. v. Nanu Ram***, (2018) 18 SCC 130, wherein, the importance of awarding loss of consortium was acknowledged, and it was observed that the same should be awarded not only to the spouse of the deceased but also to the children of the deceased upon pre-mature death of a parent for those unfortunate children who lose the care and protection of their parents in a motor vehicle accident.

78. The above said view was also followed by a three-judge bench of Hon'ble Supreme Court, in a recent case of ***United India Insurance Co. Ltd. v. Satinder Kaur***, (2021) 11 SCC 780, wherein, after considering ***Pranay Sethi (Supra)***, loss of consortium under two heads, namely, spousal consortium @ Rs.40,000/- and towards loss of parental consortium to each child @ Rs. 40,000/- were awarded.

79. Bearing in mind the social and welfare intent of the MV Act, this Court deems it appropriate to award Rs. 48,400/- towards loss of spousal consortium to the husband of the deceased, and Rs. 48,400/- towards loss of parental consortium to the minor child of the deceased.



80. As a result of the foregoing discussions and settled position of law, this Court is of the view that there are certain discrepancies in the compensation awarded by the learned Tribunal and thus, this Court deems it necessary to modify the quantum of compensation awarded under the non-pecuniary heads in the impugned award dated 3rd August, 2013, as per the law laid down in the judgment of ***Pranay Sethi (Supra)***.

(Issue of award of loss of love and affection)

81. The appellant has also challenged the award of Rs. 1,00,000/- granted by the learned Tribunal towards loss of love and affection.

82. With regard to the abovementioned contention of the appellant, this Court has relied upon the judgment of the Hon'ble Supreme Court passed in ***Raj Bala v. Rakeja Begam, 2022 SCC OnLine SC 1453***, wherein, it was categorically held that the compensation granted under the head of 'loss of love and affection' is impermissible as compensation is granted under the head of 'loss of consortium'.

“19. While considering the question of interference with the compensation granted by the High Court under the head of 'love and affection' it is only appropriate to refer to a two Judge-Bench decision of this Court in Jana Bhai v. ICICI Lombard General Ins. Co. Ltd. Evidently, the two Judge Bench took note of the fact that the Constitution Bench in Pranay Sethi's case (supra), has recognized only three conventional heads where compensation are awardable viz., 'loss of estate', 'loss of consortium' and the 'funeral expenses'. Then, the two Judge-Bench referred to the decision of this Court in Magma General Ins. Co. Ltd. v. Nanu Ram, which, in turn, had virtually followed by three Judge Bench of this Court in United Ins. Co. Ltd. v. Satinder Kaur⁷. It was held therein that as held



in Magma's case (supra) though compensation under the head of 'love and affection' is impermissible compensation for 'loss of spousal consortium to wife and 'loss of parental consortium to children' are admissible."

83. It is held in the aforesaid judgment that 'loss of love and affection' is comprehended under the non-pecuniary head of 'loss of consortium'; therefore, there is no jurisdiction with the Tribunals to award compensation towards a non-existing head of 'loss of love and affection'.

84. Therefore, in light of above discussion, the compensation awarded by the learned Tribunal towards 'loss of love and affection' is set aside since this Court has already determined the compensation towards 'loss of parental consortium' and 'loss of spousal consortium'.

85. Accordingly, the compensation awarded to the respondents stands modified in below terms:

S. No.	Heads	Amount
1.	Loss of dependency	Rs. 6,64,200/-
2.	Deduction towards personal use & living expenses	1/3 rd
3.	Multiplier	15
4.	Loss of love and affection	Nil
5.	Funeral expenses	Rs. 18,150/-
6.	Loss of spousal consortium	Rs.48,400/-
7.	Loss of parental consortium	Rs.48,400/-



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8.	Loss of Estate	Rs. 18,150/-
	Total	Rs. 7,97,300/-

86. Accordingly, the issue no. 3 stands in view of the aforesaid extent.

Issue No.4 - Whether the learned Tribunal erroneously awarded interest @ 9% per annum?

87. Section 171 of the MV Act empowers the Motor Accident Claim Tribunals to award compensation alongwith the interest. The learned Tribunal herein, has awarded interest @ 9% per annum.

88. The interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant. Although no rate of interest is fixed under Section 171 of the MV Act, it is a trite law that it shall be fixed in accordance with the policy of the RBI. The same was *inter-alia* held by the Hon'ble Supreme Court in the case of ***Kaushnuma Begum v. New India Assurance Co. Ltd., (2001) 2 SCC 9***, wherein, it was held that earlier 12% was found to be reasonable rate of simple interest but with a change in economy and the policy of Reserve Bank of India, the interest rate has been lowered and the nationalized banks are now granting interest @ 9% on fixed deposits for one year.

89. A Coordinate Bench of this Court, in the case of ***Dhaneshwari v. Tejeshwar Singh, 2012 SCC OnLine Del 1641***, has also held that no rate of interest is fixed under Section 171 of the MV Act and varying rates of interest can be fixed upon the discretion of the Courts.

90. Upon perusal of the aforementioned judgments, it is made out that



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Section 171 of the MV Act has not fixed any rate of interest and it is the discretion of the Courts to determine the same by looking into the facts and circumstances of each case.

91. The accident in the present case had taken place on 3rd October, 2009, and the learned Tribunal passed the award on 3rd August, 2013. The rate at which the interest is to be awarded should depend upon the bank rate prevailing at the relevant time.

92. Having regard to the above cited judgments, the rate of interest has been rightly fixed by the learned Tribunal and following the consistent view taken by this Court with respect to the rate of interest in motor accident claims, this Court finds no reason to interfere with the same.

93. Accordingly, this Court is not inclined to interfere with the rate of interest awarded by the learned Tribunal and the argument of the appellant with regard to the modification of the interest rate is rejected and this Court upholds the award of interest @ 9% per annum by the learned Tribunal.

94. Accordingly, issue no. 4 is decided.

95. Summarily stated, it is held that there is no illegality in the finding of the learned Tribunal on the issue of negligence which stands decided in favor of the respondents/claimants and against the appellant. However, in light of the foregoing discussions of the law laid down in *Pranay Sethi (Supra)*, the compensation amount is modified in view of the below terms:

S. No.	Heads	Amount
1.	Loss of dependency	Rs. 6,64,200/-
2.	Loss of love and	Nil

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	affection	
3.	Funeral expenses	Rs. 18,150/-
4.	Loss of spousal consortium	Rs. 48,400/-
5.	Loss of parental consortium	Rs. 48,400/-
6.	Loss of Estate	Rs. 18,150/-
	Total	Rs. 7,97,300/-

96. In view of the above discussion on facts and law, the impugned order dated 3rd August, 2013, passed by the learned Presiding Officer, Tis Hazari Courts, New Delhi, in the case bearing no. 1045/13 stands modified to the aforesaid extent.

97. The total compensation amount granted by the learned Tribunal stands reduced from Rs. 11,24,380/- to Rs. 7,97,300/-. The appellant and the driver of the offending bus are directed to make payment of the compensation as directed above, to the respondents within four weeks. The amount already paid/deposited by the appellant to the claimants/respondents shall be deducted.

98. Accordingly, the present appeal is partly allowed and stands disposed of, along with the pending applications, if any.

99. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 22, 2024/rk/sm/ryp

Click here to check corrigendum, if any

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