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

228 **FAO-1621-2007 (O&M)**
Date of Decision: April 29, 2025

Smt. Shakuntla Devi and others ......Appellant(s)

Vs.

Jagdish Chander and others ......Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. V.D. Sharma, Advocate
for the appellants.

Mr. Chander Pal Tiwana, Advocate
for respondent No.1 and 2.

Mr. Ravinder Arora, Advocate
for the respondent-Insurance Co.

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been preferred against the award dated 07.12.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the Act’) by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the legal heirs of the deceased-Anil, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 04.08.2001, Anil (since deceased) alongwith one Sampat Lal (Name incorrectly given in the petition) was returning on motor cycle and were

going towards Barwala side. Anil was sitting as a pillion rider. When they were near village Shamsukh, a tractor came from the side of Agroha at a fast speed and struck their motor cycle from behind. As a result of which both the riders fell down on the road alongwith motor cycle. The accident took the place at about 10/10.30 a.m. Anil sustained injuries on his head. A vehicle was arranged and Anil was first taken to Agroha Medical College and then got admitted in CMC, Hisar. He died on 6.8.2001.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

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

> *1. Whether the accident in question took place due to rash and negligent driving of tractor No.HR-23A-3755 by Jagdish Chander-respondent No.1? OPP.*
>
> *2. Whether the applicants are entitled to any compensation on account of death of Anil Kumar, if so how much and from whom? OPP.*
>
> *3. Whether the Insurance Company is liable to make the payment of compensation, if awarded, or not? 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 LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contend that the claim petition was wrongly dismissed on the ground that there was a collusion between claimants/appellants and respondent No.1 and 2 (driver and owner of the offending vehicle). Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants/claimants as per latest law.

7. Per contra, learned counsel for the respondents vehemently argue on the lines of the award and contend that the award has rightly been passed. Therefore, they pray for dismissal of the present appeal.

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

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

> *"ISSUE NO.1*
>
> *7. The claimants in order to prove this issue had examined Samad Lal PW2. He is the author of the FIR Ex.P1. He stated that he alongwith his cousin were going towards Barwala on motor cycle bearing No.HR-22A-9342 and he was driving the motor cycle and when they reached the kacha rasta of village Shamsukh, a tractor whose registration number he did not notice, came from behind and it was driven at a high speed and hit the motor cycle from behind and both of them fell down and Anil sustained injuries on his head and other parts of the body and he was removed to Agroha Hospital. He did not name the driver or give the registration number of the vehicle. He did not say that Bajrang had accompanied them to the hospital.*

8. Bajrang PW5 stated that he was working in his fields on 4.8.2001 and after finishing his work he was going towards the road when he saw a motor cycle which was going at a slow speed as the motor cyclist wanted to stop it. Meanwhile a tractor came from behind bearing registration No.HR-23A-3755 and the tractor was driven at a fast speed and it hit the motor cycle from behind and the pillion rider fell down while the motor cycle went and struck against the kikar tree and the pillion rider sustained multiple injuries. He stated that he was only a witness to the accident and had taken Anil to the hospital. He stated that the person who was driving the motor cycle had fallen on the kacha portion whereas Anil had fallen in the middle of the road and the driver had accompanied him to Agroha Medical College. He stated that the relatives of Anil had reached the hospital and therefore he returned and his statement was recorded after 6/7 days. He stated that the tractor was of yellow colour but it was faded. He denied that the motor cycle had skidded on the road and Anil had received injuries on account of the fall.

9. Santosh Saini Ahlmad PW4 brought the summoned file titled ***State Versus Jagdish*** *and proved the copy of the challan Ex.P6 and copy of the FIR Ex.P8.*

10. The Ahlmad was again summoned with the criminal file and examined by the respondent, who produced the mechanical report of the motor cycle and the tractor Ex.R1 and Ex.R2 and the copy of the follow up and discharge card Ex R3.

11. Dr.H.C.Popli, Director CMC RW2 stated that Anil Kumar was admitted in the hospital on 4.8.2001 and he *remained under treatment of Dr.B.K.Verma and Dr. Verma had died few months ago. He stated that Anil died on 6.8.2001. He proved the treatment card Ex.R4. He stated that there was a history of fall from the bike at 11.30 a.m. and the patient had been referred by them by Agroha Medical College.*

12. Dr.Rajiv Chauhan-RW3 stated that the follow up and discharge card Ex.R3 was signed by Dr.Shikha Nigam.

13. Jagdish-RW4 stated that he was driving the tractor No.HR-23A-3755 and was coming from Agroha to Barwala and a motor cycle had overtaken him and two persons were sitting and the motor cycle without giving any signal took a turn and struck against the bumper of the tractor and went towards the ditches and both the riders had fallen down. He admitted that a case was registered against him and he was facing trial.

14. The counsel for the claimant had urged that the accident took place on 4.8.2001 and V.T. was sent on 5.8.2001 and there is a reference about it in the FIR and the statement of Sampat Lal was recorded on 6.8.2001 and delay on the part of the police should not disentitle them to the relief and there was no delay and the driver was facing trial and we have the eye-witness account, who have deposed about the manner in which the accident occurred pointing out at the negligence of the driver.

15. On the other hand it was urged that Anil was a constable with Haryana Police and he was accompanied *by his cousin and the injured was taken to the hospital and they had reached the hospital around 11.30 a.m. but no MLR was prepared nor any intimation was given to the police and the reason was that it was not a case of accident but a case of fall from the motor cycle and the history recorded by the medical officer supports them. It was urged that at the back of Ex.R3 the doctors of Agroha Medical Institute had recorded that the patient had a fall from the bike at 11.30 a.m. and the patient had come to the casualty and was complaining of scalp wound bleeding and it was also mentioned that the patient had consumed a good amount of alcohol and was strongly smelling of it. It was urged that Anil was dead drunk and he had fallen from the motor cycle and the history does not refer to the accident with a tractor and the patient was conscious and was alert and oriented and after the patient was referred to CMC there again there is a reference in the treatment chart that he had a fall from the bike and the document is Ex.R4. It was urged that the tractor was not involved in the accident and there was collusion and they had made an application for framing additional issue but their application was disallowed by the Court and they had filed a revision, which was dismissed because their application under Section 170 of M.V.Act had been allowed and they could raise the issues and defences. It was urged that it was a case of collusion and the tractor had been introduced. It was urged that the FIR does not refer to the tractor number or the name of the driver nor Samat Lal could give the tractor number and therefore having failed to bring evidence against the driver, the claimants introduced another witness namely Bajrang Lal PW5 to fill in the gap in the evidence but his name does not find anywhere. It was urged that the* *medical record does not show that Bajrang had accompanied the injured to the hospital. It was urged that mere framing of charge was not enough and the negligence of the driver had not been proved. It was urged that the written statement of one respondent does not adversely affect their case. Reliance was placed upon* ***Smt. Sarli Devi Versus Mool Chand and others, 2003(3) PLR 169, Jugeshar Tewari and others Versus Sheopujan Tiwary and others, AIR 1986 Patna 35 and Ram Karan and others Versus Zile Singh and others, 2002(4) Accident Compensation Judicial Reports, 222****.*

16. The incident took place on 4.8.2001 at about 11/11.30 a.m. Anil was taken Aggarsain Medical Institute Agroha. He was discharged in the same evening at 6.15 p.m. as a note was given that the hospital lacked back up facility. A history was recorded that the injured had a fall from the mobike. A note was also made that the patient had consumed a good amount of alcohol and was strongly smelling of it. The patient was alert, conscious and oriented. His pulse was 120PM, B.P. was normal. His condition deteriorated around 5:30 p.m. and the blood pressure fell and he was revived. Two units of blood was given and then referred to PGI Rohtak. The medical record does not refer to the patient being accompanied by any person. The patient was taken to CMC Hisar where again there is a specific note that the patient had a fall from bike. It does not refer to any accident. The FIR was registered on 6.8.2001 at the instance of Samat Lal. Samat Lal had stated that he had accompanied his cousin to the hospital. No ruqa was sent from Aggarsain Medical Institute. Anil was admitted in CMC Hospital in the evening hours on 4.8.2001. A VT message was sent to the Police Station Civil Lines, Hisar on 5.8.2001 after 5.00 *p.m. and the statement of Samat Lal was recorded at 7.20 a.m. on 6.8.2001. Samat Lal was available according to the witnesses at the hospital but his statement was not recorded and the reason was that they did not have any particulars of the person, who was driving the tractor nor the registration number of the tractor if it was involved. The FIR was against an unknown vehicle. The FIR does not refer to the name of Bajrang as eye-witness. If he had accompanied the injured to the hospital, his name would have figured somewhere and he is an introduced witness.*

17. There appears to be collusion between the claimants and the respondents No.1&2 as they have admitted the accident but their admission alone is not sufficient. It has been held in a number of authorities that mere framing of charge is not sufficient and the claimants have to independently prove the negligence of the driver. In this case there is a delay in recording the FIR and the reason are obvious as a vehicle had to be introduced. The first version which was given to the medical officers speaks about a fall from the bike. It also refers that Anil was heavily drunk. Anil was conscious when he was brought to the hospital and he could not have given a wrong version. He was a constable with Haryana Police and could well understand the consequences. Had there been any involvement of another vehicle he would have definitely spoken about it. Bajrang Lal had been introduced as a witness at later stages. His presence on the spot is doubtful. Samat Lal did not see the driver. He could not give the registration number of the vehicle. The involvement of respondent No.1 has not been proved. The issue is answered against the claimant.

ISSUE NO.2

18. Since a finding has to be given on all the issues, this issue is being taken up. The record shows that Anil was a constable with Haryana Police. Dayanand PW6 had brought the salary record which is Ex.P9, according to which the gross salary was Rs.6491/- per month. There is no evidence to show the carry home salary. No evidence has been led to show the deductions, which were being made. The Apex Court has held in a number of authorities that the net salary has to be taken into consideration and that is the income, which ultimately comes into the hands of the family. Therefore, some estimate shall have to be made regarding the deduction. According to the certificate Ex.P10, Anil was born on 4.8.1970. His age at the time of death was 31 years. Making a rough estimate about the deductions, the take home salary could have been Rs.5500/-. After deducting 1/4th towards personal expenses, the amount available for the family would be Rs.4125/-. The annual dependency would be Rs.49,500/-. After applying the multiplier of 15, the amount of compensation would come to Rs.7,42,500/-. To this amount Rs.5000/- should be added as loss of consortium, Rs.5000/- as loss of estate and Rs.2500/- as funeral expenses. The total of this comes to Rs.7,55,000/-. This is the amount, which would have been payable had the claimants been able to prove issue No.1."

10. A perusal of the impugned award reveals that the learned Tribunal has erred in dismissing the claim petition based on a misconceived

presumption of collusion between the claimants/appellants and respondents No.1 and 2 (owner and driver). The learned Tribunal failed to appreciate the fact that respondents No.1 and 2 (owner and driver) themselves admitted the occurrence of the accident, in the absence of any cogent evidence led by the Insurer to substantiate the allegation of collusion, the said finding is not only speculative but also contrary to established principles of law.

11. The testimony of PW2-Samad Lal, the eyewitness to the occurrence is clear, consistent, and credible. He categorically deposed that while he was riding the motorcycle with the deceased-Anil Kumar as the pillion rider, a tractor came from behind at high speed and hit the motorcycle, resulting in both riders falling and sustaining injuries. Although he could not recall the registration number of the offending vehicle, his narration of the incident and the sequence of events that followed remained unshaken during cross-examination. The credible testimony of an eye witness, who was himself involved in the accident, ought to have been given due evidentiary weight. His deposition alone was sufficient to establish the occurrence and the negligent conduct on the part of the tractor driver.

12. Further, the learned Tribunal committed an error by discarding the claim on the ground of delay in lodging the First Information Report. The accident occurred on 04.08.2001 and the FIR was registered on 06.08.2001. The delay stands duly explained by PW2-Samad Lal, who stated that he was attending the injured person and remained engaged in facilitating his medical treatment. It is trite law that delay in lodging the FIR in motor accident cases does not *ipso facto* defeat a genuine claim. In ***Ravi Vs. Badrinarayan and others, 2011(4) SCC 69,*** Hon'ble the Supreme Court

categorically held that procedural delays in lodging the FIR are inconsequential when the occurrence of the accident and its causal link to the injuries sustained are otherwise established through cogent evidence. The relevant para is reproduced as under:-

> *"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.*
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> *21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless*

kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

13. Moreover, the reliance placed by the learned Tribunal upon absence of the registration number of the offending vehicle and name of the driver in the FIR to discredit the claim is also misplaced. It is a settled principle that such discrepancies or omissions in the FIR, particularly in the proceedings before the Motor Accident Claims Tribunal, which are summary in nature, cannot be construed as fatal to the case. Reference may be made to the judgment of this Court in FAO-2603-2007 titled as ***Rajbir Singh Vs. Ram Bhagat and anr***., wherein it was held as under:-

"12. The Tribunal has erroneously placed undue emphasis on the fact that the FIR (Ex. P11), lodged on the very date of the occurrence, did not initially disclose the identity of driver or registration number of the offending vehicle. It is trite law that in cases involving motor accidents, particularly those resulting in serious bodily injuries, it is not uncommon for the victim to be unaware of the particulars of the offending vehicle at the initial stage. The law does not require the FIR to be a comprehensive narrative, nor does it mandate precise identification of the vehicle and driver at the inception. The purpose of the FIR is to set the criminal law into motion, and any subsequent identification emerging from investigation is legally sufficient to establish the involvement. "

14. Further, the evidence on record clearly establishes that the deceased was taken to the hospital immediately after the accident. Subhash

Chander, a clerk at CMC Hospital, Hisar, who was examined as PW3, duly proved the medical bills (Ex. P2 to Ex.P5), thereby corroborating the version of the claimants regarding the medical treatment of the deceased.

15. Additionally, Santosh Saini, Ahlmad from the Court of the Judicial Magistrate First Class, Hisar, was examined as PW4, who deposed that a criminal case against respondent No.1-Jagdish Chander arising out of the same accident was pending and that the challan had been presented under Sections 279 and 304-A of the Indian Penal Code. It is settled preposition of law that the registration of the FIR (Ex. P8) and the filing of the challan (Ex. P6) constitute *prima facie* evidence of rash and negligent driving. Reference at this stage can be made to judgment passed by this Court in FAO-1866-2007 titled as ***Smt. Gayatri Devi and others Vs. Ashwani Kumar and others*** , the relevant extract of the same is reproduced as under:-

> *" 14. Furthermore, PW3-Raja Ram, Criminal Ahlmad to the CJM, Narnaul, testified that a challan had been duly presented in FIR No. 27 dated 4.2.2005 against Respondent No.1 and the charges were already framed under Sections 279 and 304-A IPC. Jurisprudence in motor accident cases unequivocally holds that once the FIR has been registered and a charge sheet has been filed, it constitutes prima facie evidence of the fact that the accident occurred due to the negligent driving of the accused. The learned Tribunal, however, erroneously disregarded this crucial piece of documentary evidence, which lends substantial credence to the case of the appellants/claimants.*

16. Significantly, RW4, Jagdish the driver of the offending tractor admitted in his deposition that his tractor was involved in the accident and

that he is facing criminal proceedings for the same. This admission is a material piece of evidence that supports the version put forth by the claimants. The inference drawn by the learned Tribunal that such admission indicates collusion is wholly unwarranted. It is well-established that the onus to prove collusion lies squarely on the insurer, and mere conjectures and surmises cannot displace the substantive evidence on record. Hon'ble the Supreme Court in **Geeta Dubey v. United India Insurance Co**. 2024 INSC, 998 has held that the insurer must plead and prove allegations of collusion through credible evidence. The relevant extract of the same is reproduce as under:-

> *"22. Thirdly, the claimants having discharged the initial onus, if the insurance company had a case that there was collusion between the driver/owner of the truck and the claimants, it ought to discharge that burden. It is candidly admitted by the witness Raj Kumar Kachhwah that they had taken no steps in this regard.*
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> *23. As held in Sajeena Ikhbal (supra) and Bimla Devi (supra), we are convinced that on the principle of preponderance of probability, the claimants have established the involvement of vehicle bearing registration no. MP-19-HA-1197. The insurance company having set up a specific plea of collusion has not established the same. As was held in Bimla Devi (supra), here too, we feel that there was no reason for the police to falsely implicate the vehicle concerned in the matter and launch prosecution against the driver. If the insurance company had suspected collusion, they would have taken steps to file appropriate complaints including moving the higher police authorities or the court to order an investigation into the alleged wrongful involvement of the vehicle. There is no case for the insurance company that the police officer also colluded.*

The investigation by the police has resulted in charge-sheet being filed."

17. In the present case, no evidence whatsoever was led by the insurance company to establish collusion between claimants and respondents No.1 and 2. Therefore, the presumption of learned Tribunal regarding collusion, is entirely baseless and contrary to settled law.

18. With respect to the medical records, although the initial hospital notes indicate a "fall from the bike" and mention alcohol consumption, it is important to note that such histories are usually recorded based on preliminary information and do not carry the same evidentiary value as direct eye witness account. Dr. H.C. Popli, Director of CMC, Hisar was examined as RW2, who confirmed that the deceased-Anil was admitted on the date of the accident and remained under treatment until his death. The sequence of medical treatment combined with the consistent testimony of the eye witness, undermines the version suggesting a simple fall and lends support to the assertion that the accident was caused by negligent driving.

19. It is equally important to emphasize that strict rules of evidence are not applicable in the proceedings under the Motor Vehicles Act. Claims under the Act are to be adjudicated on the touchstone of preponderance of probabilities, and not on the standard of proof applicable in criminal jurisprudence. This position has been affirmed by Hon'ble the Supreme Court in judgment titled as ***Parmeshwari Vs. Amir Chand and others, 2011 (11) SCC 635,*** wherein it was held that procedural technicalities must yield to the overarching object of the Act, which is social welfare and

compensation to victims of road accidents. The relevant extract of the same is reproduced as under:-

> *"12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009(3) RCR (Civil) 805: 2009(4) R.A.J. 408: 2009(2) AICJ 167: (2009)13 SCC 530 are very pertinent:*
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> *"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

20. In view of the foregoing analysis, it is evident that the appellants/claimants have successfully established on touchstone of preponderance of probabilities that the accident in question occurred due to the rash and negligent driving of offending vehicle by respondent No.1-Jagdish Chander.

21. The findings of the learned Tribunal are, therefore, legally unsustainable in eyes of law and liable to be set aside. Consequently, the appellants/claimants are entitled to compensation as per settled law.

22. With respect to determination of compensation, the record contains evidence of earning of the deceased-Anil and his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.

23. A perusal of the record shows that the deceasesd-Anil was 32 years of age at the time of the accident and was a Constable with Haryana Police. Daya Nand-PW6 had brought the salary record, which is Ex.P9, wherein the gross income of deceased-Anil was Rs.6491/- per month. It is settled preposition of law that the gross salary of deceased must be taken into account for the purpose of calculating dependency. Reference at this stage can be made to judgment passed by this Court in FAO-1335-2007, titled as **United India Insurance Co. Ltd. Vs. Smt. Sharda Rani & Others,** wherein it has been held as under:-

> *7. The principle plank of the argument by the learned counsel for the appellant-Insurance Company is that the learned Tribunal failed to appreciate that the aforementioned allowances were in the nature of personal benefits, and thus should not have been added to the basic salary for computing the loss of dependency. It is vehemently contended that components such as Transport Allowance, HRA, PF contribution, Special Allowance Fund (SAF) and leave encashment are inherently personal in character and therefore ought to have been excluded from the computation of income of deceased.*

*8. However, the legal position on this issue is no longer res-integra. A three-Judge Bench of the Hon'ble Supreme Court in **Vijay Kumar Rastogi v. Uttar Pradesh State Roadways Transport Corporation AIR 2018 SUPREME COURT 819** has categorically held that the income to be considered for determining compensation under the Motor Vehicles Act includes not merely the net salary or take-home pay but the taxable income, inclusive of all allowances and perquisites. The relevant extract of the said judgment observed as follows:*

> *"It is unfathomable that the High Court, despite accepting the appellant's tax returns disclosing a taxable income of Rs. 77,480 and tax deduction of Rs. 4,496, could uphold the Tribunal's conclusion that the net annual income was Rs. 44,511. The High Court ought to have reckoned the taxable income for computing compensation under the head of loss of income. This constitutes a manifest error. The jurisprudence laid down in National Insurance Co. Ltd. v. Indira Srivastava, followed in Oriental Insurance Co. Ltd. v. Jashuben and Kavita v. Deepak, clearly establishes that income includes not only basic salary but also all pecuniary benefits which are considered for the purpose of income tax assessment, even if certain components are exempt under statute."*

*9. Moreover, the Hon'ble Supreme Court in its recent decision in **Meenakshi v. Oriental Insurance Company, 2024 INSC 583**, has further reinforced this position. The Apex Court has unequivocally held that allowances and perquisites must be added to the basic salary for determining the actual income of the deceased, and future prospects must be applied thereafter. The relevant extracts of the same is reproduced as under:-*

"10. Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor. The Accident Claims Tribunal was justified in factoring these components into the salary of the deceased, before applying 50% rise by future prospects due to future prospects, while calculating the total compensation payable to the appellant.

11. Clearly, the High Court erred in accepting the appeal filed by the respondent No. 1- Insurance Company and reducing the compensation payable to the appellant from a sum of ₹ 1,04,01,000/- (Rupees One crore four lakh one thousand only) awarded by the Accident Claims Tribunal to ₹ 49,57,035/-(Rupees Forty nine lakh fifty seven thousand and thirty five only).

12. We, therefore, hold that the High Court has erred while omitting to add the components of house rent allowance, flexible benefit plan and Company contribution to provident fund to the basic salary of the deceased while applying the principle of rise in income by future prospects."

10. In light of the settled legal position, it is evident that the learned Tribunal has rightly assessed the income of the deceased by taking into consideration the gross salary inclusive of allowances and perquisites. No error qua income of the deceased therefore, can be found in the impugned award.

24. In view of the above, the income of the deceased-Anil from salary is taken as Rs.6491/- per month.

<u>SETTLED LAW ON COMPENSATION</u>

25. Hon'ble Supreme Court in the case of ***<u>Sarla Verma Vs. Delhi Transport Corporation and Another</u>*** **[(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.*
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> ***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.*
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> ***32***. *Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*
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> * * * * *
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> ***42.*** *We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by*

applying Susamma Thomas[3], 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.

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

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased;

(C) Age of deceased on basis for applying multiplier;

(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

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

"***52.*** *As far as the* ***conventional heads*** *are concerned, we find it difficult to agree with the view expressed in Rajesh[2]. It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that* *price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.*

* * * *

59.3*. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

59.4*. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

59.5*. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma*[4] *which we have reproduced hereinbefore.*

59.6. *The selection of multiplier shall be as indicated in the Table in Sarla Verma*[1] *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."*

27. Hon'ble the 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 Sethi[2] 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 Sethi[2]. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.*

RELIEF

28. 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 07.12.2006 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1.	Monthly Income	Rs.6491/-
2.	Future Prospects @ 50%	Rs.3245.50/- (50% of 6491) (rounded of 3245)
3.	Deduction towards personal expenditure 1/3rd	Rs.3245/-(1/3rd of 9736/-)
4.	Total Income	Rs.77,892/-(6491x12)
5.	Multiplier	16
6.	Annual Dependency	Rs.12,46,272/- (77,892x16)
7.	Loss of Estate	Rs.18,000/-
8.	Funeral Expenses	Rs.18,000/-
9.	Loss of Consortium Parental : Rs.48,000/- X 2 Spousal : Rs. 48,000/- X 1 Filial : Rs. 48,000/-	Rs.1,44,000/-
	Total Compensation	**Rs.14,26,272/-**

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

30. So far as findings on issue No.3 i.e. "*Whether the Insurance Company is liable to make the payment of compensation, if awarded, or not? OPD.",* learned Tribunal has held as under:-

"*This issue was not pressed.*"

31. A perusal of the record shows that as per Insurance Policy, the offending tractor bearing registration No. HR-23A-3755 was insured on the date of the accident i.e. 04.08.2001. Further, it is transpired from Ex.P7 i.e. driving licence of respondent No.1 that on the date of accident, respondent No.1 was having a valid and effective driving licence. Consequently, respondent No.3-Insurance Company is held liable to pay the compensation.

32. The respondent-Insurance Company is directed to deposit the 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 compensation alongwith interest in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank accounts details to the Tribunal.

33. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Ravinder Arora, Advocate within a period of 20 days from the date of receipt of the copy of this order, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.

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

(SUDEEPTI SHARMA)
JUDGE

April 29, 2025
sonia arora

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