



2025:DHC:11930



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

Reserved on: 24.11.2025.

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+ MAC.APP. 566/2018 & CM APPL. 24909/2018

NATIONAL INSURANCE COMPANY LTD.Appellant

versus

MAHESHWARI DEVI & ORS.Respondents

+ MAC.APP. 717/2025

MAHESHWARI DEVIAppellant

versus

NATIONAL INSURANCE CO. LTD. AND ORS.Respondents

Appearances:

Ms. Hetu Arora Sethi & Mr. Sanidhya Kumar, Advocates for National Insurance Co. Ltd.

Mr. Anshuman Bal, Advocate for claimant.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. These two appeals - MAC. APP. 566/2018 filed by National Insurance Co. Ltd. ["Insurance Company"], and MAC. APP. 717/2025 filed by Smt. Maheshwari Devi ["claimant"] - are both directed against an award of the Motor Accident Claims Tribunal ["Tribunal"] dated 16.04.2018 passed in MACT No. 575/2017, arising out of a road accident

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MAC.APP. 566/2018 & MAC.APP. 717/2025

Page 1 of 18



which took place on 27.05.2017, leading to the demise of one Mr. Manish Kumar. By the said award, the claimant has been awarded compensation of ₹10,78,000/- alongwith interest at the rate of 9% per annum.

A. FACTS & IMPUGNED AWARD

2. The facts of the case, as stated in the award, are that on 27.05.2017, at about 09:00 PM, the deceased, Manish Kumar, was riding his motorcycle when, upon reaching the dividing road near Sector-13, DSIIDC, he struck against a truck bearing registration No. HR-55U-7927, which had been parked in the middle/left side of the road. As a result of the impact, Mr. Manish Kumar fell onto the road along with his motorcycle and sustained grievous injuries. He was immediately admitted to Maharishi Valmiki Hospital, from where he was referred to Lok Nayak Hospital, where he succumbed to his injuries on 28.05.2017. The deceased was 25 years of age at the time of the accident.

3. Following the accident, a criminal case was registered¹ on the information presented by the eyewitness, Mr. Sunil s/o Khalla. A chargesheet has also been filed in the criminal proceedings.

4. The parents of the deceased – Shri Munna Lal and Smt. Maheshwari Devi, instituted proceedings for compensation before the Tribunal under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 [“Act”]. The claimants arrayed the driver, owner, and insurer of the truck as respondent Nos. 1 to 3, respectively, before the Tribunal. The father of the deceased died during the pendency of the proceedings, which were thereafter, continued by the mother. The driver and owner are arrayed as respondent Nos. 2 and 3 in each of these appeals.



5. The case of the claimant was based upon the allegation of rash and negligent driving against the driver of the truck. However, no written statement was filed by the driver or owner of the truck. The Insurance Company alone contested the claim, by filing of a written statement in which it disputed the allegation of negligence, and suggested that negligence was attributable to the deceased himself.

6. The Tribunal framed the following issues by order dated 20.09.2017:

“1. Whether Manish (victim) died due to vehicular accident occurred on 27.05.2017 at 09:00 pm near Tempo Stand, Sector-1/3, DSIIDC Bawana, Delhi due to rash or negligent driving of vehicle no. HR-55U-7927 (truck) by respondent no.1 (Sajid)? OPP.

2. Whether petitioners are LR's of said victim and entitled to compensation, if so, what amount and from whom of respondents? OPP.

3. Relief.”

7. Evidence was led before the Tribunal only on behalf of the claimant. The eye witness – Mr. Sunil, s/o Khalla, was examined as PW-1 and the claimant was examined as PW-2.

8. The Tribunal returned a finding against the claimant on issue No.1, i.e., that the claimant had failed to prove rash and negligent driving by the driver of the insured vehicle. It, therefore, converted the claim to a claim under Section 163A² of the Act, as it was then, which does not require a finding of negligence to entitle the heirs of an accident victim to compensation. The Tribunal proceeded to assess compensation of Rs.10,78,000/- under the following heads:

¹ FIR No. 0226/2017 u/ss 283/337 of the Indian Penal Code, 1860, at P.S. Bawana, Distt. Rohini.

² Corresponds to Section 164 of the amended Motor Vehicles Act, 1988.



S.No.	Heads of Compensation	Awarded by the Tribunal
1.	Loss of Dependency	Rs. 10,08,000/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of love and affection	Rs. 40,000/-
Total		Rs. 10,78,000/-

B. SUBMISSIONS

9. The appeal by the Insurance Company is directed towards the quantum of compensation. Ms. Hetu Arora Sethi, learned counsel for the Insurance Company, submits that in assessing compensation under Section 163A of the Act, the Tribunal has travelled beyond the Second Schedule to the Act, and granted compensation for future prospects (as part of loss of dependency), as well as for loss of love and affection. Further, while assessing loss of dependency, it has failed to make the necessary deduction for personal living expenses. She also assails the quantum of compensation on account of funeral expenses and loss of estate in the context of Section 163A of the Act.

10. The appeal by the claimant raises a more fundamental issue, which is that negligence was duly proved before the Tribunal, and compensation therefore ought to have been computed in line with Section 166 of the Act, rather than under Section 163A read with the Second Schedule to the Act.

11. Mr. Anshuman Bal, learned counsel for the claimant, submits that upon such an analysis, the claimant would be entitled to compensation based upon the income of the deceased, adjusted for future prospects,



after application of the applicable multiplier, in terms of the decision of the Supreme Court in *Sarla Verma v. DTC*³.

12. Learned counsel for the parties have also cited several decisions in support of their respective arguments, to which I shall refer in the course of this judgment.

C. QUESTIONS FOR DETERMINATION

13. The issues for determination in the light of these arguments are as follows:

- I. Was the Tribunal right in finding that the claimant had been unable to make out a case of rash and negligent driving against the driver of the truck?
- II. If not, was any contributory negligence attributable to the deceased, and if so, how much?
- III. If the answer to question No. I is in the negative, then what is the just and reasonable compensation that should have been awarded to the claimant under Section 166 read with Section 140 of the Act?
- IV. If the answer to question No. I is in the affirmative, then whether the Tribunal has correctly computed compensation payable to the claimant under Section 163A of the Act?

D. ANALYSIS WITH REGARD TO FINDING OF NEGLIGENCE

14. In the claim petition, the claimant has described the facts of the accident as follows:

<i>“Place, Date and time of accident</i>	<i>The accident took place near Tempo Stand, Sector- 1/3 Dividing Road, DSIIDC, P.S. Bawana, Distt. Rohini on 27.05.2017 at about 9:00 PM.</i>
<i>Brief particulars of the</i>	<i>That on 27.05.2017 at about 9:00 pm, the deceased was</i>

³ (2009) 6 SCC 121, [hereinafter, “*Sarla Verma*”].



accident.	going on motorcycle. <u>When he reached between Sector-1/3 dividing Road, DSIIDC, a Truck No.HR-55U-7927 was wrongly parked in the middle of the road in a complete darkness as a result of which, motorcycle met with accident with Truck No. HR-55U-7927.</u> Deceased was removed to Maharishi Valmiki Hospital, Delhi from where he was referred to Lok Nayak Hospital, Delhi where he died on 28.05.2017 due to injuries received in the accident.” ⁴
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15. The mother of the deceased gave evidence as PW-2. She did not testify with regard to the facts of the accident and accepted, in cross examination by learned counsel for the Insurance Company, that she was not an eye witness.

16. Eyewitness evidence was, however, provided by Mr. Sunil, s/o Khalla, who gave an affidavit of evidence, which read as follows:

“1.That on 27.05.2017 at about 9:00 PM, I was going on motorcycle. When I reached dividing road between Sector-1 and Sector-3, I saw a motorcycle coming from bada Gol Chakkar, when a Truck No.HR-55U-7927 was wrongly parked in the middle of the road in a complete darkness as a result of which, motorcycle met with accident with Truck No.HR-55U-7927. The accident took place due rash and negligent driving on the part of part of Truck. I took the motorcyclist to Mahirshi Valmiki Hospital, Pooth Khurd, Delhi where he was admitted. My statement was recorded by police.”⁵

17. PW-1 was also cross examined by learned counsel for the Insurance Company. The cross examination elicited the following evidence:

“ I was working in Amazon at the time of accident. At the time of accident, I was coming from opposite direction. The road on which accident had occurred is the main road. The width of the road was about 40 feet. There was no divider. The accident had occurred at about 9-930 pm. I was on the other side of the road at about 40-50 feet away. It is correct that the truck was parked at the left side of road.

⁴ Emphasis supplied.

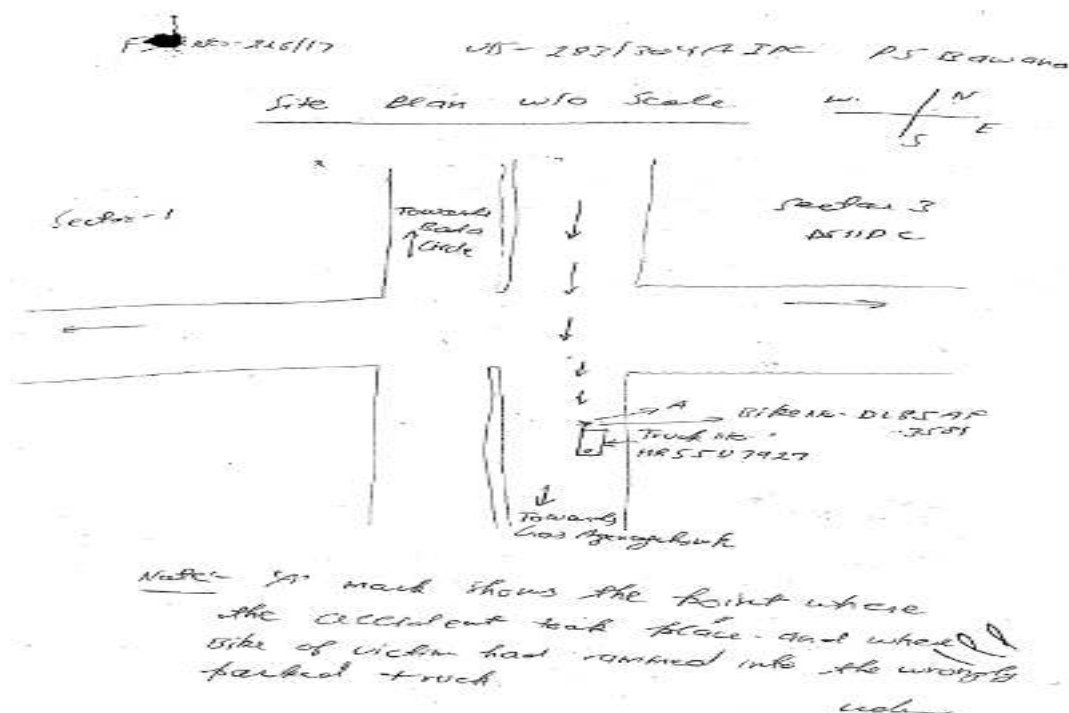
⁵ Emphasis supplied.



There was street light on the road. Vol. The light was not working that day. The speed of the motorcycle was about 50-55 KMPH. It is wrong to suggest that front light of the truck were on. There were two truck stationed on the left side of the road. It is correct that accident had occurred due to negligence and carelessness of both driver of truck and motorcyclist. Vol. the truck driver was more negligent. I am the complaint on which compliant the FIR was lodged and site plan was prepared. It is wrong to suggest that I am deposing falsely.”⁶

18. The record placed before the Tribunal included the statement of Mr. Sunil before the police authorities, to the effect that he had seen a bike collide with the truck bearing registration No. HR-55U-7927, which was wrongly parked in the middle of the road. He had stated that the accident was caused by the wrong parking of the truck, and that Mr. Sunil had taken the deceased to the hospital.

19. A site plan, prepared by the Investigating Officer, was also part of the Tribunal’s record. It is reproduced below:



⁶ Emphasis supplied.



20. The Tribunal's analysis of the evidence, on the question of negligence, was as follows:

"10. From all the facts, one fact is clearly stands established that the offending vehicle was standing in stationary mode and it was not being driven at all. It is also admitted fact that it is the vehicle of deceased which struck against the parked vehicle that too from rear side. Hitting another vehicle from back side per se is the negligence of the vehicle who stuck his vehicle in the rear side of standing vehicle and at any cost it cannot be said that it was a negligent driving on the part of driver of the standing vehicle. There may be negligence to the extent of parking a vehicle without proper caution as it is mentioned in Section 122 of Motor Vehicles Act but it cannot be said that the act of respondent no.1 tantamount to rash and negligent driving. Therefore it is held that the respondent no.1 was not driving the vehicle in rash and negligent manner. Of course the accident happened due to involvement of the offending vehicle and that fact stand established. Accordingly this court of the opinion that instant petition would not fall under the ambit of Sections 166 and 140 of Motor Vehicles Act where rash and negligent driving of respondent no. 1 is required to be proved. The court however is not dismissing the petition on this ground as the proceedings under Motor Vehicles Act with respect to injured or to LR of deceased in an accident case have been treated as social and beneficial provision to help the injured/LR of deceased as the case may be, and accordingly the petition is being treated as a petition under Section 163-A of Motor Vehicles Act where rash and negligent driving is not to be proved. No doubt accident has occurred, involving a motorcycle and standing truck therefore instant petition is being treated as a petition under Section 163-A of Motor Vehicles Act by the court.

11. This issue is therefore decided by holding that petitioners have failed to prove rash and negligent driving by respondent no.1 and it is ordered that present petition be treated as petition under Section 163A of Motor Vehicles Act.⁷"

21. Mr. Bal assailed these findings, relying upon three judgments of the Supreme Court:

- a. In *Archit Saini & Anr. v. Oriental Insurance Co. Ltd. & Ors.*⁸, the accident was alleged to have been caused due to a gas tanker being

⁷ Emphasis supplied.

⁸ (2018) 3 SCC 365, [hereinafter, "*Archit Saini*"].



parked in the middle of the road without any indicator or parking lights. The Tribunal, upon appreciation of the evidence on record, held the driver of the tanker to be solely responsible for the accident. The High Court, however, concluded that the deceased, whose car had collided with the tanker, was guilty of contributory negligence to the extent of 50%. The Supreme Court reversed the finding of the High Court and set aside the determination of contributory negligence.

- b. In *Meera Bai & Ors. v. ICICI Lombard General Insurance Co. Ltd. & Anr.*⁹, also, the High Court had reversed the award of the Tribunal granting compensation to the family of the deceased victim. The Supreme Court noted that the owner/driver of the insured vehicle had not led any evidence before the Tribunal and held that the filing of a chargesheet, even in the absence of eyewitness testimony, would militate against a finding of absence of negligence.
- c. Similarly, in *Ranjeet & Anr. v. Abdul Kayam Neb & Anr.*¹⁰, the Supreme Court reversed the findings of both the Tribunal and the High Court, which had held that negligence was not established due to the absence of eyewitness evidence. The Court held that once a chargesheet has been filed and the driver has been found negligent, no further evidence is required to prove negligence of the driver of the offending vehicle.

⁹ 2025 SCC OnLine SC 992, [hereinafter, “*Meera Bai*”].

¹⁰ 2025 SCC OnLine SC 497, [hereinafter, “*Abdul Kayam Neb*”].



22. As against these judgments, cited by Mr. Bal, Ms. Sethi relied upon the following three judgments of the Supreme Court:

- a. In the recent judgment in *Sachin Yallappa Usulkar and Ors v. Vijayata and Ors.*¹¹, the question was whether the owner of a vehicle was liable to compensate the claimant in view of a finding that the vehicle was being driven by a minor. The Court ultimately accepted the evidence led on behalf of the owner, and came to the conclusion that the vehicle was not being driven by the minor, but by his father. Ultimately, the liability of the owner was, therefore, set aside and the Insurance Company was held liable.
- b. In *M. Sabitha & Ors. v. Brahma Swamulu & Anr.*¹², the Tribunal had returned a finding of no negligence, on the basis that the criminal proceedings had been closed as the accused had died. The High Court, however, came to the conclusion that both vehicles involved in the accident were being negligently driven, and therefore granted compensation, albeit reduced by 30% for contributory negligence. The Supreme Court modified the judgment to the extent that contributory negligence was assessed at 50%. In the course of discussion, it emphasised that negligence in such cases can only be determined from attendant circumstances.
- c. In *ICICI Lombard General Insurance Company Ltd. v. Rajani Sahoo and Ors.*¹³, the Supreme Court emphasized that negligence is the *sine qua non* for making an award, but proceeded not just on

¹¹ 2025 SCC Online SC 458, [hereinafter, "*Sachin Yallappa*"].

¹² 2025 SCC OnLine SC 991 [hereinafter, "*M. Sabitha*"].

¹³ (2025) 2 SCC 599, [hereinafter, "*Rajani Sahoo*"].



the basis of the chargesheet, which was impugned as “*fraudulent*”, but also upon other materials.

23. On a reading of the aforesaid decisions, the principle, which emerges, in my view, is that the assessment of negligence and contributory negligence is a fact-intensive exercise, to be undertaken on the basis of the evidence placed before the Tribunal. The standard of proof in cases arising from motor accident claims, is one of “*preponderance of probabilities*”, and not the criminal standard of proof of “*beyond reasonable doubt*”. The Tribunal is not bound by strict rules of pleadings and evidence, but must nonetheless analyse the material before it to return a finding on this aspect. The filing of a chargesheet is undoubtedly a significant and valuable factor in arriving at a conclusion on the issue of negligence. In the absence of any other evidence, it has also been treated as decisive. However, the evidence must be analysed carefully and, where there is compelling evidence, an appropriate finding may still be returned, including a finding of contributory negligence.

24. Analysing the evidence in the present case from this perspective, I am of the view that the Tribunal erred in holding that there was no negligence attributable to the driver of the truck. The site plan, which formed part of the Detailed Accident Report, shows that the truck was parked towards the left side of the road; however, it does not appear to have been parked at the edge of the road. The driver of the truck did not lead any evidence. The only eyewitness, PW-1, attributed negligence to the driver of the truck. Ms. Sethi submitted that, in cross-examination, PW-1 accepted that the truck was parked on the left side of the road, and that the accident occurred due to the negligence or carelessness of the



drivers of both vehicles. However, the aforesaid evidence cannot lead to a conclusion exonerating the truck driver completely.

25. The evidence is, in my view, also consistent with the sketch plan produced by the police authorities referred to hereinabove. In such circumstances, the filing of the chargesheet against the driver of the truck, after investigation, also acquires considerable significance, as held in *Meera Bai* and *Abdul Kayam*, referred to above. A finding absolving the driver of negligence altogether is inconsistent with the admitted fact that a chargesheet had been filed. To rebut such a conclusion would at the very least, require unimpeachable evidence to the contrary, which I do not find in the present case.

26. The Tribunal's analysis, extracted above, proceed on the basis that the truck was stationary, and the motorcycle of the deceased struck the truck from behind. On this basis, the Tribunal concluded that the motorcyclist was *per se* negligent, and that the driver of the stationary vehicle could not be held negligent. Such a conclusion is entirely inconsistent with the judgment of the Supreme Court in *Archit Saini*. Although the Tribunal recognised that the truck may have been improperly parked, it erred in holding that no negligence could be attributed to its driver, merely because the vehicle was stationary. As held in *Archit Saini*, improper or wrongful parking of a vehicle may, by itself, constitute negligence of a degree sufficient to be regarded as the proximate cause of the accident.

27. The next question is whether contributory negligence ought to be ascribed to the deceased motorcyclist in the present case. On this point, the evidence of the eyewitness PW-1, in cross-examination, was to the



effect that both the truck driver and the motorcyclist were negligent, although, in his assessment, the truck driver was “*more negligent*”. He also deposed that the street light was not working on that day. The accident took place at about 09:00 P.M., when it would have been dark. The site plan also shows that the motorcyclist deviated from a straight path and veered to the left, at which point he struck the truck. The aforesaid evidence, in my view, requires some degree of negligence to be attributed to the motorcyclist, which I would assess at 10%.

28. It may be noted that, in *Archit Saini*, the Supreme Court came to the conclusion that there was no contributory negligence on the part of the driver of the vehicle which had collided with a stationary tanker. However, this finding was based on the evidence in that case, which included eyewitness testimony that the deceased would not have been able to spot the parked tanker, that the parked tanker was in the middle of the road, and that it was without any indicator or parking lights. The evidence in the present case is dissimilar, particularly with regard to the exact location of the parked truck.

29. I am also unpersuaded by Ms. Sethi’s reliance upon the judgments in *Sachin Yallappa* and *M. Sabitha*. In *Sachin Yallappa*, the owner of the vehicle had led evidence with regard to the facts of the accident, which was accepted by the Supreme Court. In *M. Sabitha*, negligence was inferred from attendant circumstances, as the criminal case was closed after investigation. Both these factors are absent in the present case.

30. On the basis of the above analysis, I am of the view that the Tribunal ought to have assessed the compensation payable to the



claimants under Section 166 of the Act, and adjusted the compensation to account for contributory negligence.

E. QUANTUM OF COMPENSATION

31. As far as assessment of compensation is concerned, the Tribunal returned no finding on this basis, as it proceeded under Section 163A of the Act. Having regard to the fact that the accident occurred more than eight years ago, learned counsel for the parties requested this Court to assess the compensation on the basis of certain agreed parameters, rather than to remit the matter to the Tribunal.

32. In the case of a fatal accident, compensation is to be assessed for loss of dependency, loss of consortium, loss of estate, and funeral expenses.

(a) Loss of Dependency:

33. As far as loss of dependency is concerned, there was no evidence before the Tribunal, regarding the income or educational qualifications of the deceased. Learned counsel on both sides accepted that the Court would, therefore, be required to proceed on the basis of the minimum wages of an unskilled labourer in Delhi at the time of the accident, which was undisputedly Rs. 13,584/- per month. It was also agreed that future prospects would have to be added at 40%, in accordance with the judgment of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi*¹⁴, and that the deduction towards personal expenses would be to the extent of one-half, as the deceased was unmarried, and his mother was the only person entitled to be treated as a dependent. As the deceased was 25 years of age at the time of the accident, the applicable multiplier would be



18, in terms of the selection of multipliers, laid down by the Supreme Court in *Sarla Verma*, and reiterated in several later judgments, including by the Constitution Bench in *Pranay Sethi*.

34. Consequently, the loss of dependency is computed as follows:

S. No.	Heads	Amount
1	Monthly income of the deceased [A]	Rs.13,584/-
2	Future prospects [40% of A = B]	40%
3	Monthly income of the deceased (including future prospects) [A+B = C]	Rs. 19,017.60/-
4	Personal expenses [50% of C = D]	50%
5	Monthly loss of dependency [C – D = E]	Rs. 9,508.80/-
6	Annual loss of dependency [E x 12 = F]	Rs. 1,14,105.60/-
7	Multiplier [G]	18
Total loss of dependency [F x G]		Rs. 20,53,901/-

(b) Non-Pecuniary Damages:

35. With regard to non-pecuniary heads of damages, the Tribunal awarded compensation under the heads of loss of love and affection [Rs.40,000/-], funeral expenses [Rs.15,000/-], and loss of estate [Rs.15,000/-]. The amounts awarded towards funeral expenses and loss of estate at Rs. 15,000/- each are in accordance with *Pranay Sethi*, and are affirmed. The Tribunal, however, failed to award any compensation under the head of loss of consortium. As the father of the deceased survived, the

¹⁴ (2017) 16 SCC 680, [hereinafter, “*Pranay Sethi*”], paragraph 59.4.



deceased, although he died before the award was rendered, both parents are entitled to compensation towards loss of filial consortium in the sum of Rs. 40,000/- each, in accordance with the judgments in *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Ors.*¹⁵, *United India Insurance Company Ltd. v. Satinder Kaur & Ors.*¹⁶, and *National India Assurance Company Limited v. Somwati*¹⁷.

36. In view of the settled position of law laid down in *Satinder Kaur*, compensation towards loss of love and affection is impermissible, and stands subsumed under the head of loss of consortium. The award of Rs. 40,000/- towards loss of love and affection is, therefore, set aside.

37. Accordingly, the non-pecuniary compensation payable in the present case is assessed at Rs. 1,10,000/- in total.

(c) Total Compensation:

38. As a result of the forgoing discussion, the impugned award is modified to the following extent:

Heads of compensation	Awarded by Tribunal	Awarded by this Court	Difference
Loss of dependency	Rs. 10,08,000/-	Rs. 20,53,901/-	(+) Rs. 10,45,901/-
Loss of consortium	NIL	Rs. 80,000/-	(+) Rs. 80,000/-
Loss of love and affection	Rs. 40,000/-	Deleted	(-) Rs. 40,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-	Nil

¹⁵ (2018) 18 SCC 130.

¹⁶ (2021) 11 SCC 780, paragraphs 34 & 35.

¹⁷ (2020) 9 SCC 644.



Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Nil
Total Compensation under above heads	Rs. 10,78,000/-	Rs. 21,63,901/-	(+) Rs. 10,85,901/-
Reduction for contributory negligence	Nil	10% of Total Compensation = Rs. 2,16,390/-	(-) Rs. 2,16,390/-
Total award payable	Rs. 10,78,000/-	Rs. 19,47,511/-	(+)Rs. 8,69,511/-

F. CONCLUSION

39. In sum, therefore, the impugned award is enhanced by a sum of Rs. 8,69,511/-, from Rs. 10,78,000/- to Rs. 19,47,511/-. The entire award will carry interest at the rate of 9% per annum, as awarded by the Tribunal.

40. The amount originally awarded by the Tribunal was directed to be deposited with the Tribunal by order dated 01.06.2018, pursuant to which 50% of the awarded amount has already been released to the claimant. The Insurance Company shall deposit the balance amount payable in terms of this judgment, along with up-to-date interest at the rate of 9% per annum (as awarded by the Tribunal), with the Tribunal, within a period of eight weeks from today, after due adjustment of any amount already deposited.

41. The Tribunal had directed disbursement of the compensation over a period of five years. Having regard to the fact that the said period has already elapsed, it is directed that the entire balance amount lying with



2025:DHC:11930



the Tribunal, and the amount to be now deposited, shall be released to the claimant forthwith, alongwith accrued interest, if any.

42. The appeals are disposed of with these directions. The pending application also stands disposed of.

43. The statutory deposit, if any, be refunded to the Appellant-Insurance Company.

PRATEEK JALAN, J

DECEMBER 24, 2025

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MAC.APP. 566/2018 & MAC.APP. 717/2025

Page 18 of 18