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

FAO-5140-2015 (O&M)

UNITED INDIA INSURANCE CO. LTD.

..Appellant

Versus

TARAQQI LAL (SINCE DECEASED) & OTHERS

..Respondents

Reserved on: 09.04.2025
Pronounced on : 10.04.2026
Uploaded on: 17.04.2026

Whether only the operative part of the judgment is pronounced? *NO*
Whether full judgment is pronounced? *YES*

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Paul S. Saini, Advocate
for the appellant-Insurance Company.

Mr. Ashwani Arora, Advocate
for the claimants-respondents No.1 to 4.

Mr. Manish Boora, Advocate
Mr. Bharender, Advocate
Mr. Jasvinder Rana, Advocate
for Mr. Arjun Sheoran, Advocate
for respondent No.5.

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been filed by the appellant-Insurance company against the award dated 25.03.2015 passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'), wherein the appellant-Insurance company was fastened with the liability to pay the compensation of Rs.22,05,428/- to the claimants along with interest @ 7.5 %

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2026.04.17 09:35
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per annum from the date of filing of claim petition till realization of the amount.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 25.10.2013 at about 6.00 PM, deceased Taraqqi Lal Kundra was going from his house to park in Sector 5, Panchkula on foot for a walk. He was being followed by his wife Sudarshan Kundra and his daughter Seema. After crossing Inderdhanush Editorial, when they were walking on the left side of the road and reached opposite to entrance of Park Sector 5, Panchkula, at that time a Mahindra Pick-up bearing registration No. CH-01-TA-4971 came at fast speed, in rash and negligent manner from the side of Hafed Office and Nik Bakers, which was being driven by respondent No.1 and struck against the deceased. As a result of this accident, deceased fell on the road and was dragged to a long distance. After causing the accident, the driver of Mahindra Pick-up stopped for a while and wife of deceased Sudarshan Kundra inquired his name and noted the number of Mahindra Pick-up. Thereafter, said person sped away from the spot of occurrence along with his vehicle. The deceased was immediately taken to General Hospital, Sector 6, Panchkula, from where, he was taken to PGI, Chandigarh on the same day. He was further shifted to Fortis Hospital, Mohali on 30.10.2013. Thereafter, he remained under medical treatment of General Hospital, Sector 6, Panchkula. However, he succumbed to the injuries on 26.01.2014. It is specifically alleged that the accident took place due to the rash and negligent driving of the offending Mahindra Pick-up No. CH-01-TA-4971 driven by respondent No.1 Rajan Kumar.

MOHD AYUB
2026.04.17 09:35
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3. Upon notice of the claim petition, respondents therein appeared and contested the claim petition by denying the factum of accident/compensation.

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

> *"1. Whether the accident dated 25.10.2013 resulting into the death of Taraqqi Lal Kundra had occurred on account of rash and negligent driving of vehicle bearing No. CH-01-TA-4971, if so, its effect ?OPP.*
>
> *2. If issue No.1 is proved in favour of claimants, whether claimants are entitled for compensation, if so, how much and from whom ?OPP.*
>
> *3. Whether the respondent No.1 was holding a valid and effective driving licence at the time of accident?OPR-2.*
>
> *4. Whether there was valid and effective route permit of the vehicle in question at the time of accident ?OPR*
>
> *5. Relief. "*

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the liability to pay compensation was fastened upon the appellant-Insurance Company. Hence, the present appeal.

<u>SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:</u>

7. Learned counsel appearing for the appellant–Insurance Company of the offending vehicle submits that the learned Motor Accident Claims Tribunal has erred in fastening the liability to satisfy the award upon the appellant/Insurance company. It is contended that the findings recorded

MOHD AYUB
2026.04.17 09:35
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by the Tribunal are contrary to the material available on record as well as the settled position of law.

8. Learned counsel for the appellant/Insurance company assails the finding of the Tribunal that the driver-cum-owner/respondent No.5 of the offending vehicle was holding only a Light Motor Vehicle (LMV) driving licence without any specific endorsement to drive a transport vehicle. He further contends that compensation awarded by learned Tribunal is also on higher side and deserves to be reduced. On strength of the aforesaid submissions, he prays that the present appeal be allowed.

9. Per contra, learned counsel appearing for the respondent No.5/driver-cum-owner supports the award passed by the learned Tribunal.

10. Learned counsel for respondent Nos.1 to 4/claimants contends that learned Tribunal has rightly held that accident occurred due to sole rash and negligence driving of offending vehicle by respondent No.5. He furthermore contends that compensation awarded by learned Tribunal is on lower side inasmuch as that deceased remained hospitalized for a considerable period before his unfortunate demise due to injury suffered by accident in question, however, learned Tribunal has not awarded a single penny on account of pain and suffering. He fairly concedes that no independent appeal has been preferred by the respondent Nos.1 to 4/ claimants for seeking such enhancement. Nonetheless, placing reliance on the judgment of this Court passed in ***FAO-5934-2015 titled as 'National Insurance Co. Ltd. Vs. Laltesh and others', decided on 31.01.2026***, he contends that this Court, in exercise of its appellate jurisdiction, possesses ample power to enhance the quantum of compensation even in the absence

MOHD AYUB
2026.04.17 09:35
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of a cross-appeal or cross-objections filed by the claimant. He therefore, prays that the compensation be enhanced.

11. I have heard learned counsel for the parties and perused the whole record of the case with their able assistance.

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

> *"**ISSUE NO.1***
>
> *10. In order to prove the FIR, claimant No.1 Sudershan Kundra herself appeared as PW-2, who has tendered into evidence her affidavit Ex.PW-2/A, whereby she deposed that on 25.10.2013 at about 6.00 PM, she along with her daughter Seema was going from her house to park in Sector 5, Panchkula on foot, for a walk. Her husband Taraqqi Lal Kundra was going ahead of them. After crossing Inderdhanush Editorial, when they were walking on the left side of the road and reached opposite to the entrance of park Sector 5, Panchkula, a Mahindra Pick-up bearing registration No. CH-01-TA-4971 came at fast speed, in rash and negligent manner, from the side of Hafed Office and Nik-Bakers and struck against Tarrqi Lal Kundra and at that time, respondent No.1 was driving the said vehicle. As a result of this accident, Taraqqi Lal Kundra fell on the road and was dragged to a long distance. After causing the accident, driver of Mahindra Pick-up stopped for a while and on inquiry by her (PW-2), he disclosed his name and she also noted down the registration number of his vehicle. Thereafter, he fled away from the spot along with Mahindra Pick-up. Taraqqi Lal Kundra was shifted to General Hospital, Sector 6, Panchkula and from there he was taken to PGI,*

MOHD AYUB
2026.04.17 09:35
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Chandigarh on the same day. From PGI, he was taken to Fortis Hospital, Mohali on 30.10.2013. The matter was reported to the police. She prayed for taking action against driver of said car. He has also proved the copy of said FIR as Ex.P-34.

11. On the other hand, learned counsel for the respondents contended that no accident, as pleaded, had taken place due to the rash and negligent driving of Mahindra Pick-up No. CH-01-TA-4971 by respondent No.1. The claimants have foisted a false case against respondent No.1 in connivance with the police in order to extract huge amount. It is further contended by learned counsel for the respondents that deceased Taraqqi Lal Kundra has not died due to the injuries sustained by him in the alleged accident, because the deceased Taraqqi Lal Kundra has died after about three months of the accident. So, in these circumstances, it cannot be said that the cause of death in the instant case was the injuries allegedly sustained in the accident, which occurred about two months ago.

12. Countering the contentions of learned counsel for the respondents, learned counsel for the claimants argued that testimony of Sudershan Kundra PW-2, coupled with the post mortem report Ex.P-2, proved by PW-1 Dr. Ashok, is a worth placing credence and there is no infirmity in it. He further contended that in the post mortem report Ex.P-2, it has been categorically testified that the death has occurred due to the injuries sustained in the road side accident.

13. After considering the rival contentions, this Tribunal feels inclined to agree with the learned

MOHD AYUB
2026.04.17 09:35
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counsel for the claimants. Claimant Sudershan Kundra, PW-2 has supported the version in the claim petition on all material particulars. She was cross-examined at length, but nothing favourable could be elicited from her crossexamination. There is not an iota of evidence on the record, on the basis of which, it can be said that she was in any way inimical towards the respondent No.1. Criminal case has been registered against respondent No.1 on the basis of the statement of this witness. It is the quality and not the quantity of the witnesses, which matters. Learned counsel for the respondents have failed to point out any infirmity in the statement of PW-2 Sudershan Kundra – claimant No.1, which stands like a rock. More so, the most important witness in this case was Rajan Kumar, respondent No.1 himself, who was driving the offending vehicle, in question, at the time of accident. He shied away to appear in the witness box. He could state the manner and mode in which he was driving the vehicle in question, at the relevant time and whether he had made any effort to substantiate that false FIR has been registered against him. Further, to prove the injuries sustained by Taraqqi Lal Kundra, claimants have examined Gaurav Sharma, Assistant Supervisor, Fortis Hospital, Mohali, who while appearing as PW-4 has proved the medical treatment record and bills i.e. Ex.P-10 to Ex.P-17 and Ex.PW-4/A (containing 77 pages). He also deposed that Taraqqi Lal was admitted with their hospital on 30.10.2013 for his treatment of injuries, which were sustained by him in a road side accident. From the cross examination of PW-4

MOHD AYUB
2026.04.17 09:35
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Gaurav Sharma, it is revealed that it has not even been suggested to this witness that the deceased has not died due to the injuries sustained by him in the accident in question, whereas, the entire case of the claimants is based on this fact. The learned counsel for the claimants has also placed reliance on the authority 2011 (2) Punjab Law Reporter 129 (P&H), United India Insurance Company Limited versus Pooja Verma, wherein, it has been held:

> *"That the Court has to take the quality of health of the person as it is and cannot conjecture that death could have been due to any other reason. Even in a case, where the person has a propensity for illhealth but ultimately, it was the accident that precipitated the death then it should be taken that he died only due to the accident."*

Thus, in view of above law laid down by the Hon'ble Punjab & Haryana High Court and in view of above discussed evidence, this Tribunal is of the considered opinion that Taraqqi Lal Kundra, deceased died due to the injuries sustained by him in the accident in question. As such, it is held that the accident in question caused due to rash and negligent driving of Mahindra Pickup No. CH-01-TA-4971 being driven by Rajan Kumar. Accordingly, this issue is decided in favour of claimants.

ISSUE NO.2

14. While deciding issue No.1, this Tribunal has come to the conclusion that death of Taraqqi Lal Kundra has occurred due to rash and negligent driving of the offending vehicle bearing No. CH-

MOHD AYUB
2026.04.17 09:35
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01-TA-4971, being driven by respondent No.1 Rajan Kumar.

15. Now, the requisite question for determination arises as to whether the claimants are entitled to compensation, if so, to what extent and from which of the respondents?

16. The claimants have come forward with the plea that they are entitled to recover a sum of Rs.50,00,000/- along with interest @ 12% per annum as compensation on account of death of Taraqqi Lal Kundra in the accident in question. At the time of accident, he was 72 years and was getting pension of Rs.16,197/- per approximately from State Bank of India, as he was retired as Branch Manager from State Bank of India, Kalka. In order to prove this fact, the claimant No.1 Sudarshan Kundra, during her examination has proved on record the photo copy of bank pass book Ex.P-38 of State Bank of India, in which it is reflected that a sum of Rs.16,197/- was credited in the account of deceased Taraqqi Lal on account of pension amount. Further, it is the case of the claimants that besides getting the pension, the deceased was also doing the account work of different companies and thereby, he was earning Rs.10,000/- per month. It is further pleaded that the claimants have spent a huge sum on the medical treatment of the deceased. The untimely death of Taraqqi Lal Kundra brought them to the edge of starvation. No amount can compensate the life of a person, but still they are entitled for adequate compensation on account of death of Taraqqi Lal Kundra in the motor vehicular accident in question.

MOHD AYUB
2026.04.17 09:35
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17. On the other hand, learned Counsel for respondents have contended that claimants are not entitled for any compensation as they failed to prove that the deceased Taraqqi Lal Kundra has died on account of the injuries allegedly caused by the vehicle being driven by respondent No.1, because, no cause of death has been mentioned in the Post Mortem report. With these submissions prayer is made to dismiss the claim petition.

18. However, after going through the material available on record, it is found that the claimants are entitled for compensation on account of death of deceased Taraqqi Lal Kundra in the accident in question which caused due to rash and negligent driving of Mahindra Pick-up No. CH-01-TA-4971 by respondent No. 1. As far as plea taken by the respondent No.2 that no cause of death is mentioned in the post mortem Ex.P-2 of the deceased is concerned, it is merely a figment of imagination. Admittedly, in the post mortem report Ex.P-2, the cause of death is not mentioned, however, on the first page of said post mortem report, it is categorically mentioned that the deceased had died due to the injuries sustained in the road side accident. Even, PW-1 Dr. Ashok has also deposed that in his opinion, the cause of death is consequences of injuries described in the post mortem report, coupled with moderate to complicated atherosclerosis. Thus, in view of the above said observation of our own Hon'ble High court, the plea taken by the respondents regarding non-mentioning of cause of death in the post mortem report of deceased Taraqqi Lal Kundra, is

MOHD AYUB
2026.04.17 09:35
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not tenable and cannot sustain in the eyes of law and is hereby repelled.

19. In order to prove the income of the deceased Taraqqi Lal Kundra, the claimants have proved on record the photo copy of bank pass book Ex.P-38 of State Bank of India having Account No.10755845650, in which Rs.16,197/- is reflected to be credited on account of pension for the month of January, 2014. Besides this, the claimants have also mentioned that deceased was also doing account work of different companies and thereby earning Rs.10,000/- per month. However, in order to prove this income of Rs.10,000/- the claimants have neither produced any witness nor proved any document. So, in this way, taking into account the last amount of pension drawn by deceased Taraqqi Lal, as per photo copy of bank pass book Ex.P-38, his monthly income is taken to be Rs.16,197/- per month. No contradictory evidence has been led on behalf of respondents with regard to the income of deceased Taraqqi Lal Kundra. As such, the income of deceased is assessed as Rs.16,197/- per month.

20. As per the criteria laid down in the citation ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) Recent Apex Judgments 373*** *of the Hon'ble apex Court, the deduction towards personal and living expenses of the deceased should be one-forth (1/4th), where the number of dependent family members is 4 to 6. Accordingly after deducting 1/4th of the income of the deceased towards his personal and living expenses, the annual dependency of the claimants comes to* ***Rs.12,148/- per month or Rs. 1,45,776/- per annum****.*

MOHD AYUB
2026.04.17 09:35
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21. As discussed above, deceased Taraqqi Lal Kundra was 72 years of age at the time of accident in question. Therefore, as per the criteria laid down in citation ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another (supra)****, the multiplier of 5 is to be applied where the deceased was in the age group of above 65 years. Accordingly, after applying the multiplier of 9 to the annual dependency of the claimants, the amount of compensation would come to* ***Rs.7,28,880/- (Rs.1,45,776/- X 5)****.*

22. Further, the claimants have also placed on record the medical bills, as per which, the claimants have also spent a sum of ***Rs.11,51,548/-*** *on the treatment of the deceased after the accident, to which, they are held entitled.*

23. As far as consortium as a major head to calculate is concerned, this court is in agreement with the learned counsel for the claimant who has stressfully argued in this regard with the help of order of ***Hon'ble Supreme Court of India in Civil Appeal No.3860 of 2013 arising out of S.L.P. (Civil) No.24825 of 2010 titled Rajesh & others versus Rajbir Singh & others****. It was held in* ***Rajesh Kumar's case (supra)*** *as under :*

"By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award

MOHD AYUB
2026.04.17 09:35
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a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

*24. Therefore, in view of principle as laid down in **Rajesh Kumar's case (supra)**, a compensation of **Rs.1,00,000/- (Rupees One lac only)** on account of consortium is awarded to the claimant No.1.*

*25. The **Hon'ble apex Court in Civil Appeal No. 3860 of 2013 (Arising out of S.L.P. (Civil) No.24825 of 2010) titled as Rajesh & Others versus Rajbir Singh**, has held that :*

"There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses, in the absence of evidence to the contrary for higher expenses, to award atleast an amount of Rs.25,000/-."

*26. Thus in view of law laid down by the Hon'ble apex Court, the claimants are also awarded a sum of **Rs.25,000/-** on account of transportation, funeral and last rites of the deceased Taraqqi Lal Kundra.*

*27. Further, the claimants are awarded a sum of Rs.50,000/- each for the loss of love and affection of deceased Taraqqi Lal as per the principles laid down by the Hon'ble apex Court in case of **M. Mansoor and another versus United India Insurance Company Ltd. 2013 (12) SCALE 324.***

28. In this way, claimants are awarded a compensation mentioned below :-

MOHD AYUB
2026.04.17 09:35
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Sr.No.	***Head under which amount awarded***		***Amount***
1.	*Loss of dependency*	*:*	*Rs.7,28,880.00*
2.	*Medical expenses*	*:*	*Rs.11,51,548.00*
2.	*Compensation on account of consortium*	*:*	*Rs.1,00,000.00*
3.	*Expenses incurred on Transportation, funeral and last rites*	*:*	*Rs.25,000.00*
4.	*Loss of Love & Affection*	*:*	*Rs.2,00,000.00*
	TOTAL	***:***	***Rs.22,05,428.00***

29. Thus, claimants are held entitled to a total compensation of ***Rs.22,05,428/- (Rs. Twenty Two Lacs Five Thousand Four Hundred Twenty Eight only)****.*

30. So far as the liability of the respondents is concerned, as observed under issue No. 1 the accident in question was caused due to sole negligence of respondent No. 1 while he was driving Mahindra Pick-up in rash and negligent manner. Admittedly, as per documentary evidence in the shape of photo copy of registration certificate Ex.R-2 of said vehicle, the said vehicle is owned by respondent No.1 Rajan Kumar himself and same was insured with the respondent No.2 as per Insurance Policy Ex.R-3. Thus, the respondents No. 1 & 2 are jointly and severally liable to pay the compensation for the death of Davinder Singh Saini. Thus, this issue is accordingly decided in favour of the claimants.

ISSUE NO.3

31. The respondent No.1 has placed and proved on record the copy of his driving licence Ex.R-1, as per which same was issued on 25.07.1997 and valid upto 24.07.2017 for MCWG/LMV only. Learned counsel for respondent No. 2 argued that the

MOHD AYUB
2026.04.17 09:35
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accident in question had occurred on 25.10.2013 and the driving licence Ex.R-1, hold by the respondent No.1 was not valid and effective for driving Mahindra Pick-up No. CH-01-TA-4971, hence, the liability to pay the compensation amount cannot be fastened upon the respondent No.2 Insurance Company. However, this contention of learned counsel for respondent No.2 is not tenable in view of law laid down in judgment ***Kulwant Singh & others vs. Oriental Insurance Company Ltd., 2014 Legal Eagles (SC) 804****. In the said judgment, it has been held by Hon'ble apex Court that "in the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the Insurer is not liable to pay compensation, because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."*

32. In the instant case, admittedly, the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was a Mahindra Pick- p. RW-2 Sunil Kumar, official of State Transport Authority, has proved the screen report of the vehicle in question as Ex.R-5 and during his cross examination, he has admitted that the commercial vehicle is not mentioned in the

MOHD AYUB
2026.04.17 09:35
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> *screen report Ex.R-5, meaning thereby, the vehicle in question was not being used for commercial purposes. Merely because, the driver did not get any endorsement in the driving licence to drive Mahindra Pick-up, the insurance company cannot be absolved from making the amount of compensation. Hence, the insurance company respondent No.2 is liable to pay the compensation so awarded to the dependents of the victim of the fatal accident. Accordingly, this issue is decided in favour of the claimants."*

13. Upon perusal of the award it is evident that the finding recorded by the Ld. Tribunal that respondent No. 5, being the driver-cum-owner, was in possession of a valid and effective driving licence to operate the offending vehicle, notwithstanding the absence of a specific endorsement to drive a transport vehicle, is legally sound and well-founded.

14. It is now a settled position of law that a holder of a valid licence to drive a "Light Motor Vehicle" (LMV) is duly authorised to drive a transport vehicle falling within the said class. This proposition stands conclusively determined by the larger Bench of the Hon'ble Supreme Court in ***Mukund Dewangan v. Oriental Insurance Co. Ltd., 2017 INSC 576*** wherein it was unequivocally held that no separate endorsement is required for driving a transport vehicle, provided it falls within the category of LMV.

15. The aforesaid legal position has been subsequently reaffirmed and put beyond any pale of doubt by the Constitution Bench of the Hon'ble Supreme Court in ***M/s Bajaj Allianz General Insurance Co. Ltd. v. Rambha Devi, 2024 INSC 840***. It has been categorically held therein that a driver holding a valid LMV licence is competent to drive a transport vehicle of that

MOHD AYUB
2026.04.17 09:35
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class, so long as the gross unladen weight of vehicle does not exceed 7500 kilograms, and no separate endorsement is warranted in such cases.

16. In the case at hand, the driving licence (Ex. R1) on record clearly establishes that the respondent/driver-cum-owner was duly authorised to drive a Light Motor Vehicle. Significantly, there is no evidence on record to suggest that the offending vehicle exceeded the weight threshold of 7500 kilograms so as to take it outside the purview of an LMV.

17. In view of the above, it cannot be said that there was any breach of the terms and conditions of the insurance policy on the part of the insured. Consequently, the conclusion arrived at by the Ld. Tribunal fastening liability upon the appellant–insurance company to satisfy the award is in consonance with the settled legal position and calls for no interference. The said finding is, therefore, affirmed.

18. So far as the contention advanced by the learned counsel for the appellant–insurance company regarding the award of compensation the same is examined as under.

19. A perusal of award reveals that Ld. Tribunal has awarded a sum of ₹1,00,000/- to the widow under the head of loss of consortium and further granted ₹50,000/- each to all four claimants under the head of "loss of love and affection." However, this approach is not in consonance with the settled legal position.

20. The Hon'ble Supreme Court in ***V. Pathmavathi and Others v. Bharti AXA General Insurance Co. Ltd., 2026 INSC 131*** has recently reiterated and clarified the law governing compensation under conventional heads. It has been categorically held that "loss of love and affection" does

MOHD AYUB
2026.04.17 09:35
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not constitute a separate or independent head of compensation. Rather, it stands subsumed within the broader ambit of consortium, which encompasses spousal, parental, and filial consortium. Consequently, the grant of separate compensation under the head of "loss of love and affection" is legally impermissible. The relevant portion of the same is reproduced as under:-

> *"22. In **Rajesh** (supra), this Court recognised "loss of love and affection" as a distinct head of compensation, reflecting the non-pecuniary deprivation suffered by family members upon the untimely death of a loved one. However, the Constitution Bench in **Pranay Sethi** (supra) expressly disapproved this approach holding that **Rajesh** (supra) was rendered per incuriam and that compensation should be confined to three conventional heads, i.e., loss of estate, loss of consortium and funeral expenses in order to preserve consistency and certainty in awards. Observing disagreement, **Pranay Sethi** (supra) held thus:*
>
>> *52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh [**Rajesh v. Rajbir Singh, (2013) 9 SCC 54**]. 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 [**Rajesh v. Rajbir Singh, (2013) 9 SCC 54**] refers to Santosh Devi [**Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421**], 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*

MOHD AYUB
2026.04.17 09:35
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> *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.*

23. There can be no quarrel with the binding nature of ***Pranay Sethi*** *(supra). Judicial discipline demands that a Constitution Bench decision must prevail over a judgment of a Bench of lesser strength. Accordingly, this* **Court is constrained to follow** *the law declared therein.*

24. That said, it is difficult to ignore the conceptual tension that underlies this exclusion. The head of "future prospects" itself is a creation of judicial interpretation, evolved to respond to socioeconomic realities and the legitimate expectations of de pendents. If the law is capable of recognising anticipated economic progression as a valid loss, it is not too clear why emotional deprivation manifested in loss of love and affection must be viewed as an impermissible

MOHD AYUB
2026.04.17 09:35
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head, especially when Chapter XII of the Act is a beneficial piece of legislation meant to help people in distress arising out of road accidents.

25. The concern expressed in ***Pranay Sethi*** *(supra) was primarily one of consistency and avoidance of unguided discretion. However, consistency, though desirable, cannot be elevated to a point where it eclipses the core objective of awarding "just compensation". The law must remain responsive to lived human realities, especially in cases involving the sudden rupture of familial bonds.*

26. It is in this context that the subsequent decision of this Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130*** *assumes significance. This Court expanded the ambit of "consortium" to include parental and filial consortium, implicitly acknowledging the emotional and relational loss suffered by children and parents alike. This doctrinal expansion suggests that the distinction between "consortium" and "loss of love and affection" may be one of form rather than substance. The coordinate Bench ruled as follows:*

> *21. A Constitution Bench of this Court in Pranay Sethi [**National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**] 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: [**Rajesh v. Rajbir Singh, (2013) 9 SCC 54**].*
>
> *21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which*

MOHD AYUB
2026.04.17 09:35
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allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]

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.

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
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> *A few High Courts have awarded compensation on this count [Rajasthan High Court in* ***Jagmala Ram v. Sohi Ram, 2017 SCC Online Raj 3848****; Uttarakhand High Court in* ***Rita Rana v. Pradeep Kumar, 2013 SCC Online Utt 2435****; Karnataka High Court in* ***Lakshman v. Susheela Chand Choudhary, 1996 SCC Online Kar 74****]. 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. 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.*

27. Interestingly, we find from paragraph 25 of ***Magma General Insurance*** *(supra) that apart from Rs. 80,000/- awarded on account of filial consortium, this Court awarded Rs. 1,00,000/- on account of loss and affection in addition.*

28. More recently, in the case of ***United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SC 780*** *a three-Judge Bench of this Court harmonised the principles laid down in* ***Pranay Sethi*** *(supra) and* ***Magma General Insurance*** *(supra) to ensure uniformity in the award of compensation under conventional heads. Reaffirming the binding nature of* ***Pranay Sethi*** *(supra), this Court held that compensation in death cases is confined to three conventional heads, i.e., loss of estate, loss of consortium and funeral expenses. At the same time, drawing upon* ***Magma General Insurance*** *(supra), this Court clarified that consortium is a compendious concept encompassing spousal, parental and filial consortium. It was further held that loss of love and affection is subsumed within loss of consortium and cannot be awarded as a separate head. This Court held as follows:*

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
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*34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi [**National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**], has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General [**Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130**], this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.*

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

*29. Consistent with the aforesaid position but notwithstanding the reservations noted earlier, this Court is bound by the law declared by the Constitution Bench in **Pranay Sethi** (supra), which does not countenance "loss of love and affection" as a distinct head of compensation. As subsequently clarified in **Satinder Kaur** (supra), referring to both **Pranay Sethi** (supra) and **Magma General Insurance** (supra), the non-pecuniary loss arising from deprivation of love and affection is comprehended within the broader head of "consortium". Consequently, no separate award under the head of loss of love and affection is warranted."*

21. In view of the aforesaid authoritative pronouncement, the award of compensation by the Ld. Tribunal under the distinct head of "loss of love

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
authenticity of this order/judgment.

and affection" cannot be sustained in the eyes of law. The amounts awarded under the said head are, therefore, liable to be deducted from the total compensation.

22. Further, a perusal of the impugned award reveals that no amount has been granted under the conventional head of "loss of estate." This omission is contrary to the settled principles laid down by the Hon'ble Supreme Court with respect to just compensation.

23. So far as the contention raised by learned counsel for the respondent–claimants, to the effect that the deceased remained hospitalized for a considerable period having met with the accident on 25.10.2013 and ultimately succumbing to the injuries on 26.01.2014 is concerned. It is evident that the deceased endured prolonged pain, trauma, and suffering during the interregnum. The learned Tribunal, however, failed to award any compensation under the head of pain and suffering. This Court finds merit in the said contention.

24. The issue is no longer res integra. Reliance can be placed upon the judgment of the Hon'ble Supreme Court in **Divisional Manager, Oriental Insurance Co. Ltd. vs. Maran Chandra Das and others, 2023 ACJ 864,** wherein it has been held that in cases where the deceased remains under prolonged medical treatment and undergoes sustained suffering prior to death, compensation under the head of pain and suffering is justified. The Hon'ble Apex Court, in the peculiar facts of that case, upheld the grant of compensation by observing that the prolonged period of hospitalization, multiple surgical interventions, and the agony suffered by both the victim and his family warranted such compensation.

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
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25. Applying the aforesaid principle to the facts of the present case, it is apparent that the deceased remained admitted in hospital for a substantial duration, i.e., from the date of accident on 25.10.2013 till his demise on 26.01.2014. The prolonged medical treatment and the inevitable physical and mental agony suffered during this period cannot be overlooked. The failure of the learned Tribunal to award any compensation under this head, therefore, amounts to a material omission.

26. Accordingly, in view of the law laid down by the Hon'ble Supreme Court and the peculiar facts of the present case, the claimants/respondents are held entitled to compensation quantified at ₹5,00,000/- under the head of pain and suffering, as the deceased remained under continuous medical treatment and endured prolonged agony during the said period.

27. In view of the aforesaid discussion, the compensation is liable to be recalculated as under:

Sr. No.	***Heads***	***Compensation Awarded***
1	Monthly Income	Rs.16,197/-
2	Deduction towards personal expenditure 1/4	Rs.4,049/- (16,197 X 1/4)
3	Total Income	Rs.12,148/- (16,197 – 4,049)
4	Multiplier	5
5	Annual Dependency	Rs.7,28,880/- (12,148 X 12 X 5)
6	Loss of Estate	Rs.15,000/-
7	Funeral Expenses	Rs.15,000/-
8	Loss of Consortium : 40,000X4	Rs.1,60,000/-
9	Pain and Suffering	Rs.5,00,000/-
10	Medical Treatment	Rs.11,51,548/-

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
authenticity of this order/judgment.

11	**Total Compensation**	**Rs.25,70,428/-**
12	**Amount Awarded by the Tribunal**	**Rs.22,05,428/-**
13	**Enhanced amount**	**Rs.3,65,000/-** **(Rs.25,70,428 - Rs.22,05,428)**

28. The aforesaid re-computation gives rise to a further issue, i.e. whether the award passed by the Tribunal can be enhanced in an appeal preferred by the insurance company, when the claimants have not filed any cross-objection or cross-appeal. It is pertinent to mention that this Court in ***FAO-5934-2015 titled as 'National Insurance Co. Ltd. Vs. Laltesh and others', decided on 31.01.2026*** has already dealt with the similar issue and held that the compensation can be enhanced in appeal filed by the Insurance Company even in the absence of cross-objections and cross-appeals filed by the claimants. The relevant extract of the same is reproduced as under:-

> *"28. This question came up for consideration before three-Judge Bench of the* ***Hon'ble Supreme Court in Surekha & Ors. v. Santosh & Ors., (2021) 16 SCC 467.*** *The relevant portion of the said order reads as follows:*
>
> > *1. Leave granted. This appeal takes exception to the judgment and order dated 4-1-2019 [Shriram General Insurance Co. Ltd. v. Surekha, 2019 SCC OnLine Bom 12] passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016, whereby* ***the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs 49,85,376 (Rupees forty-nine lakhs eighty-five thousand three hundred seventy-six only), however,***

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
authenticity of this order/judgment.

> ***declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.***
>
> *2.* ***By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hypertechnical approach and ensure that just compensation is awarded to the affected person or the claimants.***
>
> ***3. As a result, we modify the order passed by the High Court*** *to the effect that the compensation amount payable to the appellants is determined at Rs 49,85,376 (Rupees forty-nine lakhs eighty-five thousand three hundred seventy-six only), with interest thereon as awarded by the High Court.*
>
> *4. The appeal is allowed in the above terms. Pending applications, if any, stand disposed of."*

29. In view of the above, settled principles of law as held by Apex Court this Court can award just and reasonable compensation by enhancing the amount of compensation, even in the absence of a cross-objection or cross-appeal by the claimants.

30. This conclusion is further strengthened by the settled principle that a Court adjudicating claims under the Motor Vehicles Act is duty-bound to award just and fair compensation to victims of road accidents, unrestrained by strict rules of pleadings and evidence, as laid down by the ***Hon'ble Supreme Court***

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
authenticity of this order/judgment.

in Nagappa v. Gurudayal Singh & Ors (2003)2SCC 274.

31. Furthermore, this Court in FAO-5834-2016 titled as ***The Oriental Insurance Company Limited Vs. Smt. Mathri Devi and others*** *decided on 12.09.2025 has already dealt with similar issue and held as under:-*

> "*This Court in* ***FAO-195-2006****, titled* ***Mamata and others v. Happy and others****, decided on 29.05.2024, while examining the scope of the appellate jurisdiction under Section 107 CPC read with Order XLI Rule 33 CPC, has held as follows:-*

"11. ***RELEVANT PROVISONS UNDER THE CODE OF CIVIL PROCEDURE, 1908***

Section 107 :- Powers of Appellate Court.— (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Order XLI Rule 33 of the Code of Civil Procedure, 1908:-

33. Power of Court of Appeal*.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case*

MOHD AYUB
2026.04.17 09:35
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may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

[Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

12 to 18 XXX XXX XXX

19. As per Section 107 of Code of Civil Procedure, 1908 which refers to the powers of the Appellate Court, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein, and the Motor Vehicle Act 1988 since being a beneficial legislation, the evidence led by the parties cannot be ignored by the Appellate Authority.

20 to 25 XXX XXX XXX

CONCLUSION

26. The Appellate Courts for the purpose of doing complete justice between the parties and completely adjudicating upon all the disputes, after appreciating the whole evidence on record, have power under Section 107 read with Order XLI Rule 33 of the Code of Civil Procedure, 1908 to pass any decree and make any order which ought to have been passed or made and to pass or make such

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
authenticity of this order/judgment.

further decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

27. Motor vehicle statute is a beneficial legislation. Generally the victims/claimants/legal-representatives are not aware of their right to compensation and it is Advocates who decide under which provision of the statute the claim petition is to be filed. Before deciding the claim petitions, after appreciating the evidence on record, it is the bounden duty of the Court to apprise the parties of their legal rights as to under which provision they can get the maximum of benefit/compensation. The Judges should apply their judicial mind after appreciating the evidence on record, gravity of offence, gravity of loss, conduct of parties and over all facts and circumstances of each case and after that decide the same. The Court should not go into the technicalities that under which provision of statute case is to be filed, specially in the motor accident cases. If at any stage after appreciating the evidence, since it is original jurisdiction of the Court and the case is at initial stage, normally a person of ordinary prudence can calculate the loss of near and dear one's/relationship, the Judge feels that case of the claimant falls under a particular section he should apprise the parties regarding the same. The Courts should not apply straight jacket formula in every case and are presumed actually to do the justice by applying their judicial mind to the

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
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facts and circumstances of each and every case. The beneficial intent of the legislation ought to be borne in mind and procedural and technical formalities cannot be invoked to defeat the purpose of the legislation.

28. The Courts have to be very cautious and careful while accepting the prayer of the claimants/appellants to convert the claim petition filed under Section 163-A to Section 166 of the Motor Vehicles Act, 1988. Under Section 107 read with Order XLI Rule 33 of CPC the general rule is that an appeal is persistence of a suit and, therefore, an Appellate Court can do, while the appeal is pending, what the original Court could have done while the suit was pending. Thus, as per Section 107 Order XLI Rule 33 of CPC, an Appellate Court is empowered to re-appreciate the evidence. While hearing the appeal it is very important for a judge to apply his judicial mind. The Appellate Authority can re-appreciate the evidence before it. The grant of just and fair compensation is a statutory responsibility of the Court.

29. Over all conclusion of the above is that the Appellate Court has power to convert the petition under Section 163-A to Section 166 of the Motor Vehicles Act, 1988 to give justice to the claimants."

13. It is manifest from the above discussion that although respondents/claimants No.1 and 2 have not preferred any appeal seeking enhancement of compensation, and the present appeal has been instituted solely by the appellant-Insurance Company challenging the quantum of compensation, the settled principle of law is that an appeal is a continuation of the original

MOHD AYUB
2026.04.17 09:35
I attest to the accuracy and
authenticity of this order/judgment.

> *proceedings. Consequently, the appellate court is vested with ample jurisdiction to mould relief and to award just and proper compensation, even in the absence of a cross-appeal by the claimants.*
>
> *14. In exercise of such appellate powers, this Court cannot overlook the beneficial nature of the Motor Vehicles Act, 1988, which has been consistently interpreted as a piece of social welfare legislation intended to provide just compensation to victims of motor accidents and their dependents. The statutory duty of the Court is to ensure that the claimants are not deprived of legitimate entitlement merely due to procedural technicalities such as the absence of a cross-appeal.*
>
> *15. Accordingly, in the interest of justice, and to secure the ends of a fair adjudication, this Court deems it appropriate to award a further sum of* ***₹18,150/-*** *under the head "Loss of Estate" in favour of respondents/claimants No.1 and 2.*
>
> *16. It is well settled by the Hon'ble Supreme Court in* ***K. Ramya v. National Insurance Co. Ltd., 2022 (4) RCR (Civil) 435*** *that the Motor Accident Claims Tribunals are vested with latitude to determine "just compensation" and are not shackled by rigid arithmetical rules or strict standards of evidence as in civil suits for damages. Interference by the Appellate Court is warranted only when the award of compensation is manifestly excessive, arbitrary, or contrary to settled principles."*

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 respondent Nos.1 to 4/

MOHD AYUB
2026.04.17 09:35
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claimants is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

30. It is further revealed from the case file that vide order dated 07.08.2015, Co-ordinate Bench of this Court has stayed payment beyond Rs.20,00,000/-.

31. Consequently, respondent Nos.1 to 4/claimants are held entitled to a total compensation of ₹25,70,428/- along with interest @ 9% per annum from the date of filing of the claim petition till realization.

32. Accordingly, the appellant–Insurance Company is directed to deposit the amount of compensation as awarded by this Court after adjusting the amount, if any, already paid to the respondent Nos.1 to 4/claimants, before the Tribunal within a period of two months from the date of receipt of certified copy of this judgment. Upon such deposit, the learned Tribunal shall release the amount to the respondent Nos. 1 to 4/claimants as per ratio settled in award dated 25.03.2015. The claimants/ respondent Nos. 1 to 4 are directed to furnish their bank account details to the Tribunal.

33. Consequently, the present appeal, being devoid of merits, stands **dismissed**.

34. Pending application(s), if any, also stand disposed of.

10.04.2026 **(SUDEEPTI SHARMA)**
Sahil/Ayub **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

MOHD AYUB
2026.04.17 09:35
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