IN THE HIGH COURT OF JUDICATURE AT PATNA

New India Assurance Co. Ltd.

vs.

Dropadi Devi and others

MISCELLANEOUS APPEAL NO. 300 OF 2015

10 January 2023

(Hon'ble Mr. Justice Rajeev Ranjan Prasad)

Issue for Consideration

Whether the Motor Vehicle Accident Claim Tribunal awarded just compensation to the claimants?

Headnotes

Motor Vehicle Act – section 168 – Calculation of Compensation – Addition of Future Prospects - to follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust - 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 - established income means the income minus the tax component. **(Para- 17, 19)**

Motor Vehicle Act – section 168 – Calculation of Compensation – Deduction of Personal Expenses - 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 dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six - in regard to bachelors, normally, 50% is deducted as personal and living expenses – however, where family of the bachelor is large and dependant 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. **(Para – 22)**

Motor Vehicle Act – section 168 – Calculation of Compensation – Loss of Consortium and Loss of Love and Affection - three recognized

conventional heads under which compensation can be awarded are Loss of estate, loss of consortium and funeral expenses - consortium includes spousal consortium, parental consortium, as well as filial consortium - Loss of love and affection is comprehended in loss of consortium. **(Para – 25)**

Case Law Cited

Sarla Verma (Smt) and others vs. Delhi Transport Corporation and Another (2009)6 SCC 121; ***National Insurance Company Limited vs. Pranay Sethi and others*** (2017)16 SCC 680; ***Reshma Kumari v. Madan Mohan*** (2013) 9 SCC 65; ***Magma General Insurance Co. Ltd. v. Nanu Ram*** (2018) 18 SCC 130; ***United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Others***, (2021) 11 SCC 780; ***Ranjana Prakash and Others vs. Divisional Manager and Another***, (2011)14 SCC 639

……**Relied Upon.**

List of Acts

Motor Vehicle Act; Code of Civil Procedure

List of Keywords

Motor Vehicle Claim Case; Calculation of Compensation; Just Compensation; Addition of Future Prospects; Deduction of Personal Expenses; Loss of Consortium; Loss of Love and Affection; Spousal Consortium ; Parental Consortium; Filial Consortium; Loss of Estate

Case Arising From

judgment and award dated 12.06.2015/ 12.06.2015 passed by the Motor Vehicles Accident Claim Tribunal cum Additional District Judge Ist, Munger, in M.V. Claim case No. 15 of 2010.

Appearances for Parties

For the Appellant/s: Mr. Raj Kumar Singh Vikram, Advocate

Headnotes Prepared by Reporter : Ghanshyam, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.300 of 2015

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B.m. the New India Assurance Co. Ltd. Chandralok Complex, Ghantaghar, Bhagalpur, through the Chief Regional Manager , Regional Office New 6th Floor, B.S.F.C. Building Fraser Road, Patna-1

... ... Appellant

Versus

1. Dropadi Devi, wife of Girish kumar Sharma @ Girish sharma
2. Girish Kumar Sharma @ Girish Sharma Son of late Saryug Prasad.
   Both are resident of Mohalla Purab Saral Munger,P.s Kotwali, Dist Munger.

… ..Petitioners/Respondent 1st Set

3. M/s Lintex Industries ltd. 25-A, Shakeshpari, Sarani, Kolkata Dist- Kolkata, Pincode-700001. (W.B.) (Owner of The truck Bearing Reg No. WB-03B-7394)
4. Suresh Mandal Son of Kishun Mandal Resident of Bara Bazar, G.T. Road, Chandan Nagar, P.S. & Dist- Hugli (W.B.) Presently residing at Mohalla-Niyamatpur Road, Back of Cineman Hall, P.O. + P.S. Niyamatpur, Dist-Bardwan (W.B.)
   (Driver of truck bearing no. WB-03B/7394)

... ... O.P. No.1 & 2/Respondents 2nd Set

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Appearance :
For the Appellant/s : Mr.Raj Kumar Singh Vikram, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

Date : 10-01-2023

Heard Mr. Raj Kumar Singh Vikram, learned counsel for the appellant.

2. No one appears for the claimants- respondents 1st Set despite the fact that they have entered appearance and the name of the learned advocates of respondent nos. 1 and 2 are printed on the cause list.

3. The appellant in this case is an Insurance Company. Challenge in this appeal to the judgment and award dated 12.06.2015/ 12.06.2015 passed by the Motor Vehicles Accident

Claim Tribunal cum Additional District Judge Ist, Munger, (hereinafter referred to as "the learned Tribunal") in M.V. Claim case No. 15 of 2010 (Computer case No. 653 of 2013) whereby and whereunder the claim petition of the respondents 1st set has been allowed and the appellant has been directed to pay Rs. 7,89,500/- along with 9% interest from 21.02.2012 till the date of the payment through a cheque or bank draft within thirty (30) days.

Brief facts of the case

4. Claimants in this case happen to be the parents of the deceased, Ritu Raj Sharma. The case of the claimants is that on 31.05.2009 the said Ritu Raj Sharma was returning Hasdiha on a motorcycle bearing No. BK-10H/0769 with one Sanjay Sharma. The motorcycle was dashed by a truck bearing no. WB-03B/7394 driven by the respondent no. 4 allegedly rashly and negligently. The truck driver dashed the motorcycle from the back side due to which both the riders were thrown and sustained grievous injuries and thereafter Ritu Raj Sharma died on the way to Bhagalpur. On the basis of the fardbeyan of Sanjay Sharma Poraiya Hat P.S. Case No. 81 of 2009 was instituted.

5. The age of the deceased was about 25 years and it has come in evidence that the deceased was employed in a private company namely CISC, Kolkata. He was getting a monthly salary

of Rs. 7,500/-. The deceased had passed intermediate class and at the time of his death he was unmarried.

6. In order to prove their case the claimants-respondent 1st set examined themselves as AW-1 and AW-2 respectively. They also produced one witness namely Rahul Dev Sharma (AW-3). In support of their claim they produced the following documentary evidences:-

Exhibit '1'- Photocopy of the post mortem report of the deceased.

Exhibit '2' – Certified copy of the First Information Report of Poraiya Hat Godda P.S. Case No. 13 of 2010.

Exhibit '3'- Certified copy of chargesheet no. 142 of 2019.

Exhibit '4' – Photocopy of the owner book of the vehicle.

Exhibit '5' – Photocopy of the license of the driver.

Exhibit '6' – Photocopy of the insurance policy obtained by the truck owner in respect of WB-03B/7394 from the appellant.

Exhibit '7'- Photocopy of the voter identity card.

Exhibit '8'- Photocopy of the salary slip.

Exhibit '9'- The certificate issued by the Anchaladhikari, Sadar Munger.

7. The case of the claimants was contested by the Insurance Company by filing a written statement. The Insurance Company contented inter-alia that they are not liable to pay compensation as the driver of the vehicle did not possess any valid license to drive the vehicle as a paid driver. It was further contented that the owner of the vehicle had no valid route permit to ply the vehicle in the area where the alleged accident took place. And at the time of accident, the driver was under intoxication, therefore, for all these reasons the Insurance Company is not liable to pay.

8. The Insurance Company, however, did not bring any oral evidence. On behalf of the Insurance Company, Exhibit 'A' was provided which is said to be a report dated 12.08.2011 and 29.07.2011. The photocopy of the driving license of the driver which was produced by the claimants was exhibited as Exhibit '3' at the instance of the Insurance Company (O.P.).

Issues framed by the Tribunal

9. The Tribunal framed as many as five issues which are being reproduced hereunder :-

> '' प्रस्तुतवाद के निस्तारण हेतु निम्नलिखित वाद विन्दुओं का निर्धारण किया गया है :-
> 1. क्या दावाकर्त्तागण द्वारा यथारचित दावावाद संधार्य है?
> 2. क्या दावाकर्त्तागण को वाद संस्थित करने हेतु कोई वाद हेतु कोई वाद हेतुक प्राप्त है?
> 3. क्या मृतक रितुराज शर्मा का मृत्यु ट्रक संख्या डब्लू0बी0–03बी–7394 के चालक के तेजी व लापरवाही तथा असावधानी पूर्वक गाड़ी चलाने के कारण हुई थी?

4. क्या ट्रक संख्या डब्लू0बी0–03बी–7394 बीमा कम्पनी द्वारा घटना के समय बीमित था?

5. क्या दावाकर्त्तागण क्षतिपूर्ति की राशि पाने का अधिकारी है?"

Findings

10. The learned Tribunal examined the evidences available on the record. The evidence of AWs-1, 2 and 3 proved that due to rash and negligent driving of the truck driver, the motorcycle was dashed as a result whereof, the son of the claimants sustained injuries and died.

11. The Tribunal, therefore, decided issue no. 1 and 2 in favour of the claimants. As regards, Issue No. 3 and 4, the learned Tribunal held that at the time of accident the truck was insured under a policy issued by the appellant. This fact has been admitted on behalf of the appellant. The learned Tribunal further relied upon Exhibit '6' to hold and declare that the policy was valid at the time of accident, hence, the claimants who are mother and father of the deceased are entitled for compensation whereas the Insurance Company is liable to pay the same.

12. Referring to the salary slip of the deceased(Exhibit '8'), the learned Tribunal held that the deceased was employed in a private company at Kolkata and at the time of his death, he was getting a salary of Rs. 7,500/- per month. Exhibit '8' was not disputed, however, it was contended on behalf of the Insurance Company that from the salary slip of the deceased it would appear

that his salary was fixed. The learned Tribunal held that the deceased was an educated person, he was engaged in skilled work in the private company and his salary was Rs. 7,500/- at the time of his death, therefore, in the light of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) and others vs. Delhi Transport Corporation and Another** reported in **(2009)6 SCC 121,** the compensation would be calculated taking the said amount as his income but as regards application of the multiplicant/multiplier the learned Tribunal proceeded to consider the age of the father of the deceased and on finding that his age was 46 years at the time of death of his son, applied multiplier of 13. The Tribunal calculated the total claim payable to the claimants as under:-

"सारणी के अनुसारः–

मृतक का कुल आय	7500 / रूपये प्रतिमाह,
मृतक का कुल आमदनी 7500 / गुणक 12	90000 / रूपये प्रतिवर्ष,
1 / 3भाग मृतक अपने उपर खर्च करता है–	30000 / रूपये,
वास्तविक आमदनी–	60000 / रूपये,
सारणी के अनुसार–60000 गुणक 13	780000 / रूपये,
दाह संस्कार के लिए–	2000 / रूपये,
परिवार से बंचित रहने के लिए–	2500 / रूपये,
स्टेट लोस के लिए–	5000 / रूपये,
क्षतिपूर्ति की कुल राशि–	789500 / रूपये,

140 मोटर वाहन अधिनियम के तहत अंतरिम
क्षतिपूर्ति राशि नेशनल इन्श्योरेन्स कम्पनी लि0
एवं ओरिएन्अल इन्श्योरेन्स कम्पनी लि0 द्वारा
दावाकर्त्ता को प्राप्त कराया गया रकम– (–) 50,000 / रूपये

कुल देय दावा रकम– **739500 / रूपये,**
(सात लाख उन्तालिस हजार पांच सौ)"

Submissions on behalf of the Insurance Company

13. This matter was heard yesterday and even as the case is listed under the heading " For Judgment" today, this Court has given further hearing to Mr. Raj Kumar Singh Vikram, learned counsel for the appellant. From the order dated 09.01.2023 recorded by this Court, it would appear that as regards the application of the multiplier of 13 applied by the Tribunal, learned counsel for the appellant has submitted that the correct approach would have been to take into consideration the age of the deceased who was about 25 years old at the time of his accident and death and in his case multiplier of 18 would be applicable.

14. Regarding the deduction of personal expenses from the total income of the deceased, learned counsel contended that the Tribunal has deducted only one-third of the salary amount of the deceased whereas considering that the deceased was a bachelor/ unmarried, as per the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) the Tribunal was required to calculate the total claim amount after deducting 50% of the salary amount as personal expenses of the deceased.

15. Learned counsel for the Insurance Company has further contended that the Tribunal has recorded in the impugned order that the Insurance Company will have a right to recovery but the learned Tribunal should have allowed right of recovery to the Insurance Company in the operative part of the judgment.

16. In course of hearing, this Court called upon learned counsel for the appellant to take a stand as to why in terms of the judgment of the Hon'ble Constitution Bench in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in **(2017)16 SCC 680**, this Court while considering the case should not modify the impugned order considering the future prospects and other admissible claims which have not been considered by the learned Tribunal. In response, learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **Ranjana Prakash and Others vs. Divisional Manager and Another** reported in **(2011)14 SCC 639** to submit that since the claimants have not come in appeal against the impugned order/ award, in case, this Court comes to a conclusion that the claimants should have been entitled for more than the amount allowed by the learned Tribunal, this Court may dismiss the appeal but no enhancement may be allowed.

Consideration

17. Having heard learned counsel for the appellant and upon perusal of the records, this Court finds that in this case the age of the deceased was about 25 years and he was employed at the time of accident. The deceased was getting Rs. 7500/- per month as his salary which has been duly proved vide salary slip (Exhibit '8'). The Tribunal has, though, rightly taken into consideration the salary amount as the basis for calculation of the total income of the deceased but has apparently missed to add future prospect to the said amount. In the case of **Pranay Sethi** (supra) the Constitution Bench of the Hon'ble Supreme Court has in paragraph '57' held inter alia as under:

> *"…… … Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. .. …."*

Further the Hon'ble Apex Court settled the issue saying as under:

> *"... ...Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.... ..."*

18. Further clarifying this issue with regard to the deceased who will be more than 50 years and in whose case **Sarla Verma** (supra) which was approved in **Reshma Kumari v. Madan Mohan** reported in **(2013) 9 SCC 65**, thought it appropriate not to add any amount, the Hon'ble Apex Court in **Pranay Sethi** (supra) went on to conclude in the following terms:-

> *".. ....To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.. ..."*

19. The view expressed by the Hon'ble Supreme Court on this issue has been summarized in para 59.4 which reads as under:-

> *"**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.*

20. In the light of the law laid down by the Hon'ble Supreme Court in **Pranay Sethi** (supra), this Court has no iota of doubt that the Tribunal was required to add 40% of the established income of the deceased on account of future prospect.

21. As regards the contention of learned counsel for the appellant that the Tribunal should have deducted 50% of the salary amount as personal income of the deceased, this Court does not find itself in agreement with such submission.

22. As regards deduction of personal expenses, paragraph 30, 31 and 32 of **Sarla Verma** (supra) has been approved in Reshma Kumari's Case. In paragraph 41 of Pranay Sethi's Judgment paragraph 43.6 of Reshma Kumari's Judgment has been approved. This Court would, therefore, extract paragraph 30 to 32 of judgment in the case of Sarla Verma (supra) 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 standardized deductions. Having 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 dependant*

family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

***31**. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.*

***32.** Thus even if the deceased is survived by parents and siblings, only 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 family of the bachelor is large and dependant 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."*

Paragraph 43.6 of Reshma Kumari (supra) reads as under:-

***"43.6.** Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above."*

23. Paragraph 39 and 40 in Pranay Sethi's case would make it clear that insofar as the deduction of personal and living expenses are concerned, the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in **Sarla Verma**(supra) subject to the observations made in para 41. Paragraph 41 of the Reshma judgment clearly states that the percentage of deductions on account of the personal and living expenses may vary with reference to the number of dependant members in the family. In the present case, this Court finds that the evidence of the claimants who are parents that they were dependant upon the deceased's income has remained uncontroverted, therefore this Court would have on hesitation in holding that the Tribunal has not committed any error by allowing a deduction of only one third (1/3rd) of the income of the deceased. This submission of learned counsel for the appellant is, therefore, bound to fail.

24. This Court has further noticed from the impugned order that the learned Tribunal has allowed only a sum of Rs. 2000/- for funeral expenses and a sum of Rs. 2500/- as filial consortium and Rs. 5000/- as estate loss whereas as per the judgment of the Hon'ble Apex Court the claimants were entitled for award of claim on account of loss of love and affection at the rate of 50,000/- each, funeral expenses of Rs. 25,000/-, loss of estate Rs. 15,000/- and loss

of filial consortium at the rate of 40,000/- each. In the case of **Magma General Insurance Co. Ltd. v. Nanu Ram** reported in **(2018) 18 SCC 130** the Hon'ble Supreme Court has held in the case of a Bachelor aged about 24 years who was living with his old age father and unmarried sister that they would be entitled towards loss of consortium, loss of estate and funeral expenses as per Pranay Sethi. The Hon'ble Apex Court, however maintained the order of the High Court awarding Rs. 1,00,000/- for loss of love and affection. The relevant paragraphs from the judgment of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd.** (supra) are quoted hereunder for a ready reference:

> **"19.** The Insurance Company has contended that the High Court had wrongly awarded Rs. 1,00,000 towards loss of love and affection, and Rs. 25,000 towards funeral expenses. The judgment of this Court in Pranay Sethi has set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant extract of the judgment is reproduced herein below:
>
> > "52. … Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000, Rs. 40,000 and Rs. 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be @ 10% in a span of three years."
> >
> > (emphasis supplied)
>
> As per the aforesaid judgment, the compensation of Rs 25,000 towards funeral expenses is decreased to Rs 15,000. The amount

awarded by the High Court towards loss of love and affection is, however, maintained.

20. MACT as well as the High Court have not awarded any compensation with respect to loss of consortium and loss of estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognised by the Constitution Bench in *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant. In exercise of our power under Article 142, and in the interests of justice, we deem it appropriate to award an amount of Rs 15,000 towards loss of estate to Respondents 1 and 2.

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* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . 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.

25. In light of the abovementioned discussion, Respondents 1 and 2 are entitled to the following amounts:

Head	*Compensation awarded*
(*I*) Income	Rs 6000
(*ii*) Future prospects	Rs 2400 (i.e. 40% of the income)
(*iii*) Deduction towards personal expenditure	Rs 2800 i.e. ⅓rd of (Rs 6000 + Rs 2400)
(*iv*) Total income	Rs 5600 i.e. ⅔rd of (Rs 6000 + Rs 2400)
(*v*) Multiplier	18
(*vi*) Loss of future income	Rs 12,09,600 (Rs 5600 × 12 × 18)
(*vii*) Loss of love and affection	Rs 1,00,000 (Rs 50,000 each)
(*viii*) Funeral expenses	Rs 15,000
(*ix*) Loss of estate	Rs 15,000

(*x*) Loss of filial consortium	Rs 80,000 (Rs 40,000 payable to each of Respondents 1 and 2)
Total compensation awarded	Rs 14,25,600 along with interest @ 12% p.a. from the date of filing of the claim petition till payment.

Out of the amount awarded, Respondent 1 is entitled to 60% while Respondent 2 shall be granted 40% along with interest as specified above."

25. In the case of **United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Others** reported in **(2021) 11 SCC 780**, a three Judges Bench of the Hon'ble Supreme Court went through the judgment in **Magma General Insurance Co. Ltd.** (supra) and pointed out in paragraph 34, 35 and 36 as under:-

> *"**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, 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 (supra), 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."*
>
> ***(c) Funeral expenses – Rs. 15,000 to be awarded.***

36. *The aforesaid conventional heads are to be revised every three years @ 10%."*

26. In the aforementioned view of the matter when this Court calculates the claim which would have been admissible to the claimants, it is found as under:

Sl No.	**Income as per salary of the deceased**	**The payable amount on account of the claimants.**
(i)	As per fixed salary	Rs. 7,500/- per month
(ii)	Future prospect 40% of (i)	Rs. 3000/-
(iii)	Deduction of personal expenses 1/3rd of (i + ii)	Rs. 3500/-
(iv)	Total Income 2/3rd	Rs. 7000/-
(v)	Multiplier (age – 25 years)	18
(vi)	Loss of future income (iv) x 12 x multiplier)	Rs. 7000 x 12 x 18 = 15,12,000/-
(vii)	Funeral expenses	Rs. 15,000/-
(viii)	Loss of estate	Rs. 15,000/-
(ix)	Loss of filial consortium	Rs. 80,000/- (Rs. 40,000 x 2)
Total compensation		**Rs. 16,22,000/- plus interest @ 9% P.A. from the date of filing of the claim.**

27. This Court finds that the learned Tribunal has awarded only a sum of Rs. 7,89,500/- and after deduction of the interim relief under Section 140 of Rs. 50,000/- which was paid to the claimants, the insurance company was directed to pay a sum of Rs. 7,39,500/-. The Tribunal further found that the claim was pending since the year 2010 for no fault on the part of the claimants, therefore they would be entitled for interest from the date of settlement of the issues i.e.

21.02.2012 and the insurance company was liable to pay the interest @ 9% per annum within a period of 30 days. The insurance company has preferred this appeal on or about 31.08.2015 and it has remained pending in this Court for over 6½ years. During this period, there is no stay of the operation of the impugned order/award but the insurance company has not paid the award amount to the claimants.

28. At this stage, this Court would take note of the judgment of the Hon'ble Apex Court in the case of **Ranjana Prakash and Others vs. Divisional Manager and Another** reported in **(2011)14 SCC 639**. In the said case, the claimants were the widow, two sons and mother of the victim who died in a motor accident on 03.11.2003. He was working as a Bank Manager, State Bank of India and his monthly salary was Rs. 23,134/-. The Claim Tribunal awarded a compensation of Rs. 24,12,936/- with interest at the rate of 9% per annum but in appeal before the High Court, the Insurance Company contended that the Tribunal ought to have deducted 30% of the annual income towards income tax. The High Court agreed with the contention of the Insurance Company and reduced the compensation by 30% and held the Insurance Company liable to pay Rs. 16,89,055/- with interest at the rate of 9% per annum. The claimants went in appeal before the Hon'ble Supreme Court by way of Special Leave Petition whereunder it was contended that the deceased was holding a permanent job under

statutory body with assured increments and career progression and was aged between 40 to 50 years, therefore, as per **Sarla Verma** (supra), the income ought to have been increased by 30% keeping the future prospects into it. It was contended that if the income had been increased by 30% by taking note of the future prospects and if 30% had been deducted towards income tax, that would virtually leave the income assessed by the Tribunal undisturbed, therefore, computation of compensation by the Tribunal by taking the monthly income as Rs. 23,134/- without any deductions, did not call for any interference. In the aforementioned background of the facts of the case, the Hon'ble Supreme Court held that the High Court committed an error in ignoring the contention of the claimants. In the said case also the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of the future prospects and add 30% of the annual income of the deceased, but the Hon'ble Supreme Court held that *"…. the fact that the claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections."*

29. Paragraph '7', '8' and '9' of the judgment of the Hon'ble Supreme Court in the case of **Ranjana Prakash** (supra) are quoted hereunder for a ready reference:-

> "**7.** This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.
>
> **8.** Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow

> any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.
>
> **9.** In *Sarla Verma* [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] , this Court held that where the deceased had a permanent job with a regular salary with provisions for periodic increases, 30% of the current income could be added towards future prospects if the deceased was aged between 40 to 50 years. In *Sarla Verma* [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] , this Court also stated that income tax paid should be deducted from the annual income to arrive at the "income" which will form the basis for calculating the compensation. The Tribunal did neither of these two things. If both are done, the result would be that there would be no change in the income arrived at by the Tribunal for calculating the compensation. The 30% increase on account of future prospects and the 30% deduction on account of income tax would cancel each other, resulting in the "income" remaining unchanged. As a result, the compensation awarded by the Tribunal also would remain unaltered."

30. In view of the judgment of the Hon'ble Supreme Court in the case of **Ranjana Prakash** (supra) even as this Court finds that the claimants would have been entitled for other admissible claims but because there is no cross appeal or cross-objection on behalf of the claimants- respondent 1st set, this Court would not be in a position to enhance the award amount but can certainly conclude that the order/ award impugned in this appeal does not warrant any interference on any of the grounds pleaded on behalf of the Insurance Company.

31. This appeal would, therefore, fail. It is dismissed accordingly, but on finding that the Insurance Company has not paid the award amount to the claimants for over six and half years in the name of pendency of the appeal alone without there being any order of stay from this Court, this Court is of the considered opinion that the very purpose of this welfare legislation has been defeated by the Insurance Company. The parents of the deceased are fighting for the claim for about a decade by now. In the case of **Magma General Insurance Company Limited** (supra) the Hon'ble Supreme Court has reiterated that the Motor Vehicles Act is a beneficial and welfare legislation. By not paying the claim amount without there being any order of stay from this Court, in the opinion of this Court, the Insurance Company has failed in its duty to abide by the spirit of the welfare legislation and the judgments of the Hon'ble Apex Court reiterating the need to provide a just compensation.

32. This Court, therefore, imposes a cost of Rs. 1,00,000/- (Rupees One lakh only) payable by the Insurance Company (appellant) to the claimants together with the amount as per the order / award of the Tribunal.

33. Let the entire payment be made within a period of two weeks from the date of receipt/communication of this order, failing

which the same will be realized by the executing court/Tribunal as expeditiously as possible.

34. The statutory amount, if any, deposited by the appellant with the Registry of this Court shall be made available to the Insurance Company through appropriate mode as per practice/rule of this Court.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	
Uploading Date	12.01.2023
Transmission Date	