THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 1st November, 2021

SINGLE BENCH: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.02 of 2021

Appellant : The Branch Manager,
National Insurance Company Limited

versus

Respondent : Shri Laxmi Prasad Chettri and Others

Appeal under Section 173 of the
Motor Vehicles Act, 1988

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellant.

Mr. Tarun Choudhary, Advocate for the Respondents No.1 to 3.

None present for the Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Issues raised in the instant Appeal pertain to the deduction of one-third of the income of the deceased, a thirty one year old bachelor, in consideration of the expenses which he would have incurred towards maintaining himself had he been alive, when the deduction instead, it is asserted, ought to have been 50%. That, considering the age of the deceased, the Multiplier of "16" ought to have been adopted by the Learned Motor Accident Claims Tribunal, South Sikkim at Namchi, instead of "17" for the purpose of calculating the Loss of Earning of the deceased, in terms of the ratio of the Hon'ble Supreme Court in ***Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another***[1]. Litigation Costs of Rs.25,000/- (Rupees twenty five thousand) only, as also compensation towards Loss of Love and Affection of Rs.50,000/-

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[1] (2009) 6 SCC 121

(Rupees fifty thousand) only, each, granted to the Respondents No.1, 2 and 3/Claimants, were also assailed.

2.(i) The arguments put forth by Learned Counsel for the Appellant/National Insurance Company Limited was that the Hon'ble Supreme Court in the ratio of ***Sarla Verma*** *supra* had held that if the deceased was a bachelor and the claim was filed by the parents, the deduction would normally be 50% from the income, as personal and living expenses of the bachelor. That, subject to evidence to the contrary, the father was likely to have his own income and would not be considered to be a dependant, hence the mother alone would be considered to be a dependant. That, in the absence of any evidence to the contrary, the brothers and sisters of the deceased bachelor would not be considered as dependants because they would usually either be independent and earning, or married, or be dependant on the father. Thus, even if the deceased was survived by the parents and siblings, only the mother would be considered to be a dependant. The deduction of personal expenses of a bachelor would be 50% and 50% would be the contribution to the family. That, this observation was affirmed by the ratio in ***Reshma Kumari vs. Madan Mohan***[2]*,* whereby the Hon'ble Supreme Court held that the standards fixed by the Court in ***Sarla Verma*** *supra* on the aspect of deduction for personal and living expenses must ordinarily be followed unless a case for departure is made out by the Claimants. That, in the instant case, no such departure has been shown by the Respondents No.1, 2 and 3/Claimants to justify deduction of one-third only.

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[2] (2013) 9 SCC 65

(ii) That, for the determination of Multiplier, in the ratio of ***Sarla Verma*** *supra*, the appropriate choice of Multiplier in accordance with the age of the deceased had been prepared, hence, the Multiplier to be adopted in the instant case was "16" considering that the deceased was thirty one years of age at the time of the accident and not the Multiplier of "17," as erroneously selected by the Learned Tribunal. That, in ***National Insurance Company Limited vs. Pranay Sethi and Others***[3], the Constitution Bench of the Hon'ble Supreme Court propounded that reasonable figures on Conventional Heads namely Loss of Estate, Loss of Consortium and Funeral Expenses be made at the rate of Rs.15,000/- (Rupees fifteen thousand) only, Rs.40,000/- (Rupees forty thousand) only, and Rs.15,000/- (Rupees fifteen thousand) only, respectively. The said Conventional Heads envisages no calculation for "Loss of Love and Affection" or "Litigation Costs" as included by the Learned Tribunal which has thus erroneously calculated these amounts into the compensation to be granted to the Respondents No.1 to 3. The Income Certificate Exhibit 12 of the deceased, issued by the Block Development Officer, Block Administrative Centre, Namchi South Sikkim, bearing Memo No.2679/BAC (Namchi), dated 18.02.2017, was conceded as correct and the Appellant chose not to contest the contents of the document.

3. While conceding to the arguments of Learned Counsel for the Appellant that the Multiplier of "16" ought to have been chosen by the Learned Tribunal instead of "17," Learned Counsel for the Respondents No.1 to 3 canvassing his stand, contended

[3] (2017) 16 SCC 680

that "Loss of Love and Affection" calculated at Rs.50,000/- (Rupees fifty thousand) only, each to the Respondents No.1 to 3 cannot be said to be erroneous as the Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others***[4], also allowed calculation in the compensation for "Loss of Love and Affection." That, further in the said Judgment, the Hon'ble Supreme Court interpreted "Consortium" to be a compendious term which encompasses "Spousal Consortium," "Parental Compensation" as well as "Filial Consortium." That, Filial Consortium at the rate of Rs.40,000/- (Rupees forty thousand) only, per parent, ought to have been added in terms of the law laid down by the Hon'ble Supreme Court in this context. That, the evidence on record reveals with clarity that all the family members of the deceased were dependant on him including his sixty five year old father. This evidence was not disputed or decimated by the Appellant before the Learned Tribunal hence, apart from the wrong choice of Multiplier made by the Learned Tribunal, compensation awarded by the Learned Tribunal towards the head of "Loss of Love and Affection" requires no interference, as also deduction of one-third of the income of the deceased towards his personal and living expenses, considering the number of dependants on him. Hence, the Appeal be allowed only to the extent of choice of the Multiplier.

4. The rival submissions have been heard *in extenso* and all documents on record perused, including the impugned Judgment.

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[4] (2018) 18 SCC 130

5. The Respondents No.1 to 3 were before the Learned Tribunal with a Claim Petition under Section 166 of the Motor Vehicles Act, 1988, *(for short, the "M.V. Act")*. The deceased, aged about thirty one years, being the son of Respondents No.1 and 2 and the brother of the Respondent No.3, earning a monthly income of Rs.30,000/- (Rupees thirty thousand) only, succumbed to a motor accident near *Bhati Khola*, Bhanjyang, South Sikkim on 26.03.2017 when travelling in vehicle bearing Registration No.SK-04-P-1481 *(Maruti Van)* as its occupant. The Learned Tribunal, on due consideration of the facts and evidence placed before it, granted compensation amounting to Rs.42,85,000/- (Rupees forty two lakhs and eighty five thousand) only, to the Respondents No.1 to 3 under the following heads;

Loss of Earning:	Rs.40,80,000/-
Funeral Expenses:	Rs.15,000/-
Loss of Estate:	Rs.15,000/-
Loss of Love and Affection:	Rs.1,50,000/-
Litigation Cost:	Rs.25,000/-
Total:	**Rs.42,85,000/-**

Hence, aggrieved with the said compensation awarded to the Respondents No.1 to 3 on the grounds as reflected hereinabove, the Appellant is before this Court.

6.(i) On due consideration of the arguments placed before me, it is relevant to note that the choice of Multiplier by the Learned Tribunal is indeed erroneous in view of the categorical pronouncement in ***Sarla Verma*** *supra* which had prepared a Chart for fixing the applicable Multiplier in accordance with the age of the deceased. Hence, the Multiplier to be adopted in the instant case, as duly conceded by Learned Counsel for the Respondents No.1 to

3, is "16" and not "17" in consideration of the Victim being thirty one years at the time of the accident.

(ii) While considering the amount granted by the Learned Tribunal under the head of "Loss of Love and Affection," Learned Counsel for the Respondents No.1 to 3 contended that the amount stood justified in view of the pronouncement in ***Magma General Insurance Company Limited*** *supra.* In this context, it is relevant to mention that a Constitution Bench of the Hon'ble Supreme Court in ***Pranay Sethi*** *supra* propounded that reasonable figures on Conventional Heads such as Loss of Estate, Loss of Consortium and Funeral Expenses should be included in the compensation at the rate of Rs.15,000/- (Rupees fifteen thousand) only, Rs.40,000/- (Rupees forty thousand) only and Rs.15,000/- (Rupees fifteen thousand) only, respectively. In the subsequent Judgment of ***Magma General Insurance Company Limited*** *supra,* a two Judge Bench of the Hon'ble Supreme Court, while granting compensation to the Claimants therein, had included "Loss of Love and Affection" under the heads while calculating the compensation.

(iii) It may be apposite to notice that in ***Pranay Sethi****, supra* the Hon'ble Supreme Court had expounded the concept of "binding precedents" and held *inter alia* as follows;

> "**15.** Presently, we may refer to certain decisions which deal with the concept of binding precedent.
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> **16.** In *State of Bihar* v. *Kalika Kuer* [*State of Bihar* v. *Kalika Kuer*, (2003) 5 SCC 448], it has been held: (SCC p. 454, para 10)
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> > "*10*. … an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. …"

The Court has further ruled: (SCC p. 454, para 10)

> "*10*. … Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

17. In *G.L. Batra* v. *State of Haryana* [*G.L.Batra* v. *State of Haryana*, (2014) 13 SCC 759 : (2015) 3 SCC (L&S) 575], the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India* v. *Godfrey Philips India Ltd.* [*Union of India* v. *Godfrey Philips India Ltd.*, (1985) 4 SCC 369: 1986 SCC (Tax) 11], *Sundarjas Kanyalal Bhatija* v. *Collector, Thane* [*Sundarjas Kanyalal Bhatija* v. *Collector, Thane*, (1989) 3 SCC 396] and *Tribhovandas Purshottamdas Thakkar* v. *Ratilal Motilal Patel* [*Tribhovandas Purshottamdas Thakkar* v. *Ratilal Motilal Patel*, AIR 1968 SC 372]. It may be noted here that the Constitution Bench in *Madras Bar Assn.* v. *Union of India* [*Madras Bar Assn.* v. *Union of India*, (2015) 8 SCC 583] has clearly stated that the prior Constitution Bench judgment in *Union of India* v. *Madras Bar Assn.* [*Union of India* v. *Madras Bar Assn.*, (2010) 11 SCC 1] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by the later Constitution Bench.

20. In the context, we may fruitfully note what has been stated in *Pradip Chandra Parija* v. *Pramod Chandra Patnaik* [*Pradip Chandra Parija* v. *Pramod Chandra Patnaik*, (2002) 1 SCC 1]. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench [*Pradip Chandra Parija* v. *Pramod Chandra Patnaik*, Civil Appeal No. 791 of 1993, order dated 24-10-1996 (SC)] disagreeing with the three-Judge Bench [*Nityananda Kar* v. *State of Orissa*, 1991 Supp (2) SCC 516 : 1992 SCC (L&S) 177] decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated : (SCC p. 4, para 6)

> "*6*. … In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. …"

21. In *Chandra Prakash* v. *State of U.P.* [*Chandra Prakash* v. *State of U.P.*, (2002) 4 SCC 234 : 2002 SCC (L&S) 496] , another Constitution Bench dealing with the concept of precedents stated thus : (SCC p. 245, para 22)

> "*22*. …The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in *Raghubir Singh* [*Union of India* v. *Raghubir Singh*, (1989) 2 SCC

754] held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. …"

24. In *Rajesh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] the three-Judge Bench had delivered the judgment on 12-4-2013. The purpose of stating the date is that it has been delivered after the pronouncement made in *Reshma Kumari case* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826]. On a perusal of the decision in *Rajesh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149], we find that an attempt has been made to explain what the two-Judge Bench had stated in *Santosh Devi* [*Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167]. The relevant passages read as follows: (*Rajesh case* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , SCC p. 61, paras 8-9)

"*8*. Since, the Court in *Santosh Devi case* [*Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma case* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In *Sarla Verma case* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

25. At this juncture, it is necessitous to advert to another three-Judge Bench decision in *Munna Lal Jain* v. *Vipin Kumar Sharma* [*Munna Lal Jain* v. *Vipin Kumar Sharma*, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195]. In the said case, the three-Judge Bench commenting on the judgments stated thus: (SCC p. 349, para 2)

"*2*. In the absence of any statutory and a straitjacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the courts

> are only guidelines for the computation of the compensation. That precisely is the reason the courts lodge a caveat stating "ordinarily", "normally", "exceptional circumstances", etc., while suggesting the formula."

26. After so stating, the Court followed the principle stated in *Rajesh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . We think it appropriate to reproduce what has been stated by the three-Judge Bench : (*Munna Lal Jain case* [*Munna Lal Jain* v. *Vipin Kumar Sharma*, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195], SCC pp. 350-51, para 10)

> "*10*. As far as future prospects are concerned, in *Rajesh* v. *Rajbir Singh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects."

27. We are compelled to state here that in *Munna Lal Jain* [*Munna Lal Jain* v. *Vipin Kumar Sharma*, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195], the three-Judge Bench should have been guided by the principle stated in *Reshma Kumari* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] which has concurred with the view expressed in *Sarla Verma* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] or in case of disagreement, it should have been well advised to refer the case to a larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in *Reshma Kumari* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] being earlier in point of time would be a binding precedent and not the decision in *Rajesh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149].

28. In this context, we may also refer to *Sundeep Kumar Bafna* v. *State of Maharashtra* [*Sundeep Kumar Bafna* v. *State of Maharashtra*, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in *Rajesh case* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was delivered on a later date, it had not apprised itself of the law stated in *Reshma Kumari* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided

> by *Santosh Devi* [*Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167]. We have no hesitation that it is not a binding precedent on the co-equal Bench."

(iv) With regard to "Conventional Heads," the Hon'ble Court in ***Pranay Sethi*** *supra* observed *inter alia* as hereunder;

> "**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 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]. 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 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to *Santosh Devi* [*Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167], it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

In view of the observation of the Hon'ble Supreme Court in ***Pranay Sethi*** *supra* with regard to Binding Precedents and Conventional Heads, the compensation for "Loss of Love and Affection" cannot but be disregarded

(v) Further, in terms of the Judgment in ***Sarla Verma*** *supra*, the deduction of 50% is to be made as Loss of Earning from the income of the deceased, as the personal and living expenses the Victim would have incurred had he been alive, bearing in mind that his age was thirty one at the time of the accident. That apart, only the parents can be considered fully dependant on him, his sibling being twenty one years at the time of the accident and therefore in a position to make efforts to fend for herself.

(vi) It may be noticed that the Learned Tribunal has not granted "Loss of Consortium" in its compensation. Reverting back to the decision in ***Magma General Insurance Company Limited*** *supra,* the said ratio discussed "Consortium" and concluded that "Consortium" can be "Spousal Consortium," "Parental Consortium" and "Filial Consortium." It was further propounded that Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. That, modern jurisdictions world over have recognized the value of a child's consortium which far exceeds the economic value of the compensation awarded in 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 a deceased child. That, in case where a parent has lost their child, they are entitled to be awarded Loss of Consortium under the head of "Filial Consortium." Considering that in the ratio of ***Pranay Sethi*** *supra,* "Loss of Consortium" has been envisaged under the General Damages and the decision in ***Magma General Insurance Company Limited*** *supra,* has

only expanded the concept therein, the Respondents No.1 and 2 are found entitled to "Filial Consortium."

(vii) That apart, the Learned Tribunal has also failed to calculate and include "future prospects" of the deceased in the compensation granted. The Hon'ble Supreme Court in ***Pranay Sethi*** *supra*, while discussing Future Prospects, *inter alia* held as follows;

> "**57**. ……………………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.
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> …………………………
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> **59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made**. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."
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> **[Emphasis supplied]**

(viii) In ***Kirti and Another vs. Oriental Insurance Company Limited***[5] the Hon'ble Court observed *inter alia* as under;

> "**12.***Third* and most importantly, it is unfair on part of the respondent insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] reference. Nevertheless, the law on this point is no longer *res integra*, and stands crystallised, as is clear from the following extract of the aforecited Constitutional Bench judgment [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] : (SCC p. 714, para 59)"
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> > "*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*."

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[5] (2021) 2 SCC 166

(emphasis supplied)

13. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law [*Sunita Tokas* v. *New India Insurance Co. Ltd.*, (2019) 20 SCC 688 : (2020) 4 SCC (Cri) 436] and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in *Hem Raj* v. *Oriental Insurance Co. Ltd.* [*Hem Raj* v. *Oriental Insurance Co. Ltd.*, (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864], as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case: (*Hem Raj case* [*Hem Raj* v. *Oriental Insurance Co. Ltd.*, (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864] , SCC p. 656, para 7)

> "*7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made*."

38. The rationale behind the awarding of future prospects is therefore no longer merely about the type of profession, whether permanent or otherwise, although the percentage awarded is still dependent on the same. The awarding of future prospects is now a part of the duty of the court to grant just compensation, taking into account the realities of life, particularly of inflation, the quest of individuals to better their circumstances and those of their loved ones, rising wage rates and the impact of experience on the quality of work."

(ix) At this juncture, the provisions of Section 168 of the M.V. Act may also be pertinently noticed, which provides for "just compensation." In ***Ramla and Others vs. National Insurance Company Limited and Others***[6]***,*** it was *inter alia* held as follows;

"**5.** Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced

[6] (2019) 2 SCC 192

> amount. The courts are duty-bound to award just compensation."

On the bedrock of the provision of law and the categorical pronouncements in the ratios *supra*, "just compensation," in my considered opinion, would also include "Future Prospects" at the rate of 40% in the income of the deceased.

(x) Litigation Costs calculated by the Learned Tribunal are not in the scheme of the law or any of the Judgments of the Hon'ble Supreme Court and is thereby disregarded.

(xi) The amount awarded by the Learned Tribunal towards "Loss of Estate" and "Funeral Expenses," being undisputed are allowed.

7. Consequently, in light of the aforesaid facts and circumstances, the Judgment of the Learned Tribunal stands modified as follows;

Annual Income of the deceased (Rs.30,000/- x 12)	Rs.3,60,000/-
Add 40% of Rs.3,60,000/- as **Future Prospects** to the Annual Income of the deceased	Rs.1,44,000/-
Total Annual Income	Rs.5,04,000/-
Less 1/2 of Rs.5,04,000/- [Deducted from the said amount as expenses that the deceased would have incurred towards his maintenance had he been alive]	Rs.2,52,000/-
Net Yearly Income	Rs.2,52,000/-
Multiplier of **"16"** adopted in terms of *Sarla Verma's* Judgment [Rs.2,52,000/- x 16]	Rs.40,32,000/-
Add Loss of **Filial Consortium** [Rs.40,000/- each, payable to Respondents No.1 and 2 respectively]	Rs.80,000/-
Add Loss of estate	Rs.15,000/-
Add Funeral expenses	Rs.15,000/-
Total	**Rs.41,42,000**/-

(Rupees forty one lakhs and forty two thousand) only.

8. The Respondents No.1 to 3 shall be entitled to Simple Interest @ 10% per annum on the above amount of

Rs.41,42,000/- (Rupees forty one lakhs and forty two thousand) only, with effect from the date of filing of the Claim Petition before the Learned Tribunal till full realization.

9. The awarded amount shall be paid by the Appellant to the Respondents No.1 to 3 within one month from today with interest @ 10%, failing which, the Appellant shall pay Simple Interest @ 12% from the date of filing of the Claim Petition till realization, duly deducting the amounts, if any, already paid by it to the Respondents No.1 to 3.

10. The awarded amount of compensation shall be divided as follows;

(i) 80% to Respondents No.1 and 2 (at the rate of 40% each); and

(ii) 20% to Respondent No.3.

11. Appeal allowed to the extent above.

12. MAC App No.02 of 2021 stands disposed of accordingly.

13. No order as to costs.

14. Copy of this Judgment be sent to the Learned Motor Accident Claims Tribunal, South Sikkim at Namchi, for information.

15. Lower Court Records be remitted forthwith.

(Meenakshi Madan Rai)
Judge
01.11.2021

ml Approved for reporting : **Yes**