

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 3rd March, 2025

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

MAC App. No.02 of 2025

Appellant : The Branch Manager,
SBI General Insurance Company Limited

versus

Respondent : Songmit Lepcha and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Rahul Rathi, Advocates for the Appellant.

Mr. Sushant Subba, Advocate for the Respondents No.1 to 4.

Ms. Anusha Basnett, Advocate for the Respondents No.5 and 6.

J U D G M E N T (O R A L)

Meenakshi Madan Rai, J.

1. The only grievance raised by the Appellant, in this Appeal, which assails the Judgment of the Learned Motor Accidents Claims Tribunal, Namchi, Sikkim, dated 28-11-2024, in MACT Case No.06 of 2022 (*Songmit Lepcha and Others vs. The Branch Manager, SBI General Insurance Company Limited and Others*), is the alleged erroneous compensation of ₹ 40,22,908/- (Rupees forty lakhs, twenty two thousand, nine hundred and eight) only, granted to the Claimants (Respondents No.1 to 4 herein). It is urged that only ¼ (one-fourth) was deducted from the loss of earnings of the deceased while computing the award, when such deduction ought to have been ½ (one-half), in terms of the Judgment of the Hon'ble Supreme Court in *Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another*¹ as the deceased was a twenty-two year

¹ (2009) 6 SCC 121

old bachelor at the time of the unfortunate accident. That, the compensation is accordingly required to be re-computed and modified, in view of the obvious error made therein. That, no other grounds are being pressed in this Appeal.

2. Respondent No.1 is the mother of the deceased who is a widow and Respondents No.2, 3 and 4 are his younger siblings. Respondents No.5 and 6 are the owner and driver of the vehicle respectively.

3. Learned Counsel for the Respondents No.1, 2, 3 and 4 and Respondents No.5 and 6 concede to the submissions advanced by Learned Counsel for the Appellant, however they submit that the compensation may be computed as deemed "just" by this Court.

4. I have heard the submissions advanced by Learned Counsel for the parties. I have also perused the records of the case including the impugned Judgment.

5. The facts that led to the accident, briefly narrated are that; the deceased a resident of Pedong village, District Kalimpong, West Bengal, was working as a "Boomer Helper" in Surya Pest Control Services Company and posted at Tunnel 9 and 10, Sevoke-Rangpo Railway project. On 04-02-2022, when he was driving a Scooty and was on his way to work at the Railway project NH10, one Tata Truck driven at high speed by Respondent No.6, hit the scooty driver, at 11th Mile Tarkhola, resulting in his death.

6. The concept of "just compensation" has been succinctly explained by the Supreme Court in a litany of cases which for brevity are not being discussed here. Apart from "just compensation" the Supreme Court in **Sarla Verma** (*supra*) has also

discussed the percentage that ought to be deducted as personal and living expenses of the deceased. The relevant paragraph is extracted hereinbelow;

"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 the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."**

[emphasis mine]

(i) On the anvil of this observation, it is appropriate in the instant matter to place loss of earning at $\frac{1}{3}$ (one-third) and not $\frac{1}{4}$ (one-fourth), considering the number of family members of the deceased, who were dependant on his income and the fact that he had a widowed mother.

7. While perusing the impugned Judgment it appears that under the head "loss of consortium", the Learned MACT has granted ₹ 30,000/- (Rupees thirty thousand) only, to the Respondent No.1 and ₹ 10,000/- (Rupees ten thousand) only, each, to the Respondents No.2, 3 and 4.

(i) On this aspect relevant reference is made to the decision in **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others**². The Supreme Court addressed the issue of consortium and stated as follows;

"21. A Constitution Bench of this Court in *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

² (2018) 18 SCC 130

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 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.

.....
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* [(2017) 16 SCC 680]. **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."** [emphasis mine]

(ii) Based on the pronouncement of *Magma (supra)*, "filial consortium" is to be granted to the mother of the deceased and his siblings @ ₹ 40,000/- (Rupees forty thousand) only, each. This shall be added during the computation of the award.

8. No compensation was granted to the Respondents No.1 to 4 under the head "loss of estate" by the Learned MACT. In light of the observation of the Supreme in *National Insurance Company Limited vs. Pranay Sethi and Others*³ extracted hereinbelow the Respondents No.1 to 4 are entitled to such compensation;

"52. **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**

³ (2017) 16 SCC 680

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.”

[emphasis mine]

(i) It is also worth noticing from the above extract of the decision that for “funeral expenses”, “loss of estate” and “loss of consortium”, 10% is to be added every three years.

9. On the bedrock of the discussions that have emanated hereinabove and while relying on the various decisions of the Supreme Court on grant of compensation in MACT cases, I am of the considered view that compensation which is “just compensation” is as follows;

Annual income of the deceased (₹ 17,407/- x 12)	₹	2,08,884.00
Add 40% of ₹ 2,08,884/- as Future Prospects [in terms of Paragraph 59.4 of the Judgment of <i>Pranay Sethi (supra)</i>]	(+)	₹ <u>83,554.00</u> ₹ 2,92,438.00
Less 1/3 of ₹ 2,92,438/- [in terms of Paragraph 32 of the Judgment of <i>Sarla Verma (supra)</i>]	(-)	₹ <u>97,479.00</u>
Net yearly income	₹	1,94,959.00
Multiplier to be adopted ' 18 ' (₹1,94,959/- x 18) [The age of the deceased at the time of death was '22' and the relevant multiplier in terms of Paragraph 42 as per Judgment of <i>Sarla Verma (supra)</i> is ' 18 ']	₹	35,09,262.00
Add Funeral Expenses @ ₹ 15,000/- [in terms of Paragraph 52 of the Judgment of <i>Pranay Sethi (supra)</i> 10% enhanced every three years, hence 10% of ₹ 15,000 = ₹ 1,500 + ₹ 15,000 = ₹ 16,500/- as the accident occurred on 04-02-2022]	(+)	₹ 16,500.00
Add Loss of Estate @ ₹ 15,000/- [in terms of Paragraph 52 of the Judgment of <i>Pranay Sethi (supra)</i> 10% enhanced every three years, hence 10% of ₹ 15,000 = ₹ 1,500 + ₹ 15,000 = ₹ 16,500/- as the accident occurred on 04-02-2022]	(+)	₹ 16,500.00
Add Loss of Filial Consortium [₹ 40,000/- each, payable to Respondents No.1 to 4, in terms of Paragraphs 21 and 24 of the Judgment of <i>Magma (supra)</i> and Paragraph 52 of the Judgment of <i>Pranay Sethi (supra)</i> with enhancement @ 10% in every three years, the figure calculated is — ₹ 1,60,000/- @ 10%= ₹ 16,000 + ₹ 1,60,000 = ₹ 1,76,000/- as the accident occurred on 04-02-2022]	(+)	₹ <u>1,76,000.00</u>
Total	=	₹ <u>37,18,262.00</u>

(Rupees thirty seven lakhs, eighteen thousand, two hundred and sixty two) only.

10. The computation of compensation made by the Learned MACT is modified to the extent above.

11. The Appellant-Insurance Company is directed to pay the awarded compensation to the Claimants-Respondents No.1 to 4, within one month from today, with simple interest @ 9% per annum, failing which, it shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition, i.e., 20-07-2022, till final realization. Amounts, if any, already paid by the Appellant-Insurance Company to the Claimants-Respondents No.1 to 4, for the instant Claim Petition, shall be duly deducted from the awarded compensation.

12. The modified awarded amount of compensation, along with interest, as specified above, shall be divided amongst the Claimant-Respondent No.1 and Claimants-Respondents No.2, 3 and 4, in the following manner;

- (i) *The Claimant-Respondent No.1, mother of the deceased, is entitled to 40% of the total compensation awarded; and*
- (ii) *The Claimants-Respondents No.2, 3 and 4, being his siblings, are entitled to 60% of the total awarded compensation which shall be divided equally amongst them, i.e., 20% each.*

13. Appeal disposed of accordingly.

14. No order as to costs.

15. Copy of this Judgment be sent forthwith to the Learned MACT for information.

(Meenakshi Madan Rai)
Judge

03-03-2025

Approved for reporting : **Yes**