

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

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

MAC App. No.25 of 2024

Appellant : The Branch Manager,
National Insurance Company Limited

versus

Respondents : Hasmukh Pannalal Punamiya and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Madan Kumar Sundas, Advocate for the Appellant.

Mr. Rahul Rathi, Advocate with Ms. Rupal Agarwal, Advocate for the Respondents No.1, 2 and 3.

Mr. Nirmal Thapa, Advocate for Respondent No.4.

Date of Hearing : 12-03-2026

Judgment reserved : 12-03-2026

Judgment pronounced & uploaded : 20-03-2026

JUDGMENT

Meenakshi Madan Rai, J.

1. On a Petition filed by the Respondents No.1, 2 and 3 herein, under Section 166 of the Motor Vehicles Act, 1988, before the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), as Claimants, seeking compensation of ₹ 4,41,47,970/- (Rupees four crores, forty one lakhs, forty seven thousand, nine hundred and seventy) only, on account of the death of their brother, in a motor vehicle accident, which occurred on the intervening night of 28-05-2022 and 29-05-2022, at Khedum along Chungthang-Lachung Road, Mangan District, Sikkim, the Learned MACT vide the impugned Judgment dated 12-08-2024, in MACT Case No.27 of 2022 (*Hasmukh Pannalal Punamiya and Others vs. The Branch Manager, National Insurance Company Ltd. and Another*),

granted compensation of ₹ 4,22,21,125/- (Rupees four crores, twenty-two lakhs, twenty-one thousand, one hundred and twenty-five) only, against the claim sought.

(i) Aggrieved by the quantum of compensation, the Appellant Insurance Company alleges that the Claimants are adults with their own sources of income and hence not even entitled to the compensation, hence the Appeal.

2. The arguments advanced by Learned Counsel for the Appellant are that, in the first instance, the Respondent No.3 being the married elder sister of the deceased was not dependant on his income nor were the Respondents No.1 and 2, his elder brothers dependent on his earnings. The deduction of 1/3rd (one-third), made by the MACT, towards personal expenses of the deceased ought to be set aside and the deduction ought to be enhanced to 50% based on the assumption that, he was a bachelor on account of the demise of his immediate family comprising of his wife and children, in the accident. It was also denied that he earned ₹ 36,00,000/- (Rupees thirty-six lakhs) only, per year, as claimed and deposed by the Claimants, since they only furnished the Income Tax Return (ITR) of the deceased, unsupported by any Bank statement, which therefore cannot be relied on as a valid and effective document. Learned Counsel further argued that the cost of litigation of ₹ 25,000/- (Rupees twenty five thousand) only, was added by the MACT without basis which therefore deserves to be deducted. The Appeal therefore be allowed.

3. Opposing Counsel for the Respondents No.1 to 3 contended that it is erroneous to argue that 50% ought to be deducted towards personal expenses of the victim who was a married

man and cannot be presumed to be a bachelor by virtue of the fact that his family also perished in the accident. That apart, Respondents No.1 to 3 are entitled to the compensation claimed as they are legal representatives of the deceased and were at the time of the accident living in a joint family and solely dependent on the earnings made by the deceased. That, during the cross-examination there was no denial regarding the earning of the deceased which was placed at ₹ 36,00,000/- (Rupees thirty six lakhs) only, by the Respondents No.1 to 3 based on the ITR of the deceased. The Appeal deserves to be dismissed as there are no errors in the findings and conclusion of the MACT.

4. Learned Counsel for the Respondent No.4 had no submissions to advance.

5. I have perused the entire records before me and considered the verbal submissions put forth by Learned Counsel for the parties.

6. It is a rather unseemly argument advanced by Learned Counsel for the Appellant that, the deceased should be considered as a bachelor as his entire family perished in the accident. That circumstance would surely not render him a bachelor. This argument has no legs to stand and is disregarded, consequently the contention that 50% ought to be deducted from his income towards personal expenses is rejected as untenable. In the context of deduction towards personal expenses in *Sarla Verma (Smt) and Others* vs. *Delhi Transport Corporation and Another*¹ the Supreme Court has with clarity *inter alia* held that;

"30. Having considered several subsequent decisions of this Court, **we are of the view that where the deceased was married, the deduction**

¹ (2009) 6 SCC 121

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 dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds 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 dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.” (emphasis supplied)

(i) Thus, on the anvil of the above exposition, no fault lies in the deduction of 1/3rd (one-third) towards the personal expenses of the deceased as held by the MACT in the impugned Judgment.

(ii) Now, addressing the concerns regarding the entitlement of the Respondents to the compensation claimed, it would be beneficial to examine who a legal representative is. The Supreme Court in **Sadhana Tomar and Others vs. Ashok Kushwaha and Others**² has held that;

“14. Recently in *N. Jayasree v. Cholamandalam MS General Insurance Company Ltd.* [(2022) 14 SCC 712], this Court observed that:

“16. In our view, the term “legal representative” should be given a wider interpretation for the purpose of Chapter XII of the MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, the MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. **We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that**

² 2025 SCC OnLine SC 554

every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realisation of compensation."

(emphasis supplied)"

Adhering to the above pronouncement, it is clear that the Respondents No.1 to 3 are the legal representatives of the deceased, having lost their sole bread winner, as emerges from the evidence discussed hereinafter.

7. The evidence of the Respondent/Claimant No.2, who deposed for himself and on behalf of the other Claimants, reads as follows;

"9. **That my brother was the sole bread winner of family and we were all dependent upon him. The deceased used to contribute his income in the family and we were dependent upon his earnings. The claimants named in the claim application are the Legal Heirs and Legal Representatives of the deceased.** The deceased was the only support of the claimants and after his demise we have been rendered supportless. The claimants being the legal representatives and Legal Heirs of the deceased are entitled to the estate left behind by the deceased and the compensation claimed in the instant case."

(emphasis supplied)

The cross-examination conducted by the Appellant fails to decimate this claim of the Respondents No.1 to 3, wherein he deposed that;

"..... I do not have any business and we were dependent on the income of the deceased. It is not true that our sister is residing with her husband (witness volunteers to say that she has come back to our house due to marital problem). It is not true that I along with other claimants were not dependent on the income of deceased brother. It is not true that my deceased brother was not businessman and he did not have a business trade as stated in Exhibit 1. It is not true that as per his business he did not earn annual income of Rs.33,63,690/-"

(i) The above evidence of the Respondent No.2 establishes that the Respondents No.1 to 3 were in a joint family, entirely dependent on the income of the deceased. The cross-examination of the Respondent did not also demolish the claim that the deceased was earning an annual income of ₹ 33,63,690/- (Rupees thirty three

lakhs, sixty three thousand, six hundred and ninety) only. In fact, Respondent No.2 has also stated that whatever documents were filed along with his claim petition were valid and effective at the time of accident, which remained undecimated. From the foregoing discussions, it appears that the Appellant has failed to controvert or deny the claim made in the pleadings and evidence of the Respondents No.1 to 3 with regard to the income of the deceased.

(ii) Accordingly, in the absence of evidence to the contrary, the Respondents No.1 to 3 are found to have been dependant on the income of the deceased, being in a joint family, including Respondent No.3, his sister, who was living with them due to her marital problems.

(iii) Admittedly, the multiplier of 15 invoked by the MACT to calculate the compensation has not been assailed, the deceased being forty years of age at the time of accident.

8. It would be fair for this Court to remove the cost of litigation of ₹ 25,000/- (Rupees twenty five thousand) only, added by the MACT in computing the compensation as it is not included under any head by the Judgments of the Hon'ble Supreme Court while computing non-pecuniary damages and lacks reasonable foundation. Transportation cost of ₹ 20,000/- (Rupees twenty thousand) only, computed together with funeral expenses to a total of ₹ 35,000/- (Rupees thirty five thousand) only, in Paragraph 40 of the impugned Judgment is also done away with lacking basis. Funeral expenses are allowed subject to the computation made by this Court.

9. So far as the compensation under love and affection is concerned, it is clarified here that in **National Insurance Company**

Limited vs. Pranay Sethi and Others³ the Constitution Bench of the Supreme Court held that;

"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* [(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 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."
(emphasis supplied)

In a later Paragraph, the issue of enhancement was reiterated;

"59.8. 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 aforesaid amounts should be enhanced at the rate of 10% in every three years."

(i) The conventional heads therefore as enumerated in *Pranay Sethi* (*supra*) were (1) *loss of estate*; (2) *loss of consortium*; and (3) *funeral expenses*. It was also elucidated at Paragraph 55 as follows;

³ (2017) 16 SCC 680

"55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma* [Sarla Verma v. DTC, (2009) 6 SCC 121] and it has been approved in *Reshma Kumari* [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65]. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."

The Supreme Court went on to lay down therein as to how computation of the income of the deceased toward future prospects is to be made.

(ii) In *Magma General Insurance Co. Ltd. vs. Nanu Ram*⁴, in a Judgment authored by Indu Malhotra, J, a two Judge Bench of the Supreme Court discussed the Judgment of *Pranay Sethi (supra)* and observed that the Constitution Bench of the Supreme Court dealt with

⁴ (2018) 18 SCC 130

various heads under which compensation is to be awarded in case of death. In Paragraph 21 of **Magma General Insurance Co. Ltd.** (*supra*) it was observed 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].

....."
(emphasis supplied)

(iii) The Court in **Magma General Insurance Co. Ltd.** (*supra*) went on to delineate what "spousal consortium", "parental consortium" and "filial consortium" entailed. In Paragraph 24 the Court observed *inter alia* that 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** (*supra*). Accordingly, the father and sister of the deceased in **Magma General Insurance Co. Ltd.** (*supra*) was granted an amount of ₹ 40,000/- (Rupees forty thousand) only, each for "loss of filial consortium".

(iv) In Paragraph 25 the heads under which compensation was *inter alia* computed were; (i) *Income*; (ii) *Future prospects*; (iii) *Deduction toward personal expenditure*; (iv) *Total income*; (v) *Multiplier*; (vi) *Loss of future income*; (vii) **Loss of love and affection**; (viii) *Funeral expenses*; (ix) *Loss of estate*; and (x) **Loss of filial consortium**.

(v) From the above, it is clear that in **Magma General Insurance Co. Ltd.** (*supra*) apart from grant of 'filial consortium', 'loss of love and affection' was also computed in non-pecuniary losses.

(vi) Later in time in **United India Insurance Company Limited vs. Satinder Kaur alias Satwinder Kaur and Others**⁵, a three Judge Bench of the Supreme Court in a Judgment authored by Indu Malhotra, J, once again discussed the three conventional heads as allowed in **Pranay Sethi (supra)** viz., *loss of estate*, *loss of consortium* and *funeral expenses*. It went on to observe *inter alia* that the Court in **Pranay Sethi (supra)** held that reasonable figures on conventional heads namely '*loss of estate*', '*loss of consortium*' and '*funeral expenses*' should be ₹ 15,000/- (Rupees fifteen thousand) only, ₹ 40,000/- (Rupees forty thousand) only and ₹ 15,000/- (Rupees fifteen thousand) only, respectively. That, the Court in **Pranay Sethi (supra)** was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years which would bring consistency in respect of these heads. The Court also discussed that in **Magma General Insurance Co. Ltd. (supra)**, the Supreme Court had interpreted "*consortium*" to be a compendius term, which encompasses *spousal consortium*, *parental consortium* and *filial consortium*. In Paragraph 34 it was concluded as follows;

"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.**

(emphasis supplied)

⁵ (2021) 11 SCC 780

(vii) Hence, based on this conclusion, in Paragraph 38 of **Satinder Kaur alias Satwinder Kaur (supra)**, conventional heads were enumerated as follows;

"38.

(vii)	Funeral expenses
(viii)	Loss of estate
(ix)	Loss of spousal consortium
(x)	Loss of parental consortium
(xi)	Total compensation
	"

(viii) Separate compensation under the head of 'loss of love and affection' which was granted in **Magma General Insurance Co. Ltd. (supra)** did not find place in **Satinder Kaur alias Satwinder Kaur (supra)**. It was observed therein that some Courts had been granting compensation for *Consortium* and *loss of love and affection*, but *loss of love and affection* was to be comprehended in loss of consortium. Resultant, the head under *loss of love and affection* given in **Magma General Insurance Co. Ltd. (supra)** is now to be comprehended under "loss of consortium" as held in **Satinder Kaur alias Satwinder Kaur (supra)** and as per elucidation of the term made in **Magma General Insurance Co. Ltd. (supra)**.

(ix) Consequently adhering to the pronouncement of the Constitutional Bench Judgment in **Pranay Sethi (supra)** it would be appropriate to consider only those conventional heads as laid down in the said Judgment i.e., **Pranay Sethi (supra)** namely (1) *loss of estate*; (2) *loss of consortium*; and (3) *funeral expenses*.

(x) In the instant case, it is the brother of the Respondents No.1, 2 and 3 who had passed away in the accident. In **Magma General Insurance Co. Ltd. (supra)** although *filial consortium* was described as the right of the parents to compensation in the case of an accidental death of a child, however apart from the father the

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sister of the deceased was also granted ₹ 40,000/- (Rupees forty thousand) only, for *loss of filial consortium*. On the anvil of the said decision, in my considered view, the Respondents No.1 to 3, herein would also be entitled to filial consortium @ ₹ 40,000/- (Rupees forty thousand) only, each, duly enhanced @ 10% as per **Pranay Sethi** (*supra*).

10. In the end result, total compensation for Respondents No.1 to 3 is computed as follows;

Annual income of the deceased		₹	33,63,690.00
Add 25% of ₹ 33,63,690/- as Future Prospects [in terms of Paragraph 59.4 of <i>Pranay Sethi (supra)</i>]	(+)	₹	<u>8,40,923.00</u> ₹ 42,04,613.00
Less 1/3 rd of ₹ 42,04,613/- [in terms of Paragraph 30 of <i>Sarla Verma (supra)</i>]	(-)	₹	<u>14,01,538.00</u>
Net yearly income		₹	28,03,075.00
Multiplier of '15' (₹ 28,03,075/- x 15) [The age of the deceased at the time of death being '40' the relevant multiplier of '15' in terms of Paragraph 42 of <i>Sarla Verma (supra)</i> is adopted]		₹	4,20,46,125.00
Add Funeral Expenses [in terms of Paragraphs 52 & 59.8 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 the intervening night of 28-05-2022 and 29-05-2022]	(+)	₹	16,500.00
Add Loss of Estate [in terms of Paragraphs 52 & 59.8 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 the intervening night of 28-05-2022 and 29-05-2022]	(+)	₹	16,500.00
Add Loss of Filial Consortium (₹ 40,000/- x 3) [₹ 40,000/-, payable to Respondents No.1, 2 and 3- Claimants, each, in terms of Paragraph 21.3 and 24 of <i>Magma General Insurance Company Limited (supra)</i> and in terms of Paragraphs 52 & 59.8 of <i>Pranay Sethi (supra)</i> , 10% enhanced every three years, hence 10% of ₹ 1,20,000/- = ₹ 12,000/- + ₹ 1,20,000/- = ₹ 1,32,000/-, as the accident occurred on the intervening night of 28-05-2022 and 29-05-2022]	(+)	₹	<u>1,32,000.00</u>
Total	=	₹	<u>4,22,11,125.00</u>

(Rupees four crores, twenty two lakhs, eleven thousand, one hundred and twenty five) only.

11. The impugned Judgment of the MACT is upheld, subject to the afore modified calculation.

12. Interest @ 6% per annum was granted by the MACT. Although Learned Counsel for the Respondents No.1 to 3 has sought for 9% interest per annum on grounds that this is the rate of interest uniformly applied by this Court in all the MACT matters while granting compensation, in my considered view, considering the total compensation granted, interest @ 6% per annum is a fair amount and does not require to be enhanced.

13. The Appellant-Insurance Company is directed to pay the above compensation amount of ₹ 4,22,11,125/- (Rupees four crores, twenty two lakhs, eleven thousand, one hundred and twenty-five) only, with interest @ 6% per annum as ordered, to the Respondents No.1 to 3, within one month from today, failing which, it shall pay simple interest @ 9% per annum, from the date of filing of the Claim Petition, i.e., 16-12-2022, till full realisation.

14. The modified awarded amount of compensation along with interest, as specified above, shall be divided equally amongst the three Respondents with no disparity whatsoever.

15. Amounts, if any, already paid by the Appellant-Insurance Company to the Respondents No.1 to 3, shall be duly deducted from the awarded compensation.

16. Appeal disposed of accordingly.

17. No order as to costs.

18. Copy of this Judgment along with original records be remitted forthwith to the Learned MACT for information.

(Meenakshi Madan Rai)

Judge

20-03-2026

Approved for reporting : **Yes**