

Ningesh Vs. Nanjegowda

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Court : Karnataka

Decided On : Sep-12-2024

Judge : N S Sanjay Gowda

Appeal No. : MFA 206/2018

Appellant : Ningesh

Respondent : Nanjegowda

Judgement :

- 1 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE12H DAY OF SEPTEMBER, 2024 BEFORE THE HON'BLE MR JUSTICE N S SANJAY GOWDA MISCELLANEOUS FIRST APPEAL No.11440 OF2011C/W MISCELLANEOUS FIRST APPEAL No.206 OF 2018 IN MFA No.11440/2011: BETWEEN:

1. LAKSHMINARAYANAPPA @ MOOGAPPA, S/O ADINARAYANAPPA, AGED41YEARS, 2. SMT. PARVATHAMMA, W/O LAKSHMINARAYANAPPA @ MOOGAPPA, AGED36YEARS, 3. ANAND, S/O LAKSHMINARAYANAPPA @ MOOGAPPA, AGED13YEARS, THIRD APPELLANT IS A MINOR HENCE HE IS REPRESENTED BY HIS FATHER AND NATURAL GUARDIAN THE FIRST APPELLANT ALL ARE R/AT GINKALAVARIPALLI VILLAGE, GOWRIBIDANUR

TALUK, CHIKKABALLAPUR DISTRICT, AND NOW AT No.102M2D CROSS, 1ST MAIN, YELAHANKA, BANGALORE. APPELLANTS (BY SRI. K.V.SHYAMAPRASAD, ADVOCATE) - 2 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 AND:

1. M/S ROYAL SUNDARAM ALLIANZ INS. CO. LTD., No.132, SRI BALAJI SOVEREIGN, 2ND FLOOR, BEXT TO URBAN EDGE, BRIGADE ROAD, BANGALORE-560 068. REPRESENTED BY ITS MANAGER.

2. G. GANGADHAR, S/O GOVINDAPPA, MAJOR, ALLAPURA VILLAGE, GOURIBIDANUR TALUK, CHIKKABALLAPUR DISTRICT-561 208. RESPONDENTS (BY SRI. C.R.RAVISHANKAR., FOR SRI. K.SURYANARAYANA RAO, ADVOCATE FOR R-1; R-2 SERVED) THIS MFA IS FILED UNDER SECTION1731) OF MV ACT, AGAINST THE

JUDGMENT

AND AWARD DATED:24.09.2011 PASSED BY THE M.V.C.No.5467/2010 ON THE FILE OF XXII ADDITIONAL SMALL CAUSES JUDGE, MEMBER, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHCNCEMENT OF COMPENSATION. IN MFA No.206/2018 BETWEEN:

1. NINGESH, S/O MAYIGAIAH, AGED ABOUT42YEARS, 2. NINGAMMA, W/O NINGESH, AGED ABOUT33YEARS, BOTH ARE R/OF MARUVANAHALLI VILLAGE, - 3 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 BAGURU HOBLI, CHANARAYAPATNA TALUK, HASSAN DISTRICT-573 111. APPELLANTS (BY SRI. CHETHAN.B., ADVOCATE) AND:

1. NANJEGOWDA, S/O CHIKKEGOWDA, MAJOR, R/AT MARUVANAHALLI VILLAGE, BAGURU HOBLI, CHANNARAYAPATNA TALUK-573 111 HASSAN DISTRICT.

2. THE MANAGER, THE ROYAL SUNDAM INSURANCE COMPANY LIMITED, No.186/7, RAGHAVENDRA PLAZA, WILSON GARDEN, HOSURU MAIN ROAD, BANGALORE-560 027. RESPONDENTS (BY SRI. C.R.RAVISHANKAR, ADVOCATE FOR R-2; VIDE

ORDER

DATED:15.12.2021, NOTICE TO R-1 IS DISPENSED WITH) THIS MFA IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED:23.02.2017 PASSED IN MVC No.1844/2015 ON THE FILE OF THE4H ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN DISTRICT, (SIT AT CHANNARAYAPATNA) PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON1206.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING: CORAM: HON'BLE MR JUSTICE N S SANJAY GOWDA - 4 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 CAV

JUDGMENT

ORDER

1 To facilitate easy reading of this judgment, the same has been indexed as under:
Sl. Particulars Page 01. Details of the cases in the present batch of 07 appeals.
02. The concept of just compensation. 08

03. Principles regarding the compensation payable for 11 accidents under the Motor Vehicles Act, 1988. 04. Principles relating to compensation for minors 13 deaths. 05. Legal obligation of children under our laws vis-- 16 vis maintenance of parents. 06. Principles of compensation in transportation 23 sectors vis--vis a minors accident. 07. Compensation for minors deaths under the Motor 28 Vehicles

Act. 08. Decisions of the Apex Court over the past two 30 decades regarding the compensation to be awarded on the deaths of minors in motor vehicle accidents.

09. Appropriate methodology to be adopted to 38 - 5 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 determine compensation.

10. The 1st Method of determining compensation - 44 applying the notional income as stipulated in the Second Schedule of the Motor Vehicles Act. 10.1 Table 1.1 - compounding inflation rates as 44 per the Second Schedule to the MV Act. 10.2 Table 1.2 - amounts derived upon adding 48 40% for future prospects and deducting 1/3rd for personal expenditure. 10.3 Table 1.3 - Compensation payable per the 50 15 and 18 multipliers. 10.4 Table 1.4 - Compensation payable for a 56 single parent per the 1st Method. 10.5 Table 1.5 - Compensation payable for 57 both parents per the 1st Method.

11. The 2nd Method of determining compensation - 58 by applying the criteria for compensation awarded for accidents under the Railways Act, 1989. 11.1 Table 2 - lumpsum compensation 60 determined per the Railways Act by compounding the inflation rates.

12. The ideal method to determine the compensation 62 on a comparison of the aforementioned 1st and 2nd Methods.-. 6 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 12.1 Table 3.1 - final compensation to be 65 awarded for a single parent of a child below 15 years of age. 12.2 Table 3.2 - final compensation to be 66 awarded for both parents of a child below 15 years of age. 12.3 Table 3.3 - final compensation to be 68 awarded for a single parent of a child aged between 15 and 18 years. 12.4 Table 3.4 - final compensation to be 69 awarded for both parents of a child aged between 15 and 18 years.

13. Safeguards to ensure financial security to the 70 parents of a deceased minor child.

14. Additional component of just compensation 73 payable to parents, and directions.

2. The sole question to be determined in these appeals is: What would be the JUST compensation that should be awarded for the death of a minor child in a motor vehicle accident?. - 7 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 I. DETAILS OF THE CASES IN THE PRESENT BATCH OF APPEALS:

3. MFA114402011 - Harish (aged 14 years) was riding pillion on a motorcycle on 08.06.2010 which his father Mr. Lakshminarayanappa was riding when it was hit from behind by a lorry which resulted in both of them suffering severe injuries. They were immediately taken to the General Hospital, Bagepalli where they were declared dead on arrival. Harish's mother along with the other legal heirs filed a claim petition seeking compensation, and by the impugned award, the Tribunal has granted Rs.1,65,000/- towards compensation for the death of said Harish.

4. MFA2062018 - Sanjay, the 12 year old son of Mr.Ningesh, was killed on 06.01.2015 when he was hit by a tractor driven by the 1st respondent and which was insured with the 2nd respondent. His parents filed a claim petition seeking compensation, and by the impugned - 8 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 award, the Tribunal has granted compensation of Rs. 5,00,000/-.

5. Being dissatisfied with the quantum of compensation awarded by the Tribunal, they are in appeal.

6. These appeals, along with another batch of appeals relating to claims for injuries suffered by minors, were heard on several occasions and the learned counsel appearing for the claimants and the insurers were informed that the manner in which the compensation for minors had to be comprehensively considered and detailed guidelines had to be laid down. Learned Counsel put across their views and placed the decisions relating to this issue on record. They have also put forward their suggestions on the thoughts of the Court in this regard,

which have been considered and have resulted in this order. Their efforts and contributions are appreciated and are placed on record. II. THE CONCEPT OF JUST COMPENSATION:

7. The death of a child, to grieving parents, is - 9 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 immeasurable and is, fundamentally, incommensurable. A child's death makes the lives of parents meaningless and renders their physical being an empty shell of flesh and bones and shorn of a living soul. It is, in fact, said that the grief over the loss of a spouse, a sibling, a parent or a friend would last for some time but the grief of the loss of a child is perpetual to the parents and haunts them for the rest of their lives. However, notwithstanding this truism, the aim of the law is to ensure that the parents are given just compensation and this excruciating task is thrust on Courts of law.

8. Compensation, in its simplest explanation, in relation to a victim of a motor vehicle accident, would be a measure of the pecuniary loss and the non-pecuniary loss awarded to the victim or the dependents of the victim. Both these losses would have to be assessed and computed in terms of money. Pecuniary loss would be the monetary loss, while the non-pecuniary loss would be the loss which is not monetary in nature but would be the loss - 10 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 which befalls the legal heirs of the victim due to the accident suffered by the victim. This would also have to be expressed in terms of money.

9. Compensation is, thus, the sum of money which is computed by the Court for both pecuniary and non-pecuniary loss, and the law hopes that awarding a compensation would help the grieving parents in two ways - firstly, to lessen the pain of a loss of their child by granting compensation in monetary terms; and secondly, to compensate them for the monetary loss suffered by them.

10. The law envisages that in case of pecuniary loss, the legal heirs of the victim should be shielded from any financial loss that they would suffer due to an

accident and the Courts are required to award a sum of compensation which would eliminate the loss and essentially restore their financial position as it stood before the accident.-. 11 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 11. As far as non-pecuniary loss is concerned, though no value in terms of money can be ascertained to lessen the grief, the Courts are nevertheless expected to award a compensation which would hopefully assuage their hurt to the extent possible. III. PRINCIPLES REGARDING THE COMPENSATION PAYABLE FOR ACCIDENTS UNDER THE MOTOR VEHICLES ACT, 1988:

12. An event which is wholly unexpected, but which does occur, and causes damage to men and material can be termed as an accident. The law in cases where men and material are being transported by road during which an accident occurs, resulting in loss of life or bodily harm, creates a statutory liability on the owner/driver of the vehicle to pay compensation to the victim or the heirs of the victim. This liability, when quantified, is to be indemnified by the Insurer as it is mandatory for the owner to secure insurance on the motor vehicle owned by him. If the owner has failed to insure his vehicle, he is - 12 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 visited with the consequence of paying the compensation by himself, apart from other actions for his infraction.

13. In cases of accidents arising out of the use of a motor vehicle, the Motor Vehicles Act, 1988 (the MV Act) provides for establishing Tribunals which are required to award compensation which appears to it to be just. Thus, there is a statutory obligation on the Tribunal to determine just compensation. In order to determine this just compensation, the Tribunals are required to ensure that they reach a fair balance, which is neither too much nor too little, but the golden mean.

14. To undertake this exercise, the Courts have devised various methodologies to determine compensation, and these are based on the losses suffered by the victim or, in case of death, the financial loss which would befall the people who were dependent on the victim. As stated above, these losses could be both pecuniary

and non- pecuniary.-. 13 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 15. Pecuniary loss would not only include the loss already suffered but would also include the financial loss that is likely to occur in the future. With the future being indefinite, this loss would also be unpredictable, thus incapable of being determined with precision.

16. The Courts are required to determine the compensation once and for all for the loss suffered, and while doing so, they are required to take into consideration the pecuniary loss in the immediate aftermath of the accident as well as the future pecuniary loss that may be suffered by the victim or their legal representatives. IV. PRINCIPLES RELATING TO COMPENSATION FOR MINORS DEATH:

17. In respect of a motor vehicle accident involving a minor child resulting in such minors death, the immediate pecuniary loss to the parents would obviously be the sums incurred towards the minors hospitalisation for ensuring recovery. These sums would be the pecuniary loss which can be ascertained with certainty as it would be based on - 14 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 actual sums spent for which evidence would be readily available; and even if there is no evidence, it can still be assessed with a certain degree of precision.

18. As regards the financial dependency, which would also form a component of the pecuniary loss, since the parents would not be financially dependent on the minor child at the time of the accident, there would be no financial loss on account of the dependency. Hence, an argument can be made that no sums should be awarded towards financial dependency. However, this argument does not really address the problem from the proper perspective, and it would only be looking at the problem from the wrong side of the lens.

19. The argument that the parents would not be financially dependent, at first blush, may appear true, but on a closer scrutiny, this would simply not be the entire truth. It is no doubt true that there would have been no immediate financial

dependency on the minor at the time of accident and death. However, it should be kept in mind, - 15 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 as observed earlier, that financial dependency could also be a dependency which arises much later i.e., a future dependency.

20. In fact, if this approach that the parents would not suffer from any financial loss on account of dependency on the child were to be accepted, it would mean turning a blind eye to the actual dependency that every parent has on their child and this approach that they would not suffer from any financial dependency would only compound the grief of the parents.

21. In fact, an extreme argument can also be made that the loss of a child reduces the financial burden cast on the parents in looking after their child, and they would actually see an increase in their financials from the loss of the child. Though this may be true, this extreme argument would not only be morally repugnant, but it would also be fundamentally flawed, both in law and equity, and is therefore liable to be rejected in its totality.-. 16 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 V. LEGAL OBLIGATION OF CHILDREN UNDER OUR LAWS VIS--VIS MAINTENANCE OF PARENTS:

22. In our Society, it is the expectation of every parent that their child(ren) would take care of them when they are old, infirm and incapable of earning for themselves. It is the expectation of every parent in our society that their child would help them both morally and financially in order to lead a comfortable life in their twilight years. In fact, in this phase of their lives, there is an absolute and real financial dependency on their children.

23. In reality, every parent invests a major chunk of their earnings on their children and this is because they inherently believe that they have a moral obligation to raise their children and, at the same time, they also carry the inherent hope and expectation that the investment that they have made on their children would

ultimately result in some comfort to them in their old age. To put it in simple terms, while every parent is certainly dependent on his child emotionally, they are also, at the same time, - 17 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 impliedly dependent on them financially though this dependency would be in the future and could be either complete or only to a limited extent.

24. In this view of the matter, keeping in mind that compensation would have to be awarded only once for an accident, this component of future dependency would also have to be taken into account while awarding a just compensation.

25. It is no doubt true that all children may not live up to this expectation and the parents may be left to fend for themselves. However, both the societal norms and the law, as it stands today, discounts this probability and it in fact recognises this expectation of every parent and imposes a legal obligation on the children to maintain them. The law also provides for a legal framework to the parents to exercise this right and to initiate legal proceedings to ensure that this financial need of theirs, when they are incapable of earning for themselves, are fulfilled.-. 18 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 26. Section 125 of the Code of Criminal Procedure, 1973 specifically obligates a person to pay maintenance to his parents if they are unable to maintain themselves and the Magistrate is granted the discretion to direct payment of such amount as he deems fit, having regard to the circumstances of the case. This provision, which existed for the past five decades, recognised and carved out a right to a parent to claim maintenance from their children irrespective of their personal law. In fact, this provision exists in the newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023 under Section 144, which, by itself, indicates that it has been the intent of the law of our land all along that every parent is required to be maintained by his children if he is unable to maintain himself.

27. The personal law for Hindus also casts an obligation on a Hindu to maintain his or her aged and infirm parents by reason of Section 20 of the Hindu Adoptions

and Maintenance Act, 1956.-. 19 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 28. As per Mehboobkhans case¹, even under the Islamic law there is a duty cast on the children to maintain their parents. This view is also substantiated in Mulla's Principles of Mohammedan Law, 23rd Edition, as follows: 371. Maintenance of parents.- (1) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves. (2) A son though in straitened circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm. (3) A son, who, though poor, is earning something, is bound to support his poor father who earns nothing.² 29. In respect of Christians, it is laid out in the Fourth Commandment (of the Ten Commandments) - that a child must maintain his/her parents - as follows: Honor your father and your mother, that your days may be long in the land that the Lord your God is giving you. 3 1 Mehboobkhan v. Babarkhan, 2023 SCC OnLine Bom 1158. 2 Hedaya, 148; Baillie, 465, 466. 3 (Exodus 20:12) - obtained from the official website of the Holy See, Vatican city. https://www.vatican.va/content/catechism/en/part_three/section_two/chapter_two/article_4.index.html - 20 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 30. Though for Christians there is no express provision of law obligating the children to maintain their parent(s), this Court has in the case of K. Kumar⁴ recognised the inherent obligation that children have to look after their parents and has held that the Courts must adopt the principles of equity, good conscience and fair play, and this principle has been followed by a Division Bench of the Kerala High Court in the case of Chandi Samuval⁵.

31. It is therefore clear that even without reference to personal laws, the general law recognises that a parent has a right to claim maintenance against his children if he/she is aged and infirm.

32. In the year 2007, the Parliament enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 under which not only a parent but a grandparent could also claim maintenance from their children under 4 K. Kumar v.

Smt. Leena & Anr., AIR2010 Kar 75. 5 Chandi Samuval v. Saimon Samual, MAT.APPEAL No.782 of 2022.-. 21 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 Section 46. The maintenance contemplated under the 2007 Act includes a provision for food, clothing, residence and medical attendance, and treatment in Section 2(b)7. In fact, even a childless senior citizen (a person aged above 60 years) is entitled to seek maintenance from his relative (i.e., a person who would inherit the property of the senior citizen).

33. It is clear from the provisions of the 2007 Act that the law has recognised the obligation of children to maintain their parents distinctly and has created a 64. Maintenance of parents and senior citizens.- (1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of- (i) parent or grand-parent, against one or more of his children not being a minor; (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2. (2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life. (3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. (4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

72. Definitions.-(b) maintenance includes provisions for food, clothing, residence and medical attendance and treatment.-. 22 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 statutory right in their favour while also providing a legal framework to enforce this right. It may also be pertinent to state here that the 2007 Act provides for maintenance of

a parent or a senior citizen irrespective of the personal law of the parent or senior citizen. It is thus clear and indisputable that in India, it has been recognised since ages that every parent has a legal right to be maintained by his children if he/she is unable to maintain himself/herself.

34. If the law has recognised this right of a parent to be maintained by his children when they are aged and infirm, the argument that there is no financial dependency on the children and no compensation could thus be awarded to a parent, if the child loses his life in a motor vehicle accident, cannot be accepted. The concept of financial dependence on a minor child in other societies of the world on the basis of which the law relating to damages has been stated in other jurisdictions cannot be a reliable yardstick to determine the damages payable to a parent in - 23 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 our country in cases where the life of a child is lost due to a motor vehicle accident. VI. PRINCIPLES OF COMPENSATION IN TRANSPORTATION SECTORS VIS--VIS A MINORS ACCIDENT:

35. Accidents, which result in loss of life and limb, are not uncommon in the field of transportation and there are laws framed and processes created for payment of compensation in such cases worldwide, as well as in our country. In fact, in the Railway sector and in the Aviation sector, the concept of strict liability is adopted and there is no need of proving the fault of a person for the accident and making that person liable for damages. This is because the victim in these cases would not be responsible for the accident in any manner. It should be noticed that, at the same time, even in cases where accidents occur due to causes which are not attributable to the carrier, there is still no escape from liability for the carrier. Simply put, if a person is travelling in a train or an airplane and an accident occurs to said carrier, then the person who is - 24 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 travelling in the carrier or his dependent (in the event of his death) would be entitled to claim and secure compensation.

36. What is of significance in all these cases is that there is no distinction between compensation to be paid to a minor and the compensation to be paid to a person who has attained the age of majority. All the passengers are paid the same amount of compensation. If the compensation payable to a minor or a major (in the case of a railway accident or an airplane accident) is the same, the justification for payment of a lesser compensation to a minor victim in a motor vehicle accident would not only be legally flawed and constitutionally impermissible, but would also run afoul of the guarantee conferred under Article 14 of our Constitution.

37. It is no doubt true that compensation is paid in these cases on the doctrine of strict liability and hence, determination of tortious liability and assessment of compensation would not arise, but the fact remains that - 25 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 there is no difference in the compensation paid for a minors death or injury and that of a majors death or injury.

38. In the case of a railway accident, Section 124-A of the Railways Act, 1989 casts a statutory liability on the railways to pay the prescribed compensation to a passenger irrespective of who was at fault for the accident. The Rules framed under the Railways Act, as of now, provide for payment of a compensation of Rs. 8 lakhs and this would be without prejudice to the claimants to seek higher compensation by approaching the Civil Court.

39. In fact, in respect of railway accidents, the compensation payable was initially Rs. 2 lakhs in 1990 which was increased to Rs. 4 lakhs in 1997 and was once again increased to Rs. 8 lakhs in 2016. This progressive increase of compensation also indicates that the sum of compensation payable cannot be static and is dependent on the cost of living on the day of the accident.-. 26 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 40. If a child dies in a train accident or a motor vehicle accident, the compensation payable should not be dissimilar, more so when the majority of the populace in the country use these modes of transport.

41. In cases of airline accidents, under the Montreal Convention of 1976 - in respect of the compensation payable to an airline passenger - the airline cannot exclude its liability and is in fact limited to an extent of 1,00,000 special drawing rights. It is only if the claim is more than that can an airline exclude its liability and, that too, if it can prove that such damage was not due to any negligence or wrongful act of the carrier or its errant or agents or that the damage was caused by the negligence of any third party. Thus, the entitlement of a passenger without reference to age of the passenger is on the carrier, at least to the extent of 1,00,000 special drawing rights.

42. In the case of maritime accidents, under the Protocol of 2002 Convention, the liability of the carrier for the death of or personal injury to a passenger is limited to - 27 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2,50,000 units of account unless the carrier proves the accident was due to an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional character.

43. A common factor to be noticed here is that the carrier is made liable, at least, for a limited sum as compensation to a passenger for any accident. It is to be also noticed here that no distinction is made in the matter of compensation on the basis of the age of the passenger. In other words, when it comes to compensating a passenger of a carrier, the only requirement is that the person should be a passenger and the age of the passenger has no relevance. If this is the principle followed in respect of accidents in the other major transportation sectors, there is no logic in the quantum of compensation being dependent on the age of the passenger, when it comes to an accident occurring as a result of a use of a motor vehicle on road.-. 28 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 VII. COMPENSATION FOR MINORS DEATHS UNDER THE MV ACT:

44. The principle followed in cases of compensating a minor in cases of motor vehicle accident appears to be based on the premise that compensation under the

MV Act can be granted only if there was some financial dependence on the victim. The statutory provision under the MV Act does not, however, make any such prescription and it only states that a victim of a motor vehicle accident is to be granted just compensation.

45. Compensation is, essentially, making amends to a person who has lost something of value and the principle is that the victim of the wrongful act should be put back into the same position before the loss, as far as possible, in terms of money.

46. In the case of a loss of a minor child, the obvious victims would be the parents, the grandparents and the siblings of the child, for whom no compensation can be - 29 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 adequate as the loss is irreplaceable. The family would be scarred for life, especially the parents, whose entire life would be revolving around their child and on whom they would have been investing their entire life. With a minor child having no earning capacity, there would obviously be no immediate financial loss to the parents. However, as stated above, there would definitely be a financial loss from the minor child in future when the parents become dependent to a certain extent when they are aged and infirm, and it is this loss which would have to be ascertained and awarded to the parents.

47. Normally, a child on completing her education and securing a vocation would go on to establish his/her own family. But at the same time, they also take on the responsibility of looking after their parents. The degree of dependence of parents on their children may not be complete if the parents have planned their future and secured it. But even in such cases, it cannot be in dispute - 30 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 that the child does contribute to the well-being of the parent in more ways than one. VIII. DECISIONS OF THE APEX COURT OVER THE PAST TWO DECADES REGARDING THE COMPENSATION TO BE AWARDED FOR THE DEATHS OF MINORS:

48. In the year 2001, in Lata Wadhwa case⁸ - which was not in relation to a motor vehicle accident but in relation to a fire accident at a celebration in a factory which left several children dead - the Apex Court granted compensation of Rs. 2 lakhs for children between 5-10 years based on a voluntary statement of the factory and it proceeded to apply the notional income of Rs. 24,000/- p.a. and a multiplier of 15 and awarded compensation of Rs. 3,60,000/- along with a further sum of Rs. 50,000/- to it.

49. It is to be noticed here that in this case the Apex Court observed that there was a financial dependency of Rs. 12,000/- p.a. on the child, given the fact that every 8 Lata Wadhwa v. State of Bihar, (2001) 8 SCC197 - 31 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 child of the factory worker was assured of a job in future. It observed that this amount of notional income was inadequate and proceeded to double it to Rs. 24,000/- p.a.. Thus, the element of financial dependency of parents on a child was recognised by the Apex court way back in 2001 itself.

50. In the year 2009, in R.K. Malik's case⁹, which was a claim in respect of 29 children who were drowned when the bus in which they were travelling fell from a bridge in 1997, for which a claim under Section 163-A was made, the Court adopted the notional income of Rs. 15,000/- p.a. and applied the multiplier of 15 in case of children below 15 years and a multiplier of 16 in case of children above 16 years. The Court observed that it was not entering into the enhancement of the notional income of Rs. 15,000/- p.a. since the Second Schedule was inserted in 1994 and the accident was of the year 1997. The Court also awarded Rs. 75,000/- towards non-pecuniary damages. 9 R.K. Malik v. Kiran Pal, (2009) 14 SCC1 - 32 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 51. It is to be noticed here that the Apex Court was conscious of the inadequacy of the notional income of Rs. 15,000/- but refused to enter into that question since the accident had occurred just 3 years after the insertion of the Second Schedule in 1994.

52. In the year 2013, in Kishan Gopals case¹⁰, for the death of a 10 year old, the Apex Court though relied upon the Second Schedule, did not accept the notional income of Rs. 15,000/- p.a. for non-earning persons and proceeded to determine the notional income of Rs. 30,000/- p.a. and applied the multiplier of 15. Thus, the Apex Court has recognised the fact that the notional income of Rs. 15,000/- cannot be static while determining the compensation payable to a minor.

53. In the year 2020, in Kajals case¹¹ which related to a serious injury which had crippled a 12 year old girl, the Apex Court applied the minimum wages and applied a multiplier of 18 for awarding compensation. Though this is 10 Kishan Gopal v. Lala, (2014) 1 SCC244 11 Kajal v. Jagdish Chand, (2020) 4 SCC413 - 33 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 case related to an injury, it is to be noticed that the Apex Court did not apply the notional income contemplated for non-earning persons in the Second Schedule to determine the compensation.

54. Again in 2020, in Rajendra Singhs case¹², the Apex court, in the case relating to the death of a 12 year old girl, affirmed the compensation awarded by the High Court which had adopted the notional income of Rs. 36,000/- p.a. to the child and had deducted 50% towards the personal expenses of the minor and applied the multiplier of 15. Thus, once again, the notional income of Rs. 15,000/- stated in the Second Schedule to the MV Act was not applied.

55. In the year 2021, in Kurvan Ansaris case¹³, the Apex Court, while granting compensation in respect of the death of a 7 year old child, adopted the notional income of Rs. 25,000/- p.a. and applied the multiplier of 15. 12 Rajendra Singh v. National Insurance Co. Ltd., (2020) 7 SCC256 13 Kurvan Ansari v. Shyam Kishore Murmu, (2022) 1 SCC317 - 34 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 56. In the year 2022, in Master Ayushs case¹⁴, while granting compensation to a 5 year old who had become a paraplegic as a result of a motor vehicle accident, the Apex Court adopted a minimum wage of Rs. 3,700 and added 40% future prospects and thereafter applied a multiplier of 18 and determined the compensation.

57. In the year 2022, in Abhimanyus case¹⁵, while awarding compensation to a 5 year old child who had suffered complete paralysis and whose father was a Professor and the mother was an IAS officer, the Apex Court adopted the notional income of Rs. 60,000/- p.a. and applied the multiplier of 18.

58. Again, in the year 2022, in Meena Devis case¹⁶, the Apex Court, while awarding compensation to the parents of a 12 year old who was killed in an accident, applied the notional income of Rs. 30,000/- p.a. and applied the multiplier of 15. 14 Master Ayush v. Branch Manager, General Insurance Company Ltd. & Anr., (2022) 7 SCC738 15 Abhimanyu Partap Singh v. Namita Sekhon, (2022) 8 SCC489 16 Meena Devi v. Nunu Chand Mahto, (2023) 1 SCC204 - 35 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 59. As could be noticed from the above line of decisions spanning over two decades, the Apex Court has awarded compensation in respect of a minor by taking into consideration the notional income and by applying a multiplier, which is the methodology normally adopted for computing compensation to majors killed in an accident. The Apex Court has taken the notional income of Rs. 15,000/- fixed in the Second Schedule in the year 1994 as the basis in its decisions and it has also noticed that said sum cannot be applied for all cases having regard to the fall in the value of the purchasing power of the Rupee.

60. In all these cases, the question of a future dependency on a child was not specifically raised and consequently the Apex Court had no occasion to consider the factor of future dependency. In Lata Wadwas case, however, this future dependency was taken note of since the factory where the parents were working and within whose precincts the tragedy had occurred, had a policy - 36 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 whereby it assured every child of their workers would be employed by them.

61. In respect of awarding of compensation for the death of a child in terms of money, the Apex Court has nevertheless adopted the multiplier method and has awarded pecuniary damages to the parents by applying a notional income which,

incidentally, was significantly higher and in some cases double that prescribed amount under the Second Schedule. Thus, assessing the notional income and applying the appropriate multiplier would be one of the recognised and accepted ways in determining the just compensation even in cases relating to the award of compensation for the death of a minor child.

62. The Apex Court, as could be noticed from the above cases, has not adopted the notional income of Rs. 15,000/- p.a. which was stipulated in 1994 when the Second Schedule was inserted. The Apex Court has, in fact, recognised that the said sum cant be the real - 37 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 yardstick given the fall in the purchasing value of the Rupee.

63. It is also to be noticed that Section 163-A(3)¹⁷ also clearly and expressly states that the Central Government may from time to time amend the Second Schedule keeping in mind the cost of living. Thus, the substantive provision of statute itself recognised the amounts mentioned in the Second Schedule could never be a permanent figure and ought to be increased keeping in mind the cost of living. This basically indicates that the law has recognised that the cost of living would increase by reason of the fall in the purchasing power of the Rupees as time goes by.

64. Unfortunately, despite several strong observations made by the Apex Court in a number of cases, the Central Government has not discharged its obligation to revise the amounts mentioned in the Second Schedule and, as a 17163-A. Special provisions as to payment of compensation on structured formula basis.- (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.-. 38 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 consequence, Courts have had to repeatedly step in and consider a higher sum than the one fixed in the Second Schedule for determining compensation payable for minors. IX. APPROPRIATE METHODOLOGY TO BE ADOPTED TO DETERMINE COMPENSATION:

65. The methodologies which can be adopted to determine the compensation will have to be examined and the most appropriate one should be chosen to ensure parents are awarded a just compensation envisaged under the MV Act.

66. The two methodologies which can be adopted for determining the compensation would be: a. Considering the notional income as stipulated in the Second Schedule and applying the multiplier method; and b. Adopting the compensation payable in case of accidents in a railway accident.-. 39 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 67. The adoption of the compensation payable in case of Railway accident is because, firstly, the bulk of the population travel by Railways; and secondly, this mode of transportation is comparable to travel in a motor vehicle and both modes of travel together constitute the preferred mode of travel by the bulk of the population and also constitute as the main modes of transport in our country.

68. In both these methods, however, the amounts prescribed under the Rules cannot be accepted as the basis for the determination of the compensation as they were inserted when the Rules were framed decades ago and the value of the rupee when they were inserted and the value of the rupee as on the date of the accident would be significantly different. Historically, the fact that the value of the Rupee has fallen and continues to fall cannot be in dispute and this fall in value has been recognised by the Courts in several decisions and has also - 40 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 been commented upon. (Ref: Para 15 of Trilok Chandra¹⁸ and Para 35 of Sarla Verma¹⁹).

69. The Apex Court in the case of Krishna Bala²⁰ has reiterated that the Second Schedule did suffer from defects and it has also stated that the Second Schedule may serve as a guide, but cannot be an invariable ready reckoner.

70. In fact, the Government has been blamed for this inaction to rectify the anomalies that would abound, and the absurdities which occur as a reason of the drastic fall in the value of the money mentioned in a provision - such as

prescription of a fine which when enacted decades ago would have been a deterrent, but has now become so insignificant that it serves no purpose.

71. The Apex Court in Puttammas case²¹ has stated as follows:

18. U.P. SRTC v. Trilok Chandra, (1996) 4 SCC362 19 Sarla Verma v. DTC, (2009) 6 SCC121 20 U.P. SRTC v. Krishna Bala, (2006) 6 SCC249 21 Puttamma v. K.L. Narayana Reddy, (2013) 15 SCC45 - 41 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 53. Considering the current trend of inflation, cost of foodgrains and all other items, Mr P.P. Malhotra, Senior Advocate, Amicus Curiae submitted that for just compensation the multiplier should be enhanced to 24-25 years. Further, according to him, while calculating the compensation, the amount payable towards dependency should be increased as the life expectancy is up to 70-75 years and secondly, after 10 years of earning capacity it should be doubled in view of escalation of cost of living and progressive increase in the income. Keeping in view the cost of living, the Central Government is required to amend the Second Schedule [See Section 163-A(3)]. The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14-11-1994. Now more than 19 years have passed but no amendment has been made. While the cost of living has gone up manifolds.

54. In view of findings recorded above, we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. ***** 58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to - 42 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs 1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs 1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act. (emphasis supplied) 72. Despite a decade having elapsed since this decision, the Central Government has chosen not to awaken itself from its deep slumber and cure the anomalies in the Second Schedule. In fact, the Central Government has, ultimately, in 2019 omitted the Second Schedule altogether and made the payment of a lump-sum amount in cases where claim is made under Section 163-A. Thus, it not only becomes imperative, but it also becomes the obligation of the Courts to correct this anomaly and ensure the true value of the money is applied and adopted, especially when the Central Government did not take the necessary steps to address them.-. 43 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 73. It is no doubt true that this principle of taking into consideration the fall of the value of the rupee cannot be applied in cases of imposing fines in penal provisions as the sums to be imposed as a fine would be expressed as an outer limit. However, in cases of payment of compensation for a wrong, this limitation would not and cannot apply because that would be a self-defeating exercise.

74. To explain this with an analogy, if in 1950 the law makers felt that a payment of Rs. 100 as compensation for the loss of a buffalo was sufficient, obviously the said sum cannot be awarded in 2024 and be termed as just compensation. The most logical way to address this anomaly would be to compound the recorded value of inflation to a base sum and arrive at the figure for every year since 1950. This sum would reflect the actual value of the base sum in a particular year since the effect of inflation on the Rupee would be reflected correctly.-. 44 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 X. THE1T METHOD OF DETERMINING COMPENSATION - APPLYING THE NOTIONAL INCOME AS STIPULATED IN THE SECOND SCHEDULE OF THE MV ACT:

75. If the recorded inflation of every year from 1994 is compounded annually to the notional income of Rs. 15,000/- prescribed under the Second Schedule for non-earning persons, the resultant figure for each year from 1994 would accurately reflect the value of Rs. 15,000/- for that year. For this, purpose, the inflation rate recorded for each month of a year by the Ministry of Labour, Government of India is taken into consideration and the average of these rates is taken as the rate of inflation for every year. The resultant notional income arrived at by compounding the rate of inflation annually for each year from 1994 till date would be as follows:

Table - 1.1 A B C Year Inflation22 Compensation per Second (in %) Schedule (in Rs.) 1994 10.20 15,000 22 Official inflation rates obtained from the Labour Bureau - Ministry of Labour and Employments website: <https://labourbureau.gov.in/rate-of-inflation.->. 45 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 1995 10.22 16,533 1996 8.97 18,016 1997 7.25 19,322 1998 13.15 21,863 1999 4.84 22,921 2000 4.02 23,843 2001 3.76 24,739 2002 4.31 25,805 2003 3.81 26,789 2004 3.76 27,796 2005 4.24 28,974 2006 6.16 30,759 2007 6.38 32,722 2008 8.31 35,441 2009 10.82 39,275 2010 12.11 44,032 2011 8.86 47,933 2012 9.29 52,386 2013 10.92 58,106 2014 6.37 61,808 2015 5.88 65,442 2016 4.96 68,688 2017 2.49 70,398 2018 4.85 73,813 2019 7.66 79,467 2020 5.57 83,893 2021 4.88 87,987 2022 5.9 93,178 202323 4.25 97,138 2024 5.4 1,02,383 (until July) 76. This methodology of taking the notional income of Rs. 15,000/- p.a. as the base sum and compounding the 23 The inflation rates for the years 2023 and 2024 have been obtained from the Labour Bureaus website as well as from Government publications on www.pib.gov.in - 46 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 actual inflation rate annually to it would cure the anomaly of ignoring the effect of inflation which results in the fall in the value of the Rupee. More importantly, the base sum with inflation added to it, would reflect the real sum of money which the law

intended to be given to a victim. Thus, in order to secure a just compensation envisaged and mandated under the Act, this rational methodology of applying the notional income, as tabulated above, can be safely adopted.

77. It will, however, have to be kept in mind that this method assumes that the child would be a non-earning person even after he/she attains the age of majority. It will also have to be kept in mind that the Second Schedule was inserted to ensure compensation to people who are in the lowest strata of society in terms of earning and this would therefore not be a true reflection of the child's potential.-. 47 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 78. However, since the Constitutional Bench of the Apex Court in *Pranay Sethi's case*²⁴ has stated that the component of future prospects would have to be added to the notional income to take into consideration the future growth of the individual and also the fall in the value of the rupee, the addition of future prospects to the notional income as determined above i.e., by adding the rate of inflation would to a very large extent address the shortcomings in accepting the notional income of Rs. 15,000/- found in the Second Schedule. This addition of future prospects, given the fact that there is no true measure evolved as of today to determine the notional income of a non-earning person, would be the most rational method till a better mechanism is devised for payment of compensation to parents for the loss of their minor child.

79. To this notional income (with the addition of the annual compounded inflation rate), the added component ²⁴ *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC680 - 48 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 of 40% towards future prospects and the deduction of the 1/3rd of the sum towards the personal expenses of the minor child (as envisaged in the Second Schedule) is computed, the resultant notional income will have to be taken into consideration for each year for the purpose of computing the pecuniary loss. For ease of reference, the sums are stated in a tabular column below: Table - 1.2 A D E Year After adding 40% After deducting 1/3 for to Column C personal expenditure from

(in Rs.) Column D (in Rs.) 1994 21,000 14,000 1995 23,146 15,431 1996 25,222 16,815 1997 27,051 18,034 1998 30,608 20,405 1999 32,089 21,393 2000 33,380 22,253 2001 34,635 23,090 2002 36,127 24,085 2003 37,505 25,003 2004 38,914 25,943 2005 40,564 27,042 2006 43,063 28,708 2007 45,811 30,541 2008 49,617 33,078 2009 54,985 36,657 2010 61,645 41,097 2011 67,106 44,737 2012 73,340 48,894 2013 81,348 54,232 2014 86,531 57,687 2015 91,619 61,079 - 49 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2016 96,163 64,108 2017 98,557 65,704 2018 1,03,338 68,892 2019 1,11,254 74,169 2020 1,17,450 78,300 2021 1,23,182 82,121 2022 1,30,449 86,966 2023 1,35,993 90,662 2024 (until July) 1,43,337 95,557 80. As far as a multiplier to the above stated notional income is concerned, in case of children below 15 years of age, a multiplier of 15 would have to be applied as held in the case of Lata Wadwa (supra), and for children above the age of 15, a multiplier of 18 would apply as per Sarla Verma's case (supra) wherein a comparison has been drawn by considering the multipliers, inter alia, in Trilok Chandra (supra) and Susamma Thomas²⁵ as well.

81. Now, applying the multipliers of 15 (for children below the age of 15 years) and 18 (for children between the ages of 15 and 18 years) to the notional income as 25General Manager, Kerala S.R.T.C v. Susamma Thomas, (1994) 2 SCC176 - 50 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 determined in the preceding paragraphs for the values in Column D of Table 1.2, the amount of compensation towards pecuniary loss would be as follows: Table- 1.3 A E F G Year After Compensation Compensation deducting 1/3 amount payable amount payable for for personal for minors below minors aged 15-18 expenditure 15 years by years by applying (in Rs.) applying 15 18 multiplier multiplier 1994 14,000 2,10,000 2,52,000 1995 15,431 2,31,465 2,77,758 1996 16,815 2,52,225 3,02,670 1997 18,034 2,70,510 3,24,612 1998 20,405 3,06,075 3,67,290 1999 21,393 3,20,895 3,85,074 2000 22,253 3,33,795 4,00,554 2001 23,090 3,46,350 4,15,620 2002 24,085 3,61,275 4,33,530 2003 25,003 3,75,045 4,50,054 2004 25,943 3,89,145 4,66,974 2005 27,042 4,05,630 4,86,756 2006 28,708 4,30,620 5,16,744

2007 30,541 4,58,115 5,49,738 2008 33,078 4,96,170 5,95,404 2009 36,657 5,49,855 6,59,826 2010 41,097 6,16,455 7,39,746 2011 44,737 6,71,055 8,05,266 2012 48,894 7,33,410 8,80,092 2013 54,232 8,13,480 9,76,176 2014 57,687 8,65,305 10,38,366 2015 61,079 9,16,185 10,99,422 2016 64,108 9,61,620 11,53,944 2017 65,704 9,85,560 11,82,672 2018 68,892 10,33,380 12,400,56 2019 74,169 11,12,535 13,35,042 - 51 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2020 78,300 11,74,500 14,09,400 2021 82,121 12,31,815 14,78,178 2022 86,966 13,04,490 15,65,388 2023 90,662 13,59,930 16,31,916 2024 (until July) 95,557 14,33,355 17,20,026 82. Thus, the formula for calculating the compensation towards pecuniary loss under this method would be: [Notional Income with inflation rate + 40% Future Prospects - 1/3rd Personal Expenditure]. x 15 or 18 Multiplier = Compensation amount. o Where the Notional Income component would be the base sum of Rs. 15,000/- with the annual compounding of inflation for the corresponding year of accident (as per Table 1.1): o 18 or 15 - 18 multiplier (if the minor is above 15 but below 18 years of age) and 15 multiplier (if the minor is below

15) and 83. As an illustrative example, the compensation payable for the pecuniary loss to parents for the loss of a minor - 52 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 aged 16 years who has died in 2024, by applying the notional income with the yearly inflation rate added for a sum of Rs. 15,000/- as calculated in the tabular column above and adding the component of future prospects at the rate of 40% would be as follows:

1. t Step: Rs. 1,02,383/- + Rs. 40,953 = Rs. 1,43,336/- (Base sum of Rs. 15,000/- with the annual compounding of inflation) + (40% Future prospects) = (Total notional income) 2nd Step: Rs. 1,43,336/- - Rs. 47,779/- = Rs. 95,557/- (Total notional income - Deductions of 1/3 towards personal expenses) = (Notional income to be taken for computing the pecuniary loss) 3rd Step: - 53 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 To this notional income, the multiplier of 18 would have to be applied. i.e., Rs. 95,557/- x 18= Rs. 17,20,026/- (1,02,383 + 40,953 - 95,557/-) X (Multiplier) = Compensation payable towards pecuniary loss Thus, the pecuniary loss for the death of a minor child aged 16 years killed in a road accident in the year 2024 would be - Rs. 17,20,026/- 84. Having determined the sum of pecuniary loss suffered by the parents, necessarily, the next step would be to determine the non-pecuniary loss i.e., for the loss of love and affection.

85. In Pranay Sethis case the Apex Court in the year 2016 has stated that it would be appropriate to award a sum of Rs. 40,000/- towards loss of consortium for parents and this sum was to be increased by 10% every 3 years and consequently as of 2024, a sum of Rs. 48,400/- - 54 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 is to be paid to each of the parent towards loss of love and affection caused by the loss of a child.

86. It cannot be in dispute that the loss of a child causes a devastating blow to the parents and the degree of pain and agony would be at its peak and would linger forever. It is for this reason an adequate sum is required to be awarded and the normal sums awarded on this account in case of death of an adult cannot be the true yardstick. Since the sum determined in Pranay Sethis case has almost touched Rs. 50,000/- as of now, it would be appropriate to double this sum and award a sum of Rs. 1,00,000/- to each of the parent on account of the loss of love and affection as against the sum of Rs. 40,000/- awarded to the loss of a loved one in Pranay Sethis case (supra).

87. This sum can also be increased every year by adducing the recorded date of inflation henceforth.-. 55 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 88. This would thus result in awarding a further sum of Rs. 2,00,000/- to the parents, assuming that both of them are alive, and this would thus result in an award of a total compensation of Rs. 19,20,026/- (i.e., Rs. 17,20,026/- + Rs.2,00,000/-) to the

parents for the death of a minor aged 16 years in a motor vehicle accident which occurred in 2024.

89. It is to be stated here that in cases where there is only one surviving parent, on account of non-pecuniary loss, a sum of only Rs. 1,00,000/- will have to be paid on account of loss of love and affection.

90. For ease of reference, the compensation payable by adopting the notional income (after adding inflation), deducting 1/3rd towards personal expenses and then applying the appropriate multiplier, and thereafter after adding Rs. 1,00,000/- towards the loss of affection component for a SINGLE parent is stated in the tabular column below i.e., in Table 1.4.-. 56 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 Table - 1.4: FOR A SINGLE PARENT A H I Year Amount after adding 15 Amount after adding 18 multiplier + 1,00,000/- multiplier + 1,00,000/- (<15 years) (15-18 years) 1994 3,10,000 3,52,000 1995 3,31,465 3,77,758 1996 3,52,225 4,02,670 1997 3,70,510 4,24,612 1998 4,06,075 4,67,290 1999 4,20,895 4,85,074 2000 4,33,795 5,00,554 2001 4,46,350 5,15,620 2002 4,61,275 5,33,530 2003 4,75,045 5,50,054 2004 4,89,145 5,66,974 2005 5,05,630 5,86,756 2006 5,30,620 6,16,744 2007 5,58,115 6,49,738 2008 5,96,170 6,95,404 2009 6,49,855 7,59,826 2010 7,16,455 8,39,746 2011 7,71,055 9,05,266 2012 8,33,410 9,80,092 2013 9,13,480 10,76,176 2014 9,65,305 11,38,366 2015 10,16,185 11,99,422 2016 10,61,620 12,53,944 2017 10,85,560 12,82,672 2018 11,33,380 13,40,056 2019 12,12,535 14,35,042 2020 12,74,500 15,09,400 2021 13,31,815 15,78,178 2022 14,04,490 16,65,388 2023 14,59,930 17,31,916 2024 (until July) 15,33,355 18,20,026 - 57 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 91. The compensation payable in similar terms where BOTH PARENTS are alive and a sum of Rs. 2,00,000/- is added is also stated in the tabular column below i.e., in Table 1.5. Table - 1.5: FOR BOTH PARENTS A J K Year Amount after adding 15 Amount after adding 18 multiplier + 2,00,000/- multiplier + 2,00,000/- (<15 years) (15-18 years) 1994 4,10,000 4,52,000 1995 4,31,465 4,77,758 1996 4,52,225 5,02,670 1997 4,70,510 5,24,612 1998 5,06,075 5,67,290 1999 5,20,895 5,85,074 2000 5,33,795 6,00,554 2001 5,46,350 6,15,620 2002 5,61,275 6,33,530 2003

5,75,045 6,50,054 2004 5,89,145 6,66,974 2005 6,05,630 6,86,756 2006 6,30,620 7,16,744 2007 6,58,115 7,49,738 2008 6,96,170 7,95,404 2009 7,49,855 8,59,826 2010 8,16,455 9,39,746 2011 8,71,055 10,05,266 2012 9,33,410 10,80,092 2013 10,13,480 11,76,176 2014 10,65,305 12,38,366 2015 11,16,185 12,99,422 2016 11,61,620 13,53,944 2017 11,85,560 13,82,672 2018 12,33,380 14,40,056 2019 13,12,535 15,35,042 - 58 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2020 13,74,500 16,09,400 2021 14,31,815 16,78,178 2022 15,04,490 17,65,388 2023 15,59,930 18,31,916 2024 (until July) 16,33,355 19,20,026 XI. THE 2d METHOD OF DETERMINING COMPENSATION - BY APPLYING THE CRITERIA FOR COMPENSATION AWARDED FOR ACCIDENTS UNDER THE RAILWAYS ACT, 1989:

92. The other method to determine the compensation would be to simply adopt the sum of compensation payable in case of a death of a passenger in a railway accident. This is on the principle that compensation payable in case of an accident relating to the transportation sector should be uniform and, in our country, the preferred and probable mode of transportation of the majority of the population would be by way of train or by road, and both of them are to be treated alike. As already observed, different sets of compensation being paid to victims of an accident - merely because they happen to succumb to an accident - 59 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 while using one mode - would run afoul of the constitutionally embodied principle of equality in Article 14.

93. The argument that the compensation payable to a passenger killed in an airline should be adopted would, however, not be proper: firstly, because the fare payable for transportation by road and by train would differ vastly as compared to an airline fare; and secondly, because the use of an airline is essentially by the upper strata of our society who form a miniscule percentage of our population.

94. Even for adopting the compensation prescribed under the Rules framed under the Railways Act, necessarily, the rate of inflation would have to be added on the

compensation prescribed under the Rules given the fall in the value of the Rupee. Since the first revision of compensation to Rs. 4 lakhs was made in 1997 i.e., 3 years after the Second Schedule was inserted, the said sum of Rs. 4 lakhs is taken as the base sum and to this - 60 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 sum, the rate of inflation recorded for every year, is compounded annually in the same manner as has been for the notional income of Rs. 15,000/- stipulated in the Second Schedule.

95. The compensation then payable to a minor by applying the compensation payable to a passenger in a railway accident by adding the rate of inflation for each year would be as follows: Table - 2 Year Inflation²⁶ (in %) Total (in Rs.)

1997	7.25	4,00,000	27	1998	13.15	4,52,600	1999	4.84	4,74,506	2000	4.02	4,93,581
2001	3.76	5,12,140	2002	4.31	5,34,213	2003	3.81	5,54,566	2004	3.76	5,75,418	
2005	4.24	5,99,816	2006	6.16	6,36,764	2007	6.38	6,77,390	2008	8.31	7,33,681	
2009	10.82	8,13,065	2010	12.11	9,11,528	2011	8.86	9,92,289	2012	9.29	10,84,473	
2013	10.92	12,02,897	26	Official inflation rates obtained from the Labour Bureau - Ministry of Labour and Employments website - https://labourbureau.gov.in/rate-of-inflation . 27 Railway compensation - https://rct.indianrail.gov.in/acci_comp.html - 61 - NC:								

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2014 6.37 12,79,522 2015 5.88 13,54,757 2016 4.96 14,21,953 2017 2.49 14,57,360 2018 4.85 15,28,042 2019 7.66 16,45,090 2020 5.57 17,36,722 2021 4.88 18,21,474 2022 5.9 19,28,940 2023 4.25 20,10,920 2024 (until 5.4 July) 21,19,510 96. In this method of ascertaining the compensation, there is no differentiation of compensation for pecuniary and non-pecuniary loss and all the components of compensation are bundled together and forms one comprehensive sum.

97. In determining the sum of Rs. 4 lakhs in 1997, the Union Government was obviously of the view that given the value of money in 1997 and keeping in mind the average financial status of the majority of the travellers who used the railways, the said sum would be adequate. Thus, the compensation determined in the above manner would also be an appropriate method of determining - 62 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 compensation for the death of a minor in a motor vehicle accident. This method would also bring about a sense of parity in the manner of payment of compensation to victims of an accident in the two major forms of transportation sectors in the country. XII. THE IDEAL METHOD TO DETERMINE THE COMPENSATION ON A COMPARISON OF THE AFOREMENTIONED¹T AND²D METHODS:

98. The sums arrived by adopting the two methods narrated above does disclose a disparity and this would in turn result in prejudice to the victim if the method which fetches a lesser sum is adopted.

99. As an illustrative example, a comparison of the compensation for a minor below 15 years in a given year, say 2020, with both parents to be considered as future dependants, may be taken into account as per the sums determined in the tables mentioned above and then the sum payable would be: - 63 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 a. Under the 1st Method - Rs.13,74,500/- i.e., Rs.83,893/- (Notional income with inflation rate added) + Rs.33,557/- (40% for future prospects) - Rs.39,150 (deductions of 1/3rd towards personal expenses) x 15 + Rs.2,00,000/- (loss of love and affection) b. Under the 2nd Method - Rs.17,36,722/-.

100. As could be seen from the above, there is a significant variation in said sums though the accident occurred in the same year i.e., in 2020. While the 1st Method assumes a basic income as the notional income and applies the multiplier method, the 2nd Method is a lump sum payment, and this has resulted in a significant disparity.

101. In order to do away with this variance, the best way would be to take the average of both the sums and make that sum to be the compensation payable. This would basically ensure that by applying the average of - 64 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 compensation payable under the multiplier method and the lumpsum method -

which are the compensation payable to the victims of an accident in the two major modes of transportation prevalent in the country - a middle path would be achieved, and this would subserve the ends of justice and equity.

102. Thus, the sum payable for the death of a minor killed in a motor vehicle accident by adopting the average of the two methods for every year from 1994 till date would be the ideal methodology for determine the compensation payable to the parents of a minor who is killed in a road accident.

103. A ready reckoner of the sums payable to a single parent as well as both parents who has/have lost a minor child aged below 15 years of age in a motor vehicle accident for an accident occurring in each year from 1994 till date is provided in Tables 3.1 and 3.2 respectively: - 65 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 Table - 3.1 FOR MINORS BELOW 15 YEARS WITH A SINGLE PARENT A B C D YEAR 1ST METHOD* 2ND METHOD AVERAGE OF (15 multiplier) THE 1ST & 2ND METHODS

1994	3,10,000	3,10,000	1995	3,31,465	3,31,465	1996	3,52,225	3,52,225
1997	3,70,510	4,00,000	3,85,255	1998	4,06,075	4,52,600	4,29,338	1999
4,20,895	4,74,506	4,47,701	2000	4,33,795	4,93,581	4,63,688	2001	4,46,350
5,12,140	4,79,245	2002	4,61,275	5,34,213	4,97,744	2003	4,75,045	5,54,566
5,14,806	2004	4,89,145	5,75,418	5,32,282	2005	5,05,630	5,99,816	5,52,723
2006	5,30,620	6,36,764	5,83,692	2007	5,58,115	6,77,390	6,17,753	2008
5,96,170	7,33,681	6,64,926	2009	6,49,855	8,13,065	7,31,460	2010	7,16,455
9,11,528	8,13,992	2011	7,71,055	9,92,289	8,81,672	2012	8,33,410	10,84,473
9,58,942	2013	9,13,480	12,02,897	10,58,189	2014	9,65,305	12,79,522	11,22,414
2015	10,16,185	13,54,757	11,85,471	2016	10,61,620	14,21,953	12,41,787	2017
12,41,787	2018	10,85,560	14,57,360	12,71,460	2018	11,33,380	15,28,042	13,30,711

- 66 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2019 12,12,535 16,45,090 14,28,813 2020 12,74,500 17,36,722 15,05,611 2021 13,31,815 18,21,474 15,76,645 2022 14,04,490 19,28,940 16,66,715 2023 14,59,930 20,10,920 17,35,425 2024 15,33,355 21,19,510 18,26,433 Table - 3.2 FOR MINORS BELOW 15 YEARS WITH BOTH PARENTS A B C D YEAR 1ST METHOD* 2ND AVERAGE OF THE (15 multiplier) METHOD 1ST & 2ND

METHODS19944,10,000 - 4,10,000 1995 4,31,465 - 4,31,465 1996 4,52,225 - 4,52,225 1997 4,70,510 4,00,000 4,35,255 1998 5,06,075 4,52,600 4,79,338 1999 5,20,895 4,74,506 4,97,701 2000 5,33,795 4,93,581 5,13,688 2001 5,46,350 5,12,140 5,29,245 2002 5,61,275 5,34,213 5,47,744 2003 5,75,045 5,54,566 5,64,806 2004 5,89,145 5,75,418 5,82,282 2005 6,05,630 5,99,816 6,02,723 2006 6,30,620 6,36,764 6,33,692 2007 6,58,115 6,77,390 6,67,753 2008 6,96,170 7,33,681 7,14,926 2009 7,49,855 8,13,065 7,81,460 2010 8,16,455 9,11,528 8,63,992 - 67 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 2011 8,71,055 9,92,289 9,31,672 2012 9,33,410 10,84,473 10,08,942 2013 10,13,480 12,02,897 11,08,189 2014 10,65,305 12,79,522 11,72,414 2015 11,16,185 13,54,757 12,35,471 2016 11,61,620 14,21,953 12,91,787 2017 11,85,560 14,57,360 13,21,460 2018 12,33,380 15,28,042 13,80,711 2019 13,12,535 16,45,090 14,78,813 2020 13,74,500 17,36,722 15,55,611 2021 14,31,815 18,21,474 16,26,645 2022 15,04,490 19,28,940 17,16,715 2023 15,59,930 20,10,920 17,85,425 2024 16,33,355 21,19,510 18,76,433 104. A ready reckoner of the sums payable to a single parent as well as both parents who has/have lost a minor child aged above 15 years but below 18 years of age in a motor vehicle accident for an accident occurring in each year from 1994 till date is as given in Tables 3.3 and 3.4 respectively as follows: Table - 3.3 FOR MINORS OF AGE1518 YEARS WITH A SINGLE PARENT A B C D YEAR1T METHOD2D AVERAGE OF THE (18 multiplier) METHOD1T& 2ND METHODS19943,52,000 - 3,52,000 - 68 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 1995 3,77,758 - 3,77,758 1996 4,02,670 - 4,02,670 1997 4,24,612 4,00,000 4,12,306 1998 4,67,290 4,52,600 4,59,945 1999 4,85,074 4,74,506 4,79,790 2000 5,00,554 4,93,581 4,97,068 2001 5,15,620 5,12,140 5,13,880 2002 5,33,530 5,34,213 5,33,872 2003 5,50,054 5,54,566 5,52,310 2004 5,66,974 5,75,418 5,71,196 2005 5,86,756 5,99,816 5,93,286 2006 6,16,744 6,36,764 6,26,754 2007 6,49,738 6,77,390 6,63,564 2008 6,95,404 7,33,681 7,14,543 2009 7,59,826 8,13,065 7,86,446 2010 8,39,746 9,11,528 8,75,637 2011 9,05,266 9,92,289 9,48,778 2012 9,80,092 10,84,473 10,32,283 2013 10,76,176 12,02,897 11,39,537 2014

11,38,366	12,79,522	12,08,944	2015	11,99,422	13,54,757	12,77,090	2016
12,53,944	14,21,953	13,37,949	2017	12,82,672	14,57,360	13,70,016	2018
13,40,056	15,28,042	14,34,049	2019	14,35,042	16,45,090	15,40,066	2020
15,09,400	17,36,722	16,23,061	2021	15,78,178	18,21,474	16,99,826	2022
16,65,388	19,28,940	17,97,164	2023	17,31,916	20,10,920	18,71,418	2024
18,20,026	21,19,510	19,69,768	- 69 - NC:				

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 Table - 3.4 FOR MINORS OF AGE 15-18 YEARS WITH BOTH PARENTS A B C D YEAR 1ST METHOD 2ND AVERAGE OF THE (18 multiplier) METHOD 1ST & 2ND METHODS

1994	4,52,000	- 4,52,000	1995	4,77,758	- 4,77,758	1996	5,02,670	- 5,02,670
1997	5,24,612	4,00,000	4,62,306	1998	5,67,290	4,52,600	5,09,945	1999
5,85,074	4,74,506	5,29,790	2000	6,00,554	4,93,581	5,47,068	2001	6,15,620
5,12,140	5,63,880	2002	6,33,530	5,34,213	5,83,872	2003	6,50,054	5,54,566
6,02,310	2004	6,66,974	5,75,418	6,21,196	2005	6,86,756	5,99,816	6,43,286
2006	7,16,744	6,36,764	6,76,754	2007	7,49,738	6,77,390	7,13,564	2008
7,95,404	7,33,681	7,64,543	2009	8,59,826	8,13,065	8,36,446	2010	9,39,746
9,11,528	9,25,637	2011	10,05,266	9,92,289	9,98,778	2012	10,80,092	10,84,473
10,82,283	2013	11,76,176	12,02,897	11,89,537	2014	12,38,366	12,79,522	12,58,944
2015	12,99,422	13,54,757	13,27,090	2016	13,53,944	14,21,953	13,87,949	- 70 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018

2017	13,82,672	14,57,360	14,20,016	2018	14,40,056	15,28,042	14,84,049	2019
15,35,042	16,45,090	15,90,066	2020	16,09,400	17,36,722	16,73,061	2021	16,78,178
18,21,474	17,49,826	2022	17,65,388	19,28,940	18,47,164	2023	18,31,916	20,10,920
19,21,418	2024	19,20,026	21,19,510	20,19,768	105.			

For compensation payable for accidents occurring in future years i.e., after 2024, the recorded inflation rate of the previous year should be added to the sum indicated in the above column (For e.g. the compensation payable for accident of year 2025 would be Sum mentioned above for 2024 + Rate of Inflation for 2024).

106. In addition to the above sums, the medical expenditure incurred during the hospitalisation period will have to be added based on the documentary evidence produced by the parents.

XIII. SAFEGUARDS TO ENSURE FINANCIAL

SECURITY TO THE PARENTS OF A DECEASED MINOR CHILD: - 71 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 107. In order to ensure that this sum is put to use only when the actual dependency of a parent arises, that is when the parent become old and infirm, it would be appropriate to direct the above stipulated compensation amount be invested in a Fixed Deposit in which the interest is cumulatively accumulated. This Fixed Deposit along with the accumulated cumulative interest shall become payable, as a general rule, when one of the parents reach the age of 60 years.

108. It would, however, be open for the parents to approach the Tribunal at any time after the sum is invested (as stated above) and satisfy the Tribunal that there is a genuine need to be met or an exigency to be dealt with and request for a partial withdrawal. The Tribunals, in such cases, on being satisfied of the cause shown, may relax the conditions stated above and permit the parents to make a withdrawal of the sums that it deems appropriate.-. 72 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 109. In cases where the child leaves behind a widowed unemployed mother who is in need of financial assistance immediately, the Tribunal can permit such widowed mother to withdraw the interest on the amounts awarded by it instead of directing it to be invested in a cumulative Fixed Deposit.

110. This approach would satisfy the requirement of the law as regards the liability of the children to maintain the parents when they become old and infirm and satisfy the future financial dependency. This would prevent the use of this sum to be used for their regular and immediate needs and also ensure that there is no imprudent fiscal expenditure by them.

111. The parent(s) would, however, be entitled for withdrawal of entire the amounts that have spent by them towards medical expenses and which is awarded by the Tribunal, in addition to the above sums.-. 73 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 112. It must also be kept in mind that the grant of compensation as provided above may not be

a considered as a rigid formula. In a case where there is clear evidence of the quality of education that the child is undertaking, the background of the parents and their family, the education being pursued by a sibling, etc., a case can be made out for payment of a higher compensation, the Tribunals could award a larger sum of compensation payable by increasing the notional income appropriately and by adding the recorded rate of inflation from 1994 till the date of the accident on this increased notional income, in the same manner stated above.

XIV. ADDITIONAL COMPONENT OF JUST COMPENSATION PAYABLE TO PARENTS, AND DIRECTIONS:

113. Apart from the financial support given by the children, which would be taken care of by paying compensation determined by adopting the above method, there would be an additional component which should be - 74 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 awarded in the event of a minors death in a motor vehicle accident so as to ensure that it is completely just.

114. As already observed above, the other contribution that a child would make to their parents is to ensure that the medical needs of the parents are taken care of when they become aged. In our country, the dependence of parents on their children for their health cannot be in doubt at all since most parents tend to be incapable of taking care of their medical costs as they tend to have very little savings because of the sums that they would have spent on themselves and on their children, which would have included their considerable educational expenditure. The children, in large measure, contribute and at times become completely responsible for the medical expenditure incurred by their parents. It is to be kept in mind that the medical needs of a large section of the populace is not secure since the planning and securing of medical security is still in its infancy.-.

75 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 115. It is therefore essential that in the event of a loss of a minor child, an additional component of compensating the parents would be necessary to ensure that the medical needs of the parents are taken care of and secured. This could be

achieved by directing the Insurer (in cases where the offending vehicle is insured) to purchase health insurance for the parents, which would cover their medical needs the moment that they become 60 years old and this insurance covers their medical need till the end of their lives.

116. The insurer, being an insurance company itself, can easily devise a policy to meet such a situation whereby the medical costs of the parents are taken care of by the issuance of a policy in advance.

117. Given the fact that medical costs are rising by the day, for the present, it would be appropriate to direct the insurer to provide a basic insurance cover of Rs. 10 lakhs for the parents. The insurer can also provide for an option to the parent to opt for additional cover at their own cost - 76 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 and this would also be a good social measure for ensuring the betterment of the elderly, in advance.

118. In cases of there being no indemnity from insurers to satisfy compensation, the Tribunal would have to ascertain the cost of purchasing an insurance policy as stated above for the aforementioned sum and direct the person liable for compensation to purchase such policy.

119. It is hereby clarified that this obligation of purchase of a medical insurance cover to the parents would be in addition to the compensation awarded and shall not be deducted from the compensation awarded as this is an additional component of just compensation.

120. The Insurance Regulatory and Development Authority of India (IRDAI) is directed to ensure that all insurance companies offer such a policy to the parents who have lost their minor child in a motor vehicle accident and ensure that insurers of a motor vehicle create such a policy.- 77 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 121. The Registry is directed to forward a copy of this order to the IRDAI. The IRDAI is directed to report compliance of the directions mentioned above within a period of

three months. Notwithstanding the disposal of these appeals, the same would be posted before this Court for compliance on 17th December, 2024.

122. Now, coming to the facts of the present case, by applying the amounts determined in this mentioned, the claimants, in substitution of the awards of the Tribunal, would be entitled for the following sums.

123. In MFA No.11440/2011 - This is a case in which an accident occurred in 2015, in which Harish a 14 year old was killed and his mother (a single parent) is claiming compensation. Per the method of determination of compensation made above, she would be entitled for a compensation, per Table 3.1, of - Rs. 11,85,471/-.

124. In MFA No.206/2018 - This is a case in which an [accident occurred in 2010, when Sanjay (a 12 year old - 78 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 boy) was killed. Per the determination made above in Table 3.2, both his parents would be entitled for a compensation of - Rs. 8,63,992/-.

125. The said sums shall carry interest at the rate of 6% per annum from the date of the claim petition till the date of payment.

126. This sum shall be invested in a Cumulative Fixed Deposit in a nationalised bank of the choice of the parent(s) till one of them reaches the age of 60 years. The accumulated amount shall be paid to them thereafter.

127. It is made clear that it will be open for the parents to approach the Tribunal and seek partial or complete withdrawal of the accumulated sum at any point in time by producing material or attendant circumstances which would satisfy the Tribunal that there is an overwhelming need of money for the parents.

128. The Insurer shall also issue a Medical Insurance Policy in the name of the parent(s) to the extent of Rs. 10 - 79 - NC:

2024. KHC:38401 MFA No.11440 of 2011 C/W MFA No.206 of 2018 lakhs, which would come into effect from the date on which the parent attains the age of 60

years. An option to purchase an additional cover by the parents, at their own cost (popularly termed as Top-up Cover by the Insurers), shall also be provided.

129. These appeals are, accordingly, allowed in part. Sd/- (N S SANJAY GOWDA)
JUDGE Prajwala Sathyaprakash/PKS

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