

Abdul Rasheed vs Faris

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Court : Kerala

Decided On : Aug-02-2023

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : MACA/593/2015

Appellant : Abdul Rasheed

Respondent : FARIS

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN
WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945 MACA
NO.593 OF 2015 APPEAL AGAINST THE AWARD DATED 31.03.2014 IN
O.P.(MV)NO.474 OF 2011 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS
TRIBUNAL, TIRUR APPELLANTS/CLAIMANTS:

1 ABDUL RASHEED, AGED 43 YEARS, S/O.MUHAMMED KUTTY,
THEYYAMBAKKAL HOUSE, NELLISSERY, ALAMCODE P.O.,
MALAPPURAM DISTRICT. 2 RIYA FATHIMA (MINOR), 6 YEARS,
D.O.B.-15.01.2007, D/O.ABDUL RASHEED, 40 YEARS,
THEYYAMBAKKAL HOUSE, NELLISSERY, ALAMCODE P.O.,

MALAPPURAM DISTRICT, REPRESENTED BY NEXT FRIEND, FATHER, ABDUL RASHEED, 40 YEARS, S/O.MUHAMMED KUTTY, THEYYAMBAKKAL HOUSE, NELLISSERY, ALAMCODE P.O., MALAPPURAM DISTRICT. 3 BEEVATHUKUTTY, 64 YEARS, W/O.UMMER (LATE), KIZHAKUTTUVALAPPIL HOUSE, KANJOOR, MALAPPURAM DISTRICT. BY ADVS. LOWEL CHERIAN V.V.JOY

RESPONDENTS/RESPONDENTS: 1 FARIS, 23 YEARS, S/O.SAKARIYA, KANKANGHAT VALAPPIL HOUSE, PAVITTAPURAM P.O., OTHALLOOR, PONNANI TALUK, MALAPPURAM DISTRICT, PIN-679 534.(R.C. OWNER - CUM DRIVER) 2 THE ORIENTAL INSURANCE CO.LTD., DIVISIONAL OFFICE, 1ST FLOOR, JYOTHIS SUPPER BAZAR, THODUPUZHA, PIN-685 584.(INSURER) BY ADVS. SRI.AJEESH K.SASI SRI.P.V.JYOTHI PRASAD SRI.P.V.JYOTHI PRASAD SRI.M.REVIKRISHNAN SRI.P.VIJAYA BHANU SR. LATHA SUSAN CHERIAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 02.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellants are the claimants in O.P.(MV)No.474 of 2011

on the file of the Motor Accidents Claims Tribunal, Tirur, which was one filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of one Rajula, wife of the 1st appellant, mother of the 2nd appellant and daughter of the 3rd appellant, who sustained fatal injuries in a motor accident which occurred on 23.05.2010, while she was travelling in a car bearing Registration No.KL-54/A-7895, on 23.05.2010 at about 9.30 p.m. At the place of the accident, the car was hit by a Mahindra pickup bearing registration No.KL-57/A-5821, owned and driven by the 1st respondent and insured with the 2nd respondent. In the accident, she sustained fatal injuries, who succumbed to the injuries on the date of the accident. Alleging that the accident occurred due to the rash and negligent driving of Mahindra pickup by the 1st respondent owner cum driver, a claim petition was filed before the Tribunal, claiming a total compensation of Rs.5,75,000/- under various heads. For the purpose of payment of court fee, the

total compensation claimed was limited to Rs.5,00,000/-.

2. Before the Tribunal, the 1st respondent owner cum driver remained absent and he was set ex-parte. The 2nd respondent

insurer filed a written statement admitting the insurance coverage of the offending vehicle. The insurer contended that the accident occurred due to the negligence of the driver of the car. The Mahindra pickup was not having a valid permit at the time of the accident. The 1st respondent owner cum driver was charge sheeted for the offence punishable under Section 46(1) read with Section 177 of the Motor Vehicles Act and under Section 66 read with Section 192. Therefore, the insurer is not liable to indemnify the insured.

3. The claim petition, i.e., O.P.(MV)No.474 of 2011, was tied along with the connected matters. On the side of the claimants, Exts.A1 to A15 were marked. The disability certificate was marked as Ext.C1.

4. After considering the pleadings and evidence on record,

the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the Mahindra pickup by the 1st respondent owner cum driver. Since the said vehicle was not having a valid permit at the time of the accident, the 2nd respondent insurer was found entitled to recover the amount of compensation paid to the claimants, by proceeding against the 1st respondent owner cum driver. Under various heads, the Tribunal awarded a total compensation of Rs.4,09,000/- together with interest at the rate of

9% per annum from the date of the petition till realisation with proportionate costs. The insurer was directed to deposit the amount of compensation within a period of one month from the date of the award. Out of the total compensation of Rs.4,09,000/-, the 2nd claimant was found entitled to Rs.3,00,000/- with proportionate cost and interest, which was directed to be kept in a fixed deposit in a Nationalised Bank till she attains majority. The 1st claimant, who is the husband of the deceased, and the 3rd claimant, who is her mother were found entitled to payment of the balance amount with proportionate cost and interest, out of which

Rs.25,000/- each was directed to be paid to them directly and the balance amount was directed to be deposited in a Nationalised Bank in fixed deposit, for a period of three years. The 2nd respondent insurer was permitted to recover the award amount by proceeding against the 1st respondent owner cum driver.

5. Dissatisfied with the quantum of compensation awarded

by the Tribunal under various heads, the appellants-claimants are before this Court in this appeal, invoking the provisions under Section 173 of the Motor Vehicles Act, which was one filed along with C.M.Application No.671 of 2015 for condonation of delay of 234 days, which was condoned by a separate order dated this date,

subject to the condition that in case additional compensation is granted, appellants-claimants will not be entitled to interest for the said amount for the period of delay of 234 days.

6. Heard the learned counsel for the appellants-claimants

and also the learned counsel for the 2nd respondent-insurer. Despite service of notice in C.M.Application No.671 of 2015, the 1 st respondent owner cum driver of the offending vehicle, who was set ex-parte before the Tribunal, has not chosen to enter appearance.

7. The issue that arises for consideration in this appeal is whether the appellants-claimants are entitled to enhancement of the compensation awarded by the Tribunal under various heads.

8. In Sarla Verma v. Delhi Transport Corporation

[(2009) 6 SCC 121] the Apex Court laid down the principles governing determination of quantum of compensation in the case of death in a motor accident. The Apex Court held that, the compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the

wrong, as far as money can do so, by

applying the well settled principles relating to award of

compensation. It is not intended to be a bonanza, largesse or source of profit. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by following the well settled steps, namely, ascertaining the multiplicand (annual contribution to the family), the multiplier and calculation of loss of dependency by multiplying the multiplicand by such multiplier.

9. In National Insurance Company Ltd. v. Pranay

Sethi [(2017) 16 SCC 680], a Constitution Bench of the Apex Court held that, Section 168 of the Motor Vehicles Act, 1988 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, i.e., just compensation.

10. In the instant case, the compensation awarded by the Tribunal under various heads reads thus;

Sl.No	Head of claim	Amount claimed	Amount awarded (in rupees)
1	Loss of earnings (Total)	Nil	Nil
2	Loss of earnings (partial)	Nil	Nil
3	Medical expenses	5,000/-	Nil
4	Future treatment	Nil	Nil
5	Bystander		

expenses Nil Nil 6 Transportation expenses 2,000/- 2,000/- 7 Extra nourishment 1,000/- Nil 8 Damage to clothing, etc. 2,000/- 1,000/- 9 Pain and suffering 50,000/- 10,000/- 10 Loss of dependency 4,00,000/- 3,06,000/- 11 Loss of consortium 25,000/- 25,000/- 12 Loss of love and affection 25,000/- 50,000/- 13 Loss of estate 50,000/- Nil 14 Compensation towards Nil Nil permanent partial disability

15. Compensation for loss of Nil Nil amenities

16. Any other heads:- Funeral expenses 15,000/- 15,000/- Loss of earning power Nil Nil Total 5,75,000/- 4,09,000/- Claim limited to Rs. 5,00,000/-

11. The accident occurred on 23.05.2010. At the time of the

accident, the deceased was aged 30 years. In the claim petition, the monthly income of the deceased, who was a homemaker, was shown as Rs.2,000/-. The Tribunal fixed the monthly income of the deceased notionally as Rs.3,000/-.

12. In Ramachandrappa v. Manager, Royal Sundaram

Alliance Insurance Company Limited [(2011) 13 SCC 236] the Apex Court reckoned the monthly income of a coolie (manual labourer), who met with a road accident in the year 2004, at the age of 35 years, notionally as Rs.4,500/-. The Apex Court held that the claimant who was working as a coolie cannot be expected to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in the facts of the said case, the Tribunal should have accepted the claim of the claimant. The Apex Court made it clear that, in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant, in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may

proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.

13. In Syed Sadiq v. Divisional Manager, United India

Insurance Co. Ltd. [(2014) 2 SCC 735], taking note of the earlier decision in Ramachandrappa [(2011) 13 SCC 236], the Apex Court reckoned the monthly income of a vegetable vendor, who met with a road accident in the year 2008, at the age of 24 years, notionally as Rs.6,500/-. In the said decision, the Apex Court

held that a labourer in an unorganised sector doing his own

business cannot be expected to produce documents to prove his monthly income. Therefore, there was no reason for the Tribunal and the High Court to ask for evidence to prove his monthly income. Going by the state of economy prevailing at that time and the rising prices in agricultural products, the Apex Court accepted his case that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.

14. In Arun Kumar Agrawal v. National Insurance

Company [(2010) 9 SCC 218] the Apex Court held that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered

by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family, i.e., husband and children. However, for the purpose of award of compensation to the dependants, some

pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife.

They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relations like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

15. In Arun Kumar Agrawal [(2010) 9 SCC 218] the

Apex Court held further that, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/ mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife.

16. In Arun Kumar Agrawal [(2010) 9 SCC 218], the Apex Court noticed that household work performed by women throughout India is more than US\$612.8 billion per year

(Evangelical Social Action Forum and Health Bridge, p.17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The Courts and Tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing 'just

compensation'. In Arun Kumar Agrawal [(2010) 9 SCC 218], the Apex Court did not approve the approach adopted by the Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker, because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker.

17. In Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar [(2015) 4 SCC 237] the Apex Court reiterated the law laid down in Arun Kumar Agrawal [(2010) 9 SCC 218]. In Jitendra Khimshankar Trivedi, the accident occurred on 21.09.1990. The deceased, who was aged 22 years, succumbed to

the injuries. In the claim petition it was averred that, at the time of accident, the deceased was a housewife, who was doing embroidery and knitting work. She was earning Rs.900/- per month from the said work and was maintaining her family. The Tribunal observed that in the district of Kutch embroidery work, stitching work and local traditional embroidery work is doing well and had the deceased been alive she would have earned Rs. 1,500/- per month. Therefore, the Tribunal took the monthly income of the deceased as Rs.1,500/-. After deducting 1/3rd towards personal and living expenses of the deceased and adopting the multiplier of 18, Tribunal calculated loss of dependency at Rs.2,16,000/-. Adding conventional damages Rs.8,000/-, the Tribunal awarded total compensation of Rs.2,24,000/-. In the appeal filed by the respondents, the High Court of Gujarat at Ahmedabad reduced the monthly income of the deceased as Rs.1,350/-. After deducting

and adopting the multiplier of 18, the High Court calculated loss of dependency at Rs.2,09,400/-. Dissatisfied with the quantum of compensation awarded by the High Court, the claimants approached the Apex Court. The Apex Court held that, as observed by the Tribunal, embroidery work, stitching work and local

traditional embroidery work was doing well in the district of Kutch and there was good earning. Considering the nature of the work and the oral evidence of the father-in-law and the mother-in-law of the deceased, had the deceased been alive she would have earned not less than Rs.3,000/- per month. Even assuming the deceased was not a self-employed doing embroidery and tailoring work, the fact

remains that she was a housewife and a homemaker. It is hard to monetise the domestic work done by a house-mother. The services of the mother/wife are available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is invaluable and that, it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker have to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking the deceased as the homemaker, it is reasonable to fix her income at Rs.3,000/- per month.

18. In *Jitendra Khimshankar Trivedi* [(2015) 4 SCC 237],

the Apex Court noticed that, as against the award passed by the Tribunal awarding a total compensation of Rs.2,24,000/-, the claimants have not filed any appeal. Therefore, the Apex Court

considered the question as to whether the income of the deceased could be increased and compensation could be enhanced. The Apex Court held that, in terms of Section 168 of the Motor Vehicles Act, the Courts/Tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the Courts in awarding reasonable compensation was emphasised in *Nagappa v. Gurudayal Singh* [(2003) 2 SCC 274], *Oriental Insurance Company Ltd. v. Mohd. Nasir* [(2009) 6 SCC 280] and *Ningamma v. United India Insurance Company Ltd.* [(2009) 13 SCC 710]. As against the award passed by the Tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of Courts/Tribunals to award just and reasonable compensation, the Apex Court deem it appropriate to increase the compensation. In

order to award just and reasonable compensation, the monthly

income of the deceased was taken as Rs.3,000/-. After deducting adopting the multiplier of 18, the Apex Court calculated loss of dependency at Rs.4,32,000/-.

19. In *Gopinathan A. and others v. Afzal Basha and another* [2020 (3) KHC 666] this Court held that, as held by the

Apex Court in *Arun Kumar Agrawal* [(2010) 9 SCC 218] the gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. In the instant case, the accident occurred on 10.10.2004 and at the time of accident, the deceased was aged 53 years. The appellants claimed Rs.4,000/- as the notional monthly income of the deceased, who was a housewife. Considering the economic conditions prevailing at the time of accident, i.e., during the year 2004, and taking note of the fixation of notional monthly income by the Apex Court in *Ramachandrappa* [(2011) 13 SCC 236] and *Syed Sadiq* [(2014) 2 SCC 735], the monthly income of a manual labourer or a labourer in an unorganised sector doing his own business as vegetable vendor, fruit vendor, etc., who met with a motor accident in the year 2004, could be reasonably taken as Rs.4,500/-. Therefore, the notional monthly income that could be taken for a housewife/homemaker, who met with a motor accident in the year 2004, for the purpose of awarding just and reasonable compensation under the head loss of dependency, shall not be less than the notional monthly income of Rs.4,500/-, that could be taken for a manual labourer or a labourer in an

unorganised sector doing his own business as vegetable vendor, fruit vendor, etc., who met with a motor accident in that year, taking note of the fixation of notional monthly income by the Apex Court in *Ramachandrappa* [(2011) 13 SCC 236] and *Syed Sadiq* [(2014) 2 SCC 735], even in a case in which the notional monthly income claimed in the claim petition is on the lower side. On the

facts of the case on hand, this Court noticed that the appellants

have no case that the deceased was earning any income by doing tailoring, embroidery work, etc. Therefore, the notional monthly income of the deceased in that case was re-fixed as Rs.4,500/-, for the purpose of assessing compensation under various heads.

20. In the instant case, the accident is of the year 2010. The

appellants have no case that the deceased was earning any income by doing tailoring, embroidery work, etc. Therefore, the notional monthly income of the deceased, who was a homemaker, is re-fixed as Rs.7,500/-, for the purpose of assessing compensation under various heads.

21. In *Pranay Sethi* [(2017) 16 SCC 680], a Constitution

Bench of the Apex Court held that, the determination of 'just compensation' 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* [(2009) 6 SCC 121] and it has been approved in *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 standardization 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 standardization keeping in view the principle of certainty, stability and consistency. In *Pranay Sethi* the Apex Court approved the principle of 'standardisation' so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

22. In *Rajesh v. Rajbir Singh* [(2013) 9 SCC 54], a

Three-Judge Bench of the Apex Court held that, in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. In *Munna Lal Jain v. Vipin Kumar Sharma* [(2015) 6 SCC 347] another Three-Judge Bench followed the principle stated in *Rajesh*. In *Pranay Sethi*, after expressing the

opinion that the dicta laid down in Reshma Kumari being earlier in point of time would be a binding precedent and not the decision in Rajesh, the Constitution Bench observed that, in Munna Lal Jain, the Three-Judge Bench should have been guided by the principle stated in Reshma Kumari which has concurred with the view expressed in Sarla Devi or in case of disagreement, it should have been well advised to refer the case to a Larger Bench.

23. In Pranay Sethi [(2017) 16 SCC 680] the

Constitution Bench held that, while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50

to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. The Apex Court held further that, in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

24. In the instant case, at the time of accident, the deceased

was a housewife aged 30 years. In this judgment, the monthly income of the deceased is re-fixed notionally as Rs.7,500/-. In the impugned award, the Tribunal did not add anything to the notional monthly income of the deceased towards future prospects.

25. In view of the law laid down by the Apex Court in Pranay

Sethi, an addition of 40% of the notional monthly income of the deceased, as re-fixed in this appeal considering the economic conditions prevailing at the time of accident and taking note of the fixation of notional monthly income by the Apex

Court in Ramachandrappa [(2011) 13 SCC 236] and Syed Sadiq [(2014) 2 SCC 735], can be made towards future prospects, since the deceased was below the age of 40 years.

26. Therefore, for the purpose of re-fixing the compensation

under the head loss of dependency, 40% of the monthly income of the deceased notionally re-fixed in this appeal as Rs.7,500/-, i.e., a sum of Rs.3,000/- ($7,500 \times 40/100$) has to be added towards future prospects. In the result, the monthly income of the deceased, for the purpose of re-fixing the compensation under the head loss of dependency, is reckoned as Rs.10,500/- ($7,500 + 3,000$).

27. In Sarla Verma [(2009) 6 SCC 121], the Apex Court,

after referring to its earlier decisions in Kerala State Road Transport Corporation v. Susamma Thomas [(1994) 2 SCC 176], U.P. State Road Transport Corporation v. Trilok Chandra [(1996) 4 SCC 362] and New India Assurance Co. Ltd. v. Charlie [(2005) 10 SCC 720] held that the multiplier to be used should be as mentioned in column (4) of the Table in paragraph 40 of the said decision [prepared by applying Susamma Thomas, Trilok Chandra and Charlie], which starts with an operative multiplier of 18 [for the age groups of 15 to 20 and 21 to 25 years], reduced by one unit for every five years, i.e., multiplier of 17 for 26 to 30 years, multiplier of 16 for 31 to 35 years,

multiplier of 15 for 36 to 40 years, multiplier of 14 for 41 to 45 years, and multiplier of 13 for 46 to 50 years, then reduced by two units for every five years, i.e., multiplier of 11 for 51 to 55 years, multiplier of 9 for 56 to 60 years, multiplier of 7 for 61 to 65 years and multiplier of 5 for 66 to 70 years.

28. In Pranay Sethi [(2017) 16 SCC 680] the

Constitution Bench of the Apex Court held that, as far as the multiplier is concerned, the Claims Tribunal and the Courts shall be guided by Step 2 that finds a place in paragraph 19 of Sarla Verma, read with paragraph 42 of the said judgment.

29. In the instant case, as on the date of accident, the

deceased was aged 30 years. In the light of the decisions of the Apex Court in Sarla Verma's case and Pranay Sethi's case referred to supra, the multiplier of 17 applied by the Tribunal is correct.

30. In *Sarla Verma v. Delhi Transport Corporation*

[(2009) 6 SCC 121] the Apex Court, on the question of deduction towards the personal and living expenses of the deceased held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to

the dependants. Where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependant family members is 2 to 3; one-fourth where the number of dependant family members is 4 to 6; and one-fifth where the number of dependant family members exceeds 6. 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 independant and earning, or married, or be dependant on the father. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on

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

31. In Reshma Kumari [(2013) 9 SCC 65] a Three-Judge

Bench of the Apex Court reproduced paragraphs 30, 31 and 32 of Sarla Verma and approved the same, in paragraph 38 of the decision, by stating that, the standards fixed in Sarla Verma provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants. Therefore, the standards fixed in Sarla Verma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out. In paragraph 43.6 the Apex Court directed

that, insofar as deduction for personal and living expenses is concerned, the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma, subject to the observations made in para 38 of Reshma Kumari.

32. In Pranay Sethi [(2017) 16 SCC 680], the

Constitution Bench of the Apex Court, after considering the analysis made in Sarla Verma, which was reconsidered in Reshma Kumari, approved the method provided therein by stating that, as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the Tribunals and Courts should be guided by the conclusion in paragraph 43.6 of Reshma Kumari.

33. In Arun Kumar Agrawal [(2010) 9 SCC 218] the

Apex Court was dealing with a case in which the deceased, wife of the 1st appellant and mother of the 2nd appellant died in a road accident. They pleaded that the deceased was aged 39 years at the time of accident and due to her death,

the life of 1st appellant had become miserable inasmuch as, being a Government servant he was unable to look after his minor child. They further pleaded that the deceased used to look after domestic affairs of the family and both the appellants have been deprived of the care, love and

affection of the deceased and the comfort of her company. The owner, driver and insurer of the truck involved in the accident disputed the dependency of the appellants and the quantum of compensation specified in the claim petition. The Tribunal, while dealing with the issue relating to the quantum of compensation, extensively referred to the statement of the 1st appellant, who stated that the deceased was earning Rs.50,000/- by engaging herself in paintings and handicrafts. The Tribunal held that the deceased was deeply involved in the family affairs and after her death, the entire family was broken and as a result of that, the working capacity of 1st appellant was decreased. The Tribunal noted that at the time of accident monthly income of 1st appellant was Rs.15,416/- and held that in view of Clause 6 of Second Schedule of the Motor Vehicles Act, the income of the deceased could be assessed at Rs.5,000/- per month (Rs.60,000/- per annum) and after making a deduction of Rs.20,000/- (one-third) towards personal expenses of the deceased and applying the multiplier of 15, the total loss of dependency comes to Rs.6,00,000/-. However, instead of awarding that amount as compensation, the Tribunal reduced the same to Rs.2,50,000/- by making the following observations;

"The claimants are entitled to this amount of compensation but keeping in mind that the deceased was actually not an earning member and this is only based on notional income. The amount of compensation is too much and as such a lesser multiplier could be adopted in the present case. In the circumstances of this case, the claimants are entitled to Rs.2,50,000/- as compensation from the insurance company. This issue is accordingly decided with the above observation."

The Division Bench of Allahabad High Court dismissed the appeal preferred by the appellants by making the following observations:

"At the time of accident claimant No.1 Arun Kumar Agrawal was getting monthly salary of Rs.15,416/- and at time of filing the appeal Rs.24,042/- per month. Claimant Arun Kumar Agarwal and his son aged about seven years are the only legal representatives of the deceased. Neither of the claimants were dependents upon the deceased. The services rendered by Renu Agrawal, the deceased as housewife may be estimated at Rs.1,250/- per month and thus the annual contribution by rendering services comes to Rs.15,000/- and applying the multiplier of 15 it comes to Rs. 2,25,000/- and adding the amount of Rs.3,000.00 as funeral expenses, Rs.7,000.00 due to loss of love and affection to the son and Rs.15,000.00 due to loss of comfort consortium, the compensation comes to Rs.2,50,000.00. Thus, considering all the facts and circumstances, the compensation awarded is just and fair."

34. In Arun Kumar Agrawal [(2010) 9 SCC 218], before the Apex Court, the learned counsel for the appellants relied upon

the judgment of the Apex Court in Lata Wadha v. State of Bihar [(2001) 8 SCC 197] and argued that the Tribunal and the High Court committed serious error by not awarding just and fair compensation to the appellants ignoring that the family was not only deprived of the money which the deceased used to earn from

paintings and handicrafts but also of her services as housewife/mother apart from the care, love, affection and comfort of her company; the Tribunal did not assign any reason for reducing the amount of compensation payable to the appellants in terms of the loss of dependency, i.e., Rs.6,00,000/-; both the Tribunal and the High Court erred in refusing to recognise the immense

importance of the invaluable services rendered by a housewife/mother to the family throughout her life; even if a housewife/mother does not earn a single penny in material terms, the criteria laid down by the legislature in Clause 6 of the Second Schedule appended to the Motor Vehicles Act should be applied for awarding compensation in claim petitions filed under Section 166 of the said Act.

35. In Arun Kumar Agrawal, the Apex Court, after noticing some of the precedents in which guiding principles have been laid down for determination of the compensation payable to

the victims of motor accident or their legal representatives, held

that though, Section 163A of the Motor Vehicles Act does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite

criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in Clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the decisions in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas [(1994) 2 SCC 176]; U.P. State Road Transport Corporation v. Trilok Chandra [(1996) 4 SCC 362]; Sarla Verma v. Delhi Transport Corporation [(2009) 6 SCC 121]; and also take guidance from the decision in Lata Wadha v. State of Bihar [(2001) 8 SCC 197].

36. In Arun Kumar Agrawal, reverting to the facts of the case, the Apex Court found that, while in his deposition, the 1st appellant had categorically stated that the deceased was earning

Rs.50,000/- per annum by paintings and handicrafts, the respondents did not lead any evidence to controvert the same. Notwithstanding this, the Tribunal and the High Court altogether

ignored the income of the deceased. The Tribunal did advert to the Second Schedule of the Motor Vehicles Act and observed that the income of the deceased could be assessed at Rs.5,000/- per month (Rs.60,000/- per annum) because the income of her spouse was Rs.15,416/- per month and then held that after making deduction, the total loss of dependency could be Rs.6,00,000/-. However, without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was actually a non-earning member and the amount of compensation would be too much. The High Court went a step further

and dismissed the appeal by erroneously presuming that neither of the claimants was dependent upon the deceased and the services rendered by her could be estimated as Rs.1250/- per month.

37. In Arun Kumar Agrawal, the Apex Court held that the

reasons assigned by the Tribunal for reducing the amount of compensation are wholly untenable and the approach adopted by the High Court in dealing with the issue of payment of compensation to the appellants was ex facie erroneous and unjustified. Accordingly, the Apex Court allowed the appeal, holding that the appellants are entitled to compensation of Rs.6,00,000/-.

38. In Arun Kumar Agrawal, the Apex Court upheld

deduction of 1/3rd of the notional income of the deceased housewife towards her personal and living expenses, for the purpose of assessing compensation payable under the head loss of dependency. In Krishnadas v. Henry Joseph and others [2011 (4) KHC 543] a Division Bench of this Court held that the principle underlying the methodology to deduct personal expenses of the deceased stems out of the reality that while a person renders services which can be monetarily converted, expenses of such person will have to be deducted from the monetary output. Therefore, deduction of 1/3 rd of the amount, which is the standardised deduction for personal expenses of all earning persons can apply to the case of a homemaker.

39. In the instant case, the Tribunal deducted 50% of the

notional monthly income of the deceased towards her personal and living expenses. It cannot be sustained in view of the law laid down in the decision of the Apex Court in Arun Kumar Agrawal and the decision of this Court in Krishnadas. Therefore, a deduction of made towards her personal and living expenses.

40. Towards loss of dependency, the Tribunal awarded a sum of Rs.3,06,000/- (3,000 x 12 x 17 x 1/2). Since the notional

monthly income of the deceased is re-fixed as Rs.7,500/-, adding Rs.3,000/- towards 40% future prospects ($7,500 \times 40/100$) the multiplicand comes to Rs.10,500/- ($7,500 + 3,000$). Deducting

applying the multiplier of 17 applicable to the age group of the deceased, the compensation under the head loss of dependency would come to Rs.14,28,000/- ($10,500 \times 12 \times 17 \times 2/3$). Deducting Rs.3,06,000/- awarded by the Tribunal under the head loss of dependency, the additional compensation payable under the said head comes to Rs.11,22,000/-.

41. In the impugned award, towards funeral expenses, the

Tribunal awarded no compensation. Towards loss of companionship (loss of consortium) the 1st appellant husband is awarded a sum of Rs.25,000/-. Towards loss of love and affection, the 2nd appellant, the minor daughter, is awarded a sum of Rs.50,000/-. The Tribunal awarded no compensation under the head loss of estate.

42. In *Rajesh* [(2013) 9 SCC 54] a Three-Judge Bench of

the Apex Court 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.

43. In *Pranay Sethi* [(2017) 16 SCC 680] the

Constitution Bench of the Apex Court held that the head relating to loss of care and guidance for minor children does not exist. Though *Rajesh* refers to *Santosh Devi v. National Insurance Company Limited* [(2012) 6 SCC 421], it does not seem to follow the same. The conventional and traditional heads 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, the 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. The Apex Court observed that, it would be condign that the amounts that have been quantified as above 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, which will bring in consistency in respect of those heads.

44. In *Santosh Devi v. Mahaveer Singh* [(2018) 9 SCC

146] a Three-Judge Bench of the Apex Court granted compensation on conventional heads, in terms of the figures standardised by the Constitution Bench in the year 2017, in *Pranay Sethi*, to the wife and children of one *Puran Chand*, who died in a motor accident, which occurred on 30.12.1992.

45. In *Sureshchandra Bagmal Doshi v. New India*

Assurance Company Limited [(2018) 15 SCC 649] the Apex Court granted the figures on conventional heads standardised by the Constitution Bench in the year 2017, in *Pranay Sethi*, i.e., Rs.15,000/- as loss of estate; Rs.40,000/- towards loss of consortium; and Rs.15,000/- as funeral expenses to the parents [appellants before the Apex Court], who lost their only daughter in a motor accident which occurred on 16.08.1998. In the said decision, Rs.40,000/- granted in *Pranay Sethi* towards loss of consortium was granted to the appellants, who are the parents of

the deceased, towards loss of love and affection. Paragraphs 1 and 14 of the said decision read thus;

1. Fate can be cruel. This is a tragic case where the only daughter of a lawyer husband and a doctor wife, who got married early and unfortunately became a widow also at a young age, died in a vehicular accident, which took place on 16.8.1998. The claim of the parents (appellants herein) in respect of this unfortunate demise forms the subject matter of the present appeal. xxx xxx xxx

14. Now coming to the last aspect, i.e., the conventional

heads, in *National Insurance Company Ltd. v. Pranay Sethi* [(2017) 16 SCC 680], it has been standardised at Rs.15,000 for loss of estate; Rs.40,000 towards loss of consortium (in the present case loss of love and affection) and Rs.15,000 towards funeral expenses. The total amount, thus, would be Rs.70,000, which as per the said judgment is capable of being enhanced @ 10 percent in the span of every three years. However, we are still within the window of three years. underline supplied

46. In *Magma General Insurance Co. Ltd. v. Nanu Ram*

@ *Chuhru Ram* [(2018) 18 SCC 130], after referring to the decision in *Pranay Sethi*, the Apex Court held that 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. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of 'company, society, co-operation, affection, and aid of the other in every conjugal relation'. Parental consortium is granted to the child upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training'. Filial consortium is the right of the parents to compensation in the

case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

47. In Magma General Insurance the Apex Court held that

consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world- over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions, therefore, permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a

compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In a case where parents have lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Motor Vehicles Act. The Apex Court held further 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*.

48. In Magma General Insurance, the deceased was aged

24 years, who was engaged in the business of manufacturing 'namkeen products', who died in a motor accident which occurred on 01.12.2013. The father, brother and sister of the deceased filed claim petition under Section 166 of the Motor Vehicles Act. The Claims Tribunal did not award any compensation to the brother of

the deceased, as he could not be considered to be a dependant. Compensation was awarded to the father and unmarried sister of the deceased, who were held to

be dependants. The father and sister of the deceased filed appeal before the Punjab and Haryana High Court for enhancement of the compensation awarded by the Claims Tribunal. The High Court found that the Claims Tribunal used the wrong principle for application of multiplier. The multiplier ought to have been taken on the basis of the age of the deceased and not that of his father. The High Court, while re-assessing the compensation granted a sum of Rs.1,00,000/- (Rs.50,000/- x 2) towards loss of love and affection to the father and unmarried sister of the deceased. The insurer filed S.L.P. before the Apex Court contending, inter alia, that the father and sister of the deceased could not be considered as dependants, and were not entitled to compensation. In case of death of bachelor, only the mother could be considered to be a dependant. The grant of Rs.1,00,000/- on account of loss of love and affection, and Rs.25,000/- towards funeral expenses is erroneous. It was contended that only Rs.30,000/- could have been awarded as per the judgment in *Pranay Sethi*. [i.e., loss of estate - Rs.15,000/- and funeral expenses - Rs.15,000/-] The Apex Court held that, considering that

the deceased was living in a village, where he was residing with his aged father, who was about 65 years old, and an unmarried sister, the High Court correctly considered them to be dependants of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased. [Para.16 @ page 135 of SCC] The Apex Court found that the deceased was a bachelor, whose mother had pre-deceased him. The father of the deceased was about 65 years old and his sister was unmarried. The deceased was contributing a part of his meagre income to the family for their sustenance and survival. Therefore, the Apex Court held that the father and unmarried sister of the deceased would be entitled to compensation under his dependants. [Para.18 @ page 136 of SCC] Dealing with the contention of the insurer that the High Court had wrongly awarded Rs.1,00,000/- towards loss of love and affection, and Rs.25,000/- towards funeral expenses, the Apex Court, after quoting Para.52 of the decision in *Pranay Sethi*, decreased the compensation under the head funeral expenses from Rs.25,000/- to Rs.15,000/-. However, the amount awarded under the head loss of love and affection was maintained. After explaining the concept

of spousal consortium, parental consortium and filial consortium, the Apex Court deem it appropriate to award the father and unmarried sister of the deceased, an amount of Rs.40,000/- each for loss of filial consortium.

49. In view of the law laid down by the Constitution Bench

of the Apex Court in *Pranay Sethi*, which was followed in *Santhosh Devi and Suresh Chandra Bagmaldoshi* referred to supra, the compensation payable under the conventional heads of loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid figures quantified by the Apex Court should be enhanced on percentage basis, at the rate of 10%, in a span of every three years.

50. In view of the law laid down by the Apex Court in *Magma*

General Insurance Company Ltd., after referring to the decision in *Pranay Sethi*, the surviving spouse is entitled for spousal consortium; children of the deceased are entitled for parental consortium; and parents of a deceased child, who died in a motor accident, are entitled for filial consortium. The amount of compensation that has to be awarded will be governed by the principles of awarding compensation under the head loss of consortium, as laid down in *Pranay Sethi*.

51. In *Indian Bank v. ABS Marine Products (P) Ltd.*

[(2006) 5 SCC 72] one of the contentions raised was that, any direction issued by the Apex Court in exercise of power under Article 142 of the Constitution of India to do proper justice and the reasons, if any, given for exercising such power, cannot be considered as law laid down by that Court under Article 141. It was also pointed out that, other Courts do not have the power similar to that conferred on the Apex Court under Article 142 and any attempt to follow the exercise of such power will lead to incongruous and disastrous results. The Apex Court left open that question, observing as follows; "Though there appears to be some merit in the first respondent's submission, we do not propose to examine that aspect." Though the said question was left open, the Apex Court observed as follows in Para.26 of the judgment;

"26. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar

facts or in view of the uncertainty of law till then, to do

complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article

142. It is not uncommon to find that Courts have followed not the law declared, but the exemption/ relaxation made while moulding the relief in exercise of power under Article

142. When the High Courts repeatedly follow a direction

issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/ relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The Courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. ..."

52. In *State of Punjab v. Rafiq Masih* [(2014) 8 SCC

883] a Three-Judge Bench of the Apex Court affirmed the view taken in *ABS Marine Products'* case (supra) holding that, the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Apex Court held further that, the directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. Paras.11 to 13 of the judgment read thus;

"11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land,

with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clearly and make the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.

12. Article 142 of the Constitution is supplementary in

nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the Statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of *Indian Bank v. ABS Marine Products (P) Ltd.* [(2006) 5 SCC 72], *Ram Pravesh Singh v. State of Bihar* [(2006) 8 SCC 381] and in *State of U.P. v. Neeraj Awasthi* [(2006) 1 SCC 667], has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and

differentiated the relief in the operative portion of the

judgment by exercise of powers under Article 142 of the

Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case

in hand from the rigour of the law in view of the peculiar facts

and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

13. Therefore, in our opinion, the decisions of the Court

based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter

judgment."

53. In Magma General Insurance Company Ltd., the

Apex Court maintained the compensation awarded by the High Court at the rate of Rs.50,000/- to the father and unmarried sister of the deceased towards loss of love and affection. However, the compensation under the head funeral expenses was decreased from Rs.25,000/- to Rs.15,000/-, after quoting para 52 of the decision in

Pranay Sethi. After explaining the concept of spousal consortium, parental consortium and filial consortium, the Apex Court awarded the father and unmarried sister of the deceased an amount of Rs.40,000/- each for loss of filial consortium.

54. As already noticed, the compensation that has to be

awarded to the surviving spouse towards spousal consortium; to the children of the deceased towards parental consortium; or to the parents of the deceased child towards filial consortium, is for loss

of love and affection and such other matters. In such circumstances, once the surviving spouse is awarded compensation towards spousal consortium; or the children of the deceased are awarded compensation towards parental consortium; or the parents of the deceased child are awarded compensation towards filial consortium, they are not entitled for award of further compensation under the head loss love and affection, as it would result in duplication or overlapping of compensation under the relevant heads.

55. The concept of spousal consortium to the surviving

spouse; parental consortium to the children of the deceased; and filial consortium to the parents of the deceased child laid down by the Apex Court in Magma General Insurance Company Ltd.

does not speak anything as to the right of siblings to get compensated under the head loss of consortium. In Magma, after noticing the fact that the mother of the deceased had pre-deceased him, his father was aged 65 years old, his sister was unmarried, and the deceased was contributing a part of his meagre income to the family for their sustenance and survival, the Apex Court granted a sum of Rs.40,000/- as compensation to unmarried sister of the deceased under the head filial consortium, after maintaining the compensation (Rs.50,000/- x 2) awarded by the High Court towards loss of love and affection, which can only be treated as a direction issued by the Apex Court in exercise of its powers under Article 142 of the Constitution of India to do proper justice and the exercise of such power cannot be considered as law laid down by the Apex Court under Article 141 of the Constitution of India.

56. In view of the law laid down by the Apex Court in Pranay

Sethi and Magma General Insurance Company Ltd. referred to supra, towards funeral expenses, the appellants are granted a sum of Rs.15,000/-. The 1st

appellant husband of the deceased is entitled to Rs.40,000/- towards spousal consortium. Deducting Rs.25,000/- awarded by the Tribunal under the head loss of consortium, the 1st appellant-1st claimant is entitled for an

additional compensation of Rs.15,000/- towards spousal consortium. The 2nd appellant, who is the minor daughter of the deceased, is entitled to Rs.40,000/- toward parental consortium. Rs.50,000/- awarded by the Tribunal under the head loss of love and affection is scaled down to Rs.40,000/- payable under the head parental consortium, resulting an excess payment of Rs.10,000/-, which is liable to be deducted from the additional compensation payable to her. The 3rd appellant, who is the mother of the deceased, is granted Rs.40,000/- towards filial consortium.

57. The Tribunal awarded no compensation towards loss of

estate. In view of the law laid down by the Apex Court in *Pranay Sethi* [(2017) 16 SCC 680] an amount of Rs.15,000/- can be granted under the head loss of estate. Accordingly, the appellants are granted a sum of Rs.15,000/- towards loss of estate.

58. The Tribunal awarded Rs.10,000/- as compensation towards pain and suffering of the deceased.

59. In *Jyni and others v. Raphael P.T. and others* [2016

(2) KHC 870] a Division Bench of this Court held that death in an

accident is generally the result of violent impact on the body resulting in serious injuries causing severe pain. The magnitude of the ordeal may vary from case to case depending upon the nature

of injuries sustained. In cases of instantaneous deaths also pain and suffering is invariably present, as in the case of survival for hours or days. In cases of instantaneous death as well as cases where the deceased was unconscious between the time of accident and the time of his death, some notional amount is payable under the head pain and suffering. A slightly higher amount can be

awarded under this head if the death is not instantaneous. Therefore, a conventional amount in the range of Rs.5,000/- to Rs.15,000/- could be awarded under the head pain and suffering in such cases.

60. In the instant case, the deceased succumbed to the

injuries on the date of the accident. Considering the said fact, the compensation awarded by the Tribunal towards pain and suffering is scaled down to Rs.5,000/-, resulting in an excess payment of Rs.5,000/- (10,000 - 5,000).

61. Towards transportation to hospital, the Tribunal awarded

a sum of Rs.2,000/- and towards damage to clothing, the Tribunal awarded a sum of Rs.1000/-. The accident is of the year 2010. The deceased succumbed to the injuries on the date of the accident. The compensation awarded by the Tribunal under the heads transportation to hospital and damage to clothing is just and reasonable, which requires no enhancement in this appeal.

62. The Tribunal awarded no amount under the head medical expenses. In the absence of any documents, the Tribunal cannot be found at fault in not awarding any amount under the said head.

63. In the result, the appellants-claimants are entitled to

payment of an additional compensation of Rs.11,92,000/- (Rupees eleven lakhs ninety two thousand only) $[(11,22,000 + 15,000 + 15,000 + 40,000 + 15,000) - (10,000 + 5,000)]$ in this appeal, which will carry interest at the rate of 8% per annum from the date of petition till realisation, excluding the period of delay of 234 days in filing this appeal. The additional compensation granted in this appeal, excluding Rs.15,000/- granted to the 1st appellant as spousal consortium, Rs.40,000/- granted to the 3rd appellant as filial consortium and the excess payment of Rs.10,000/- to be deducted from that payable to the 2nd appellant as parental consortium, shall be apportioned among the appellants in the ratio 5:90:5. The 2nd respondent insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the

appellants-claimants towards Balance Court Fee and Legal Benefit Fund. The amount of compensation payable to the 2 nd appellant,

who is a minor presently aged 16 years, shall be kept in fixed deposit, in a Nationalised Bank, till she attains majority. The disbursement of additional compensation to the appellants- claimants shall be made taking note of the law on the point and in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019 and clarified further in Official Memorandum No.D1-62475/2016 dated 07.11.2019. The appellants to provide their Bank account details (attested copy of the relevant page of the Bank Passbook having details of the Bank Account Number and IFSC Code of the branch) before the Tribunal, with copy to the learned Standing Counsel for the insurer, within one month from the date of receipt of a certified copy of this judgment.

This appeal is disposed of as above. No order as to costs. Sd/- ANIL K. NARENDRAN, JUDGE MIN

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