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Paulose @ Paul vs C. Parameswari

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Court : Kerala

Decided On : Dec-17-2019

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : MACA/2513/2012

Appellant : Paulose @ Paul

Respondent : C. Parameswari

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE 17TH DAY OF DECEMBER 2019 / 26TH AGRAHAYANA, 1941 MACA.No.2513 OF 2012 AGAINST THE AWARD IN OP(MV)No.1164/2007 DATED 15-03-2012 OF MOTOR ACCIDENT CLAIMS TRIBUNAL MUVATTUPUZHA APPELLANTS:

1 * PAULOSE @ PAUL S/O ITTAR, THANDATHU @ PALAKKATTUMARI HOUSE, KEEZHILLOM KARA, RAYAMANGALAM VILLAGE [(DIED) LEGAL HEIRS RECORDED. APPELLANTS 2 AND 3 ARE RECORDED AS THE LEGAL HEIRS OF DECEASED APPELLANT 1 AS PER ORDER DATED 4.12.2019 IN MEMO DATED 25.11.2019] 2

THANKAMMA W/O PAULSOE@PAUL, THANDATHU @ PALAKKATTUMARI HOUSE, KEEZHILLOM KARA, RAYAMANGALAM VILLAGE 3 CINU PAUL .T D/O PAULSOE@PAUL, THANDATHU @ PALAKKATTUMARI HOUSE, KEEZHILLOM KARA, RAYAMANGALAM VILLAGE BY ADVS. SRI.T.K.KOSHY SMT.V.V.RISANI

RESPONDENTS:

1 C. PARAMESWARI W/O CHINNAKKANNAN, PERIYAKANI KONAR STREET, VELANDIPALAYAL, COIMBATORE, TAMIL NADU 641025 2 KANNAN S/O RAMACHANDRAN, DOOR NO 11/66A (10/40B), THADAGAM ROAD, COIMBATOR 641025, TAMIL NADU 3 THE NEW INDIA ASSURANCE CO. LTD 482,483, SNV CHAMBERS, III FLOOR, COIMBATORE 641012 [NO RELIEFS ARE CLAIMED AGAINST RESPONDENTS 4&5 BEFORE THE COURT BELOW AND HENCE THEY ARE NOT MADE PARTIES TO THIS APPEAL] BY ADV. SRI.T.C.GOVINDA SWAMY SMT.KALLATH T.GOPI SRI.N.S.MOHAMMED USMAN SRI.SHYAM RAJ THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON

17.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.2513 OF 2012 2

JUDGMENT

The appellants are the claimants in O.P.(MV)No.1164 of

2007 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha, a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the death of one Ciju Paul @ Cijo, son of appellants 1 and 2, and brother of the 3rd appellant, in a motor accident which occurred on 22.7.2007, while he was traveling as a passenger in a Maruthi Van bearing registration No.KL-17/B-9022. At the place of accident, Maruthi Van was hit by an LMV van bearing registration No.TN-38Q-2522, owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent. Respondents 4

and 5 before the Tribunal are the registered owner and insurer of the Maruthi Van. In the accident, he sustained fatal injuries, who succumbed to the injuries on the way to the hospital. Alleging that the accident occurred due to rash and negligent driving of the LMV Van by the 2nd respondent driver, claim petition was filed before the Tribunal, claiming a total compensation of Rs.7 lakhs, under various heads.

2. Before the Tribunal, the 1st and 4th respondents MACA.No.2513 OF 2012 3

remained absent and they were set ex-parte. The 2 nd respondent Driver of the LMV van filed written statement admitting the accident, however, denying negligence alleged against him. The 2nd respondent contended that the accident occurred due to the rash and negligent driving of maruthi van by its driver. The 3 rd respondent insurer of the LMV van filed written statement admitting the policy coverage of the said vehicle; however, denying negligence alleged against the driver of that vehicle. The age, occupation, monthly income, etc. stated in the claim

petition were denied and it was contended that the compensation claimed is highly excessive.

3. Before the Tribunal, Exts.A1 to A16 were marked on the side of the appellants/claimants. Exts.B1 policy was marked on the side of the respondents. Both sides have not chosen to adduce any oral evidence.

4. After considering the pleadings and materials on record, the

Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the LMV Van by the 2 nd respondent driver. Since insurance coverage of the said vehicle was not in dispute, the insurer was held liable to indemnify the insured. Under various heads, the Tribunal awarded a total compensation of Rs.3,01,500/-, together

MACA.No.2513 OF 2012 4 with interest at the rate 8% per annum from the date of petition, till the date of deposit, with proportionate cost and the 3 rd respondent insurer was directed to satisfy the award.

5. Dissatisfied with the quantum of compensation awarded by the Tribunal under various heads, the appellants/claimants are before this Court in this appeal.

6. Heard the learned counsel for the appellants/claimants and also the learned Standing Counsel for the 3 rd respondent insurer.

7. The issue that arises for consideration in this appeal is as to whether the appellants/claimants are entitled for 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

MACA.No.2513 OF 2012 6 the part of the tribunal to be guided by the expression, i.e., just compensation.

10. The compensation awarded by the Tribunal under various heads reads thus;

SI.N Head of claim Amount Amount awarded Basis-vital o claimed (in rupees) details in a (in rupees) nutshell 1 Funeral Expenses 5,000 5,000 2 Loss of Estate 10,000 2,500 3 Pain and suffering 15,000 5,000 4 Love and affection 25,000 25,000 5 Loss of dependency 6,48,000 2,64,000 Rs.3,01,500/- Total Rs.7,03,000/- (Claim limited to Rs.10,00,000/-)

11. The accident occurred on 22.07.2007. At the time of accident, the deceased was aged 23 years. It was claimed that, at the time of accident, the deceased was earning a monthly income of

Rs.4,500/- as Technician-cum-Service Engineer in M/s.Prompt Electronics, Kottappady. Materials were placed before the Tribunal to prove the technical qualification of the deceased and Ext.A16 certificate was produced to prove his monthly income. However, Ext.A16 was not proved by examining the employer of the deceased. None of the appellants have chosen to mount the box. In the absence of any reliable materials, the Tribunal fixed the monthly income of the deceased notionally as Rs.4,000/-.

12. In Ramachandrappa v. Manager, Royal Sundaram MACA.No.2513 OF 2012 7

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 2007, at the age of 23 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 guess work, 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's case (supra), 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 MACA.No.2513 OF 2012 8

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 6,500/- per month.

14. Considering the economic conditions prevailing at the time

of accident, i.e., during the year 2007, and taking note of the fixation of notional monthly income by the Apex Court in the decisions referred to supra, the monthly income of the deceased claimed in the claim petition as Rs.4,500/- is not on the higher side and the same is accepted as his notional monthly income, for the purpose of assessing compensation under various heads.

15. 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.

16. 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 MACA.No.2513 OF 2012 10

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.

17. 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 MACA.No.2513 OF 2012 11 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.

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

was aged 23 years. It was claimed that, at the time of accident, the deceased was earning a monthly income of Rs.4,500/- as Technician- cum-Service Engineer. In

the impugned award, the Tribunal did not add anything to the notional monthly income of the deceased, towards future prospects.

19. As already noticed, at the time of accident, the deceased

had a permanent job. Therefore, the deceased can only be treated as on a fixed salary. 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 and in Syed Sadiq referred to supra, can be made towards future prospects, since the deceased was aged below 40 years. MACA.No.2513 OF 2012 12

20. Therefore, for the purpose of re-fixing compensation under

the head loss of dependency, 40% of the monthly income of the deceased notionally re-fixed in this appeal as Rs.4,500/-, i.e., a sum of Rs.1,800/- (4,500 x 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.6,300/- (4,500 + 1,800).

21. 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

MACA.No.2513 OF 2012 13 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.

22. 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 place in paragraph 19 of Sarla Verma, read with paragraph 42 of the said judgment.

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

deceased was aged 23 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 11 applied by the Tribunal is not correct and the proper multiplier to be adopted is 18.

24. 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 dependents. Where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3; one- fourth where the number of dependent family members is 4 to 6;

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and one-fifth where the number of dependent 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 dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either

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

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25. 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 dependent 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.

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26. 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.

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

was a bachelor aged 23 years. In the light of the decisions of the Apex Court in Sarla Verma, Reshma Kumari and Pranay Sethi referred to supra, the deduction of 50% of the notional monthly income of the deceased towards his personal and living expenses is perfectly legal.

28. Towards loss of dependency, the Tribunal awarded a sum of

2,64,000/- (4,000 x 12 x 11 x 1/2). In this appeal, the monthly income of the deceased has already been re-fixed as Rs.4,500/-. Adding 40% of the notional monthly income of the deceased towards future prospects (4,500 + 1,800 = 6,300); deducting 50% towards the personal and living expenses of the deceased; and applying the multiplier of 18, the compensation under the head loss of dependency is re-fixed as Rs.6,80,400/- (6,300 x 12 x 18 x 1/2), resulting an additional compensation of Rs.4,16,400/- (6,80,400 - 2,64,000).

29. In the impugned award, towards funeral expenses the

Tribunal awarded a sum of Rs.5,000/-. Towards loss of love and affection appellants are awarded a sum of Rs.25,000/- (Rs.10,000/- each to appellants 1 and 2 and Rs.5,000/- to the 3 rd appellant). The Tribunal awarded a sum of Rs.2,500/- under the head loss of estate.

30. 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.

31. 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 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.

32. 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.

33. In Sureshchandra Bagmal Doshi v. New India MACA.No.2513 OF 2012 19 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, MACA.No.2513 OF 2012 20 which as per the said judgment is capable of being enhanced @ 10 per cent in the span of every three years. However, we are still within the window of three years. underline supplied

34. 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

MACA.No.2513 OF 2012 21 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.

35. 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 childs 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

MACA.No.2513 OF 2012 22 laid down in Pranay Sethi.

36. 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 dependent. Compensation was awarded to the father and unmarried sister of the deceased, who were held to be dependents. 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

MACA.No.2513 OF 2012 23 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 1/3 rd 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.

37. 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/-, 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.

38. 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 MACA.No.2513 OF 2012 25 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.

39. 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. ..."

40. 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

MACA.No.2513 OF 2012 27 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."

41. 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.

MACA.No.2513 OF 2012 29 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.

42. 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.

43. 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 MACA.No.2513 OF 2012 30 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.

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

Sethi and Magma General Insurance Company Ltd. referred to supra, Rs.5,000/- awarded by the Tribunal in the impugned award towards funeral expenses is enhanced to Rs.15,000/-, resulting an an additional compensation of Rs.10,000/- (15,000 - 5,000); Rs.10,000/- awarded towards loss of consortium to 1 st appellant is enhanced to Rs.40,000/- and the same is granted under the head filial consortium, resulting an additional compensation of Rs.30,000/- MACA.No.2513 OF 2012 31

40,000 - 10,000); Rs.25,000/- awarded towards loss of consortium to appellants 1 to 3 is re-fixed as Rs.40,000/- each (40,000x2=80,000) to appellants 1 and 2 and the same is granted under the head filial consortium, resulting an additional compensation of Rs.55,000/- (80,000 - 25,000). As already noticed, 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. Therefore, the 3rd appellant is not entitled for payment of any compensation under the head loss of consortium or loss of love and affection.

45. The Tribunal awarded Rs.2,500/- as 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 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, resulting an additional compensation of Rs.12,500/- (15,000 - 2,500).

46. The Tribunal awarded Rs.5,000/- as compensation towards pain and suffering of the deceased. MACA.No.2513 OF 2012 32

47. In Jyni and others v. Raphel 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.

48. In the instant case, the deceased succumbed to the injuries

on the way to hospital. Considering the nature of injuries, Rs.5,000/- awarded by the Tribunal towards pain and suffering of the deceased represents just and reasonable compensation, which requires no enhancement in this appeal. In the result, the appellants/claimants are entitled for payment of an additional compensation of Rs.5,23,900/- [Rupees Five MACA.No.2513 OF 2012 33

Lakhs Twenty Three Thousand Nine Hundred only] [4,16,400 + 10,000 + 30,000 + 55,000 +12,500] in this appeal, which will carry interest at the rate of 8% per annum from the date of petition till realisation. The additional compensation granted in this appeal, excluding that granted under the head filial consortium to appellants 1 and 2 shall be apportioned among the appellants in the ratio 45:50:5. The 3rd 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. Disbursement of the additional compensation to the appellants/claimants shall be 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-

This appeal is disposed of as above. No order as to costs. Sd/- ANIL K.NARENDRAN JUDGE ska MACA.No.2513 OF 2012 34 The judgment dated 17/12/2019 in MACA 2513/2012 is corrected as per order dated 14/08/2020 in RP.548/2020 in the MACA as follows:- The words 10,000/- awarded towards loss of consortium to 1 st appellant is enhanced to 40,000/- and the same is granted under

the head filial consortium, resulting an additional compensation of 30,000/- (40,000-10,000/-); occurring in paragraph 44 of the

judgment is deleted and the 1st sentence in the operative portion of

the judgment at pages 32 & 33 is corrected as In the result, the appellants/claimants are entitled for payment of an additional compensation of 4,93,900/- (Rupees Four Lakhs Ninety Three Thousand Nine Hundred only) (4,16,400 + 10,000 + 55,000 + 12,500) in this appeal, which will carry interest at the rate of 8% per annum from the date of petition till realisation. Sd/- DEPUTY REGISTRAR

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