

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

MISC. APPEAL No. 38 of 2016

BETWEEN:-

1. **DALSINGH S/O PEMA BANJARA, AGED ABOUT 43 YEARS, OCCUPATION: LABOUR GRAM DEVIPURA POST PALSODA TEH.JIRAN (MADHYA PRADESH)**
2. **SMT. PREM W/O DALSINGH BANJARA, AGED ABOUT 40 YEARS, OCCUPATION: HOUSEHOLD GRAM DEVIPURA, POST PALSODA, TEHSIL JIRAN (MADHYA PRADESH)**
3. **SMT. REKHA W/O PRAHLAD BANJARA, AGED ABOUT 21 YEARS, OCCUPATION: HOUSEHOLD GRAM DEVIPURA, POST PALSODA, TEHSIL JIRAN (MADHYA PRADESH)**
4. **PEMA S/O MANGILAL BANJARA, AGED ABOUT 65 YEARS, OCCUPATION: NOTHING GRAM DEVIPURA, POST PALSODA, TEHSIL JIRAN (MADHYA PRADESH)**
5. **SMT. KAMLABAI W/O PEMA BANJARA, AGED ABOUT 60 YEARS, OCCUPATION: HOUSEHOLD GRAM DEVIPURA, POST PALSODA, TEHSIL JIRAN (MADHYA PRADESH)**
6. **KU. MAYA (MINOR U/G FATHER DALSINGH) D/O DALSINGH BANJARA, AGED ABOUT 14 YEARS, GRAM DEVIPURA, POST PALSODA, TEHSIL JIRAN (MADHYA PRADESH)**

.....APPELLANTS

(SHRI MANISH JAIN, LEARNED COUNSEL FOR THE APPELLANTS)

AND

1. MOHD.GULFAM S/O MOHD.GULSHAN MUSALMAN, AGED ABOUT 30 YEARS, OCCUPATION: DRIVER GRAM SUTARI, POST DARIYAPUR TEHLAND DISTT.BULAND SAHAR (U.P.) (UTTAR PRADESH)
2. SMT. NAMITA (THROUGH POWER OF ATTORNE SAIYYED KHAN QURESHI) W/O VINOD GHAI WARD NO. 8, NARAYANGARH, DISTRICT MANDSAUR (MADHYA PRADESH)
3. BRANCH MANAGER BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. RANCH OFFICE, 7, RACE COURSE ROAD, COMMERCE HOUSE, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI MAYANK UPADHYAY, LEARNED COUNSEL FOR THE RESPONDENT NO.3)

Reserved on : 21.11.2023

Pronounced on : 22.12.2023

This miscellaneous appeal having been heard and reserved for orders, coming on for pronouncement this day, Justice Achal Kumar Paliwal pronounced the following

ORDER

This appeal by the claimants under section 173(1) of the Motor Vehicles Act is arising out of the award dated 30.09.2015 passed by Additional Member MACT, Neemuch in Claim Case No.67/2014 seeking enhancement of compensation amount awarded by the Tribunal.

2. The date of accident, negligence and the issue of liability are not in dispute and the findings recorded by the Tribunal in this regard

are also not in question. As per the findings of the Tribunal, for the death of Prahlad, the Tribunal has awarded a total compensation of Rs.6,07,000/- along with interest.

3. Learned counsel for the appellants/claimants submits that Tribunal has assessed the monthly income of the deceased as Rs.3,000/- which is on lower side. Tribunal has held deceased to be unskilled labour, therefore, monthly income of deceased should have been assessed/determined as per circular/notification issued under the Minimum Wages Act, 1948/Guidelines issued by M.P.State Legal Services Authority. In this connection learned counsel for the appellants/claimants has relied on the judgments in the case of **Sapna and others Vs. Mangilal and another 2021 ACJ 957, Bhimsingh Vs. Jagmelsingh and another M.A.No.5350/2022 decided on 07.07.2023, Shankar and others Vs. Dinesh and others M.A.No.2057/2021 decided on 08.09.2023, Sohanlal and others Vs. Noorsingh and others M.A.No.7014/2019 decided on 22.08.202023, Smt. Nirmala and others Vs. Gudia and others M.A.no.4193/2019 decided on 07.11.2023.**

4. As per para 1 of AW-1, all the claimants are dependent on the deceased. There is nothing in the cross examination of above witness that claimants were not dependent on deceased. Thus, in the absence of any rebuttal, all claimants should be considered as dependant on deceased. As in the instant case, there are six dependants on deceased, hence, $1/4^{\text{th}}$ should be deducted for personal expenses and not $1/3^{\text{rd}}$ as deducted by the Tribunal. It is further submitted that for the purpose of consortium, grand parents should be considered to be included in "parents" and sister should be included for the purpose

of consortium under the head of filial consortium. In this connection he has relied on judgment in the case of **Magma General Insurance Co.Ltd. Vs. Nanu Ram and others** reported in **2018 ACJ 2782** wherein consortium has been awarded to sister.

5. Learned counsel for the Insurance Company has submitted that directions issued by the M.P.State Legal Services Authority are only meant for the purpose of Lok Adalat and they are not binding on this Court while deciding the case on merits. Deceased was resident of village and incident occurred in the year 2014 and in the year 2014, minimum wages fixed for industrial labour were Rs.3070/- per month. It is also urged that while calculating minimum basic pay/income, dearness allowance and perks are not to be included. Only in the case of industrial labour, dearness allowance and perks can be included while calculating the monthly income. It is further submitted that father of the deceased is aged 43 years, therefore, father as well as grandparents/sister of deceased cannot be considered as dependent on deceased. Only rest of the three can be considered to be dependent on deceased. Hence, 1/3rd deducted by Tribunal for personal expenses is correct. It is also urged that grand parents and sister are not entitled for consortium. In the instance case, principle laid down in the case of Nanu Ram (Supra) does not apply. In this connection learned counsel for the Insurance Company has referred to para 8 of the case of Nanu Ram (Supra) whereas it is mentioned that “looking to the facts and circumstances of the case”.

6. Heard learned counsel for the parties and perused the record of the case.

Principles regarding determination of income:-

7. So far as calculation of actual income/established income for determining compensation is concerned, where there is documentary evidence to prove the income or Tribunal finds it otherwise proved from evidence on record, no difficulty arises but where there is no documentary evidence or insufficient oral/documentary evidence to prove the income or Tribunal finds that applicants have failed to prove actual income/established income, then, question arises as to how determine the actual income/established income of the deceased/applicant for assessing the compensation under Motor Vehicles Act. So far as second category of cases are concerned, Hon'ble Apex Court as well as Coordinate Benches of this Court has dealt with the issue in a number of cases.

8. In *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others*, (2018) 18 SCC 130, Hon'ble Apex Court in para No.17 has held as under:

“17. With respect to the income of the deceased, as the family could not produce any evidence to show that the income of the deceased was Rs.15,000/- per month, as claimed, the High Court took his income to be Rs.6000/-, which is marginally above the minimum wage of an unskilled worker at Rs.5342. This finding is also not being interfered with.”

9. In *Kirti and Another vs. Oriental Insurance Company Limited*, (2021) 2 SCC 166, Hon'ble Apex Court in para No.11 has held as under:

II. Assessment of monthly income

“11. Second, although it is correct that the claimants have been unable to produce any document evidencing Vinod’s income, nor have they established his employment as a teacher; but that doesn’t justify adoption of the lowest tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence on record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving the existing standard of living of a deceased’s family is a fundamental endeavour of motor accident compensation law. Thus, at the very least, the minimum wage of Rs 6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case.”

10. In *Chandra alias Chanda alias Chandraram and Another vs. Mukesh Kumar Yadav and Others, (2022) 1 SCC 198*, Hon'ble Apex Court in para No.9 has held as under:

*“9.It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW1 that her husband Shivpal was earning Rs.15000/per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. **In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased.** In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same*

time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month.”

11. In *Manusha Sreekumar and Others vs. The United India Insurance Company Limited, AIR 2022 SC 5161*, Hon'ble Apex Court in para Nos.19 & 20, has held as under:

“19. Applying the above parameters to the instant case, there exists sufficient evidence to show that the Deceased, undoubtedly, was a fish vendor-cum-driver with a valid license. The certificate issued by the Kerala Motor Transport Workers Welfare Fund Board, certifying the Deceased as the driver of light motor goods vehicle bearing Registration No. KL-36-B-7822 under the ownership of one Shri Prakashan has been proved on record. Further, the Deceased had also paid all his subscriptions to the Board from April 2012 until the month he died. We find no reason to doubt that the Deceased was a driver at the time of his death. This Court in [Chandra Alias Chanda Alias Chandraram and Anr. v. Mukesh Kumar Yadav and Ors., \(2022\) 1 SCC 198](#) has aptly held that in the absence of a salary certificate, the minimum wages notification along with some amount of guesswork that is not completely detached from reality shall act as a yardstick to determine the income of the deceased. In this context, keeping in view the import of [section 57](#) of the Indian Evidence Act, 1872, we take judicial notice of the provisions of the Kerala Fair Wages Act.....

20. Schedule B-Category III of the Kerala Fair Wages Act classifies a driver as a “Skilled worker”. Reading this in conjunction with the Notification that came into

*effect from 01.01.2015 which amended Schedule A of the Kerala Fair Wages Act, prescribing a minimum pay scale of the workers listed in Schedule B, it is apparent that a 'driver' in Kerala earned a minimum of Rs. 15,600/ in 2015. It appears to us that the aforesaid Act and the notification issued thereunder were not brought to the notice of the Tribunal or the High Court. As a result thereto, **the High Court could not be cognizant of the statutory mandate prescribing minimum wages for a skilled worker like 'driver', and thus, erred in fixing the income of the Deceased at Rs.10,000/. We are therefore inclined to fix the income of the Deceased notionally at Rs. 15,600/ per month.**"*

12. In *Sidram vs. Divisional Manager, United India Insurance Company Limited and Another* , (2023) 3 SCC 439, Hon'ble Apex Court in para Nos.58 & 59 has held as under:

"58.This Court in the case of [Kirti and Another v. Oriental Insurance Company Limited](#), (2021) 2 SCC 166, while discussing the issue of proving the income of the victim, held as under:

"39. Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a court in the first category of cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income".

*59. Thus, we are of the view, more particularly keeping in mind the dictum of this Court in the case of **Kirti (supra)** that it is not necessary to adduce any documentary evidence to prove the notional income of the victim and the Court can award the same even in the absence of any documentary evidence. In the case of **Kirti (supra)**, it was stated that the Court should ensure while choosing the method and fixing the notional income that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally."*

13. In *Sapna and Others vs. Mangilal and Another*, 2021 ACJ 957, Coordinate Bench of this Court in para No.8 has held as under:-

“8.Having heard the learned counsel for parties and on perusal of the record, it is noticed that the appellant had deposed before the tribunal that the deceased was earning Rs.8,000/- per month, but no document in support of which was produced. The tribunal had noted that the deceased was about 20 years of age and was a labourer, therefore, considering the minimum wages and dearness allowance for the relevant period, the tribunal has assessed the income of the deceased as Rs.6000/-. No notification/circular of the concerned Labour Officer was taken note of by the tribunal while mentioning the daily wages of Rs.6000/-. The circular dated 7/4/2018 issued by the Labour Officer, Barwani applicable to the period from 01/4/2018 to 30/9/2018 produced by the appellants reveals that the monthly wages on the basis of daily wages along with dearness allowance fixed by the concerned Labour Officer was Rs.7325/-. Hence, the tribunal ought to have fixed the monthly income on the basis of the said circular.”

14. Coordinate Benches of this Court in the cases of *Bhim Singh vs. Jagmelsingh in MA No.5350 of 2022 dated 07th July, 2023*, *Shankar and Others vs Dinesh and Others in MA No.2057 of 2021 dated 08th September, 2023* and *Sohanlal and Others vs. Noorasingh and Others in MA No.7014 of 2019 dated 22.08.2023* has also determined income on the basis of minimum wages notified under the Minimum Wages Act, 1948.

15. Thus, from principles laid down in above cases, it is evident that Hon'ble Apex Court as well as Coordinate Benches of this Court has consistently determined the income of the deceased/applicant on

the basis of Minimum Wages duly notified under Minimum Wages Act.

16. It is correct that as per section 3 & other provisions of Minimum Wages Act, 1948, minimum wages thereunder are fixed & notified for employees employed in an employment specified in the Act, i.e. in respect of scheduled employment under the Act. But, in view of principles laid down in decisions referred to in preceding paras, in this court's considered opinion, in absence of other evidence on record, to obviate uncertainty & for sake of reasonable uniformity & consistency, it would be just & proper to apply yardstick of Minimum Wages duly notified under Minimum Wages Act, 1948 for determining compensation under the Motor Vehicles Act.

17. In view of section 57 of Indian Evidence Act, 1872, judicial notice can be taken of Minimum Wages duly notified under Minimum Wages Act, 1948. Hence, the same need not to be proved separately.

18. Another issue is what is meant by "Minimum Wages" ? Section 4 of Minimum Wages Act, 1948, has defined term "Minimum Wages" & "Minimum Wages" means Minimum basic pay & dearness allowance. Thus, "Minimum Wages" consists of Minimum basic pay & dearness allowance.

19. Next question arises, how to calculate monthly Minimum Wages i.e. whether on the basis of 30 days or less than 30 days. This issue has been taken care of/dealt with in section 13 & 23 of

Minimum Wages Act, 1948 & also in notifications issued under the Act. Further, perusal of various notifications issued under under Minimum Wages Act, 1948 show that therein “Minimum Wages” are fixed on monthly basis as well as daily basis. Hence, “Monthly Minimum Wages” fixed in the the relevant notification are to used & applied for determining the compensation.

20. There is another aspect of matter also, that is, while calculating annual income, whether “Minimum Monthly Wages” are to be multiplied by 12 months or less than 12 months. In this court’s considered opinion, annual income has to be calculated by multiplying “Minimum Monthly Wages” by 12 months. This view also stands fortified from decisions in *Magma General Insurance company Limited, Manusha Sreekumar, Sidram & Sapna (supra)*.

21. Further, just because there is no provision in the Motor Vehicles Act to the effect that if income is not proved, then, income is to determined on the basis of Minimum Wages, it can not be said that in cases, income is not proved, then, Tribunal/court can not determine income on the basis of Minimum Wages.

22. It is correct that Tribunal/Court can not determine income on the basis of guidelines issued by State Legal Service Authority. The reason being that they are not issued under any statutory authority/Statutory provision empowering State Legal Service Authority to issue such guidelines. Such guidelines are issued for Lok Adalat purposes. On the contrary, Minimum Wages are notified

under Minimum Wages Act. Hence, they can be used for determining compensation under the Motor Vehicles Act.

23. Hence, in view of discussion in the foregoing paras , it would be just and proper to determine the income of the deceased on the basis of minimum wages duly notified under the Minimum Wages Act, 1948. But while determining income on the basis of minimum wages duly notified under the Minimum Wages Act, 1948, following factors should also be kept in mind:-

i. Reliance on Minimum Wages for determining income should be resorted to only when Tribunal comes to the conclusion that from evidence on record income is not proved.

ii. Minimum Wages are the minimum & it is not that Tribunal/court can not fix over & above Minimum Wages, if circumstances/evidence of particular case warrants so.

iii. Before determining/proceeding to determine income, Tribunal/court must, on the basis of evidence available, record a finding with respect to as to which category the person, whose income is to be determined, belongs, i.e. unskilled/skilled/semi-skilled etc.

Factual Analysis:-

24. So far as income of deceased is concerned, perusal of impugned award reveal that in the instant case accident has occurred on 09.02.2014. Learned Tribunal has determined deceased's income as Rs.3000/- per month considering him as unskilled labour.

Finding regarding unskilled labour has not been challenged by the appellant. Hence, in view of discussion in the foregoing paras, it would be just and proper to determine deceased's income as per Circular and notification issued under Minimum Wages Act which comes to Rs.5,845/- per month.

Dependency:-

25. Learned counsel for the appellant after referring to para-1 of AW-1 Dal Singh submits that learned Tribunal has wrongly held that deceased's father as well as deceased's grand parents cannot be considered dependent on deceased. It is also urged that on behalf of respondent no suggestion has been given to applicant's witness Dal Singh that deceased's father as well as grand parents were not dependent on deceased. Evidence adduced on above points has remained un rebutted, therefore, Tribunal should have deducted ¼th as personal expenses.

26. Perusal of claim petition filed by claimants and examination in chief of AW-1 Dal Singh reveal that therein Dal Singh's occupation is mentioned as "labourer" and from above it is also clear that applicant Dal Singh is aged 43 years and there is nothing on record to show that applicant Dal Singh, on any account, is unable to earn livelihood and to support his mother and father. Therefore, it cannot be said that learned Tribunal has wrongly held that applicant No.1 Dal Singh and his parents (applicants No.4 & 5) are not dependent on deceased. Therefore, it cannot be said that learned Tribunal has wrongly deducted 1/3rd as personal expenses.

Principle regarding consortium:-

27. So far as issue of “*consortium*” is concerned, looking to the controversy between the parties & in view of submissions of rival counsels of both the parties, it would be appropriate to refer relevant pronouncements of Hon’ble apex court, wherein above issue has been dealt with.

28. Hon'ble Apex Court in *Smt. Sarla Verma vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104 (Two Judge Bench)*, in Para 26, has held that **widow** will be entitled to Rs.10,000/- as **loss of consortium**.

29. Hon'ble Apex Court in *National Insurance Company Limited vs. Pranay Sethi and Others, AIR 2017 SC 5157(Five Judge Constitution Bench)*, in para 54 & 61, has held as under:

*54.As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in **Rajesh**. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though **Rajesh** refers to **Santosh Devi (AIR 2012 SC 2185)** it does not seem to follow the same.....*

Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.....

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i)The two-Judge Bench in Santosh Devi (AIR 2012 SC 185) should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma (AIR 2009 SC 3104), a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii)As Rajesh has not taken note of the decision in Reshma Kumari (AIR 2013 SC (Suppl) 474), which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

30. In *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130*, Hon'ble Apex Court in para No.21 to 25 has held as under:

21.A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’.The right to consortium would include the company care help comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

21.1.Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of “company, society, co-operation,affection, and aid of the other in every conjugal relation.”

2. Parental consortiumis granted to the child upon the premature death of a parent, for loss of“parental aid,

protection, affection, society, discipline, guidance and training.”

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

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized 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.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has 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 Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.”

*24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under ‘Loss of Consortium’ as laid down in **Pranay Sethi (supra)**. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium.*

25. In light of the above mentioned discussion, Respondent Nos. 1 and 2 are entitled to the following amounts.

S. No.	Head	Compensation Awarded
i	Income	Rs.6000/-
ii	Future Prospects	Rs.2400 (i.e. 40% of the income)
iii	Deduction towards personal expenditure	Rs.2800 i.e. 1/3 rd of Rs.6000 + Rs.2400.
iv	Total Income	Rs5600 i.e. 1/3 rd of Rs.6000 + Rs.2400.
V	Multplier	18
Vi	Loss of future income	Rs.12,09,600 (Rs.5600x12x18)
Vii	Loss of love and affection	Rs.1,00,000 (Rs.50,000 each)
Viii	Funeral Expenses	Rs.15,000/-
Ix	Loss of Estate	Rs.15,000/-
X	Loss of filial consortium	Rs.80,000/- (Rs.40,000/- payable to each of Respondents 1 and 2).
	Total Compensation Awarded	Rs.14,25,600 along with interest @ 12% p.a. from the date of filing of the claim petition till payment.

31. Hon'ble Apex Court in *United India Insurance Company Limited vs. Satinder Kaur Alias Satwinder Kaur and Others* , (2021) 11 SCC 780(Three Judge Bench) has held in para Nos. 28 to 35 and 37.12 as under:

28. Three Conventional Heads in *Pranay Sethi (supra)*, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that 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, which has to be based on a reasonable foundation. It was observed that

factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads.

a) Loss of Estate – Rs. 15,000 to be awarded

b) Loss of Consortium

29. Loss of Consortium, in legal parlance, was historically given a narrow meaning to be awarded **only to the spouse** i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognized the right of a spouse to get compensation even during the period of temporary disablement.

30. In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors. (2018) 18 SCC 130, this Court interpreted “**consortium**” to be a compendious term, **which encompasses spousal consortium, parental consortium, as well as 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.

31. 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 and affection, and their role in the family unit.

32. Modern jurisdictions world-over have recognized 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 permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has 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 the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in National Insurance Company Ltd. vs. Pranay Sethi and Others, (2017) 16 SCC 680.

34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General (supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to

award compensation towards loss of love and affection as a separate head.

*37.12, Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in **Pranay Sethi (supra)** and **Magma General (supra)**, the following amounts are awarded under the conventional heads :-*

i) Loss of Estate: Rs. 15,000

ii) Loss of Consortium:

a) Spousal Consortium: Rs. 40,000

b) Parental Consortium: 40,000 x 3 = Rs. 1,20,000

iii) Funeral Expenses : Rs. 15,000

32. Hon'ble Apex Court in *New India Assurance Company Limited vs. Somvati and Others*, 2020 9 SCC 644, in Para 26 to 44, has held as under:

“26. This court also awarded an amount under the head ‘loss of consortium’ to the wife.

*27. We need to notice the Constitution Bench judgment in **National Insurance Company Limited vs. Pranay Sethi and Others (2017) 16 SCC 680** which case notices the earlier judgments of this Court where compensation was awarded towards loss of consortium. In paragraph 46, the following was laid down: -*

*"46. Another aspect which has created confusion pertains to grant of “loss of estate”, loss of consortium and funeral expenses. In **Santosh Devi**, the two-Judge Bench followed the traditional method and granted Rs.5000/- for transportation of the body, Rs.10,000/- as funeral expenses and Rs.10,000/- as regards the loss of consortium. In **Sarla Verma**, the Court granted Rs.5000/- under the head of loss of estate, Rs.5000/-*

*towards funeral expenses and Rs.10,000/- towards loss of consortium. In **Rajesh (2013) 9 SCC 54**, the Court granted Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. It also granted Rs.1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in **Santosh Devi (2012) 6 SCC 421**. On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote: (**Rajesh case**):-*

“17...In legal parlance, “consortium” is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

28. In para 52, the **Constitution Bench in Pranay Sethi (supra)** opined that reasonable figures on conventional head namely 'loss of estate', 'loss of consortium' and 'funeral expenses' should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. In para 52, following has been laid down: -

“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in **Rajesh (2013) 9 SCC 54**. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though **Rajesh (supra)** refers to **Santosh Devi (2012) 6 SCC 421** it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads namely; “loss of estate”, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

29. In para 59.8, **Pranay Sethi (supra)** the Court further held that the amount of conventional head should be

enhanced at the rate of 10% every three year. In para 59.8, following was held:-

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. "

30. *The next judgment which needs to be noted is **Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130**, the concept of consortium was explained in para 21,22 and 23 which are as follows: -*

*"21. A Constitution Bench of this Court in **Pranay Sethi (supra)** dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*

21.1. "Spousal consortium" is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation." 21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." 21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized 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.

23. *The Motor Vehicles Act* is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has 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 Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.”

31. A two-Judge Bench in Magma General Insurance Company Limited (supra) awarded the amount of Rs.40,000/- to father and sister of the deceased. Para 24 is as follows: -

“24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under ‘Loss of Consortium’ as laid down in **Pranay Sethi (supra)**. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium.”

32. A three-Judge Bench in United India Insurance Company Ltd. v. Satinder Kaur alias Satvinder Kaur and others, (2021) 11 SCC 780, had reaffirmed the view of two-Judge Bench in Magma General insurance Company Ltd. (supra). The Three-Judge Bench from para 53 to 65, dealt with three conventional heads. The entire discussion on

three conventional heads of three-Judge Bench is as follows:

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"53. In **Pranay Sethi (supra)**, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. "loss of estate", "loss of consortium" and funeral expenses. The Court held that 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 headshave to be quantified, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration.

The Court held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads.

a) Loss of Estate – Rs. 15,000 to be awarded

b) Loss of Consortium

55. Loss of Consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognized the right of a spouse to get compensation even during the period of temporary disablement.

56. [In Magma General Insurance Co. Ltd. v. Nanu Ram & Others \(supra\)](#), this Court interpreted "consortium" to

be a compendious term, which encompasses spousal consortium, parental consortium, as well as 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.

57. 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.

58. 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 and affection, and their role in the family unit.

59. Modern jurisdictions world-over have recognized 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 permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

60. [The Motor Vehicles Act, 1988](#) is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has 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.

61. Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.

*62. The amount to be awarded for loss consortium will be as per the amount fixed in **Pranay Sethi (supra)**.*

63. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in **Pranay Sethi (supra)**, has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

64. In *Magma General (supra)*, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

65. The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.....

33. The Three-Judge Bench in the above case approved the comprehensive interpretation given to the expression 'consortium' to include spousal consortium, parental consortium as well as filial consortium. Three-Judge Bench however further laid down that 'loss of love and affection' is comprehended in 'loss of consortium', hence, there is no justification to award compensation towards 'loss of love and affection' as a separate head.

34. The **Constitution Bench in Pranay Sethi (supra)** has also not under conventional head, included any compensation towards 'loss of love and affection' which have been now further reiterated by **three- Judge Bench in United India Insurance Company Ltd. (supra)**. It is thus now authoritatively well settled that no compensation can be awarded under the head 'loss of love and affection'.

35. The word '**consortium**' has been defined in **Black's law Dictionary, 10th edition**. The Black's law dictionary also simultaneously notices the filial consortium, parental consortium and spousal consortium in the following manner:-

"Consortium 1. The benefits that one person, esp. A spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium.

□ ***Filial consortium** A child's society, affection, and companionship given to a parent.*

□ ***Parental consortium** A parent's society, affection and companionship given to a child.*

□ ***Spousal consortium** A spouse's society, affection and companionship given to the other spouse."*

36.*In Magma General Insurance Company Ltd. (Supra) as well as United India Insurance Company Ltd.(Supra), the Three-Judge Bench laid down that the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In para 87 of United India Insurance Company Ltd. (supra), 'consortium' to all the three claimants was thus awarded. Para 87 is quoted below:-*

*"87. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in **Pranay Sethi (supra)** and **Magma General (supra)**, the following amounts are awarded under the conventional heads:-*

i) *Loss of Estate: Rs. 15,000*

ii) *Loss of Consortium:*

a) *Spousal Consortium: Rs. 40,000*

b) *Parental Consortium: 40,000x 3 = Rs. 1,20,000*

iii) *Funeral Expenses: Rs. 15,000"*

37.*Learned counsel for the appellant has submitted that **Pranay Sethi (supra)** has only referred to spousal consortium and no other consortium was referred to in the*

judgment of Pranay Sethi, hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in Pranay Sethi (supra) has referred to amount of Rs.40,000/- to the 'loss of consortium' but the Constitution Bench had not addressed the issue as to whether consortium of Rs.40,000/- is only payable as spousal consortium. The judgment of Pranay Sethi (supra) cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.

38.*The Three-Judge Bench in United India Insurance Company Ltd. (Supra) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.*

39.*We, thus, found the impugned judgments of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. We, however, accept the submissions of learned counsel for the appellant that there is no justification for award of compensation under separate head 'loss of love and affection'. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head 'loss of love and affection'.*

40.*We may also notice the Three-Judge Bench judgment of this Court relied upon by learned counsel for the appellant i.e. Sangita Arya and others versus Oriental Insurance Company Ltd. and others, (2020) 5 SCC 327. Counsel for the appellant submits that this Court has granted only Rs.40,000/- towards 'loss of consortium' which is an indication that 'consortium' cannot be granted to children. In the above case, Motor Accident Claims Tribunal has awarded Rs.20,000/- to the widow towards loss of consortium and Rs.10,000/- to the minor daughter towards 'loss of love and affection'. The High Court has reduced the amount of consortium from Rs.20,000/- to Rs.10,000/-. Para 16 of the judgment is to the following effect: -*

"16. The consortium payable to the widow was reduced by the High Court from Rs. 20,000 (as awarded by the MACT) to Rs.10,000; the amount awarded towards loss of love and affection to the minor daughters was reduced from Rs.10,000 to Rs. 5,000. However, the amount of Rs. 5,000 awarded by the MACT towards funeral expenses was maintained."

41.*This Court in the above case confined its consideration towards the income of the deceased and there was neither any claim nor any consideration that the consortium should have been paid to other legal heirs also. There being no claim for payment of consortium to other legal heirs, this Court awarded Rs.40,000/- towards consortium. No such ratio can be deciphered from the above judgment that this Court held that consortium is only payable as a spousal consortium and consortium is not payable to children and parents.*

42.*It is relevant to notice the judgment of this Court in United India Insurance Ltd (supra) which was delivered shortly after the above Three-Judge Bench judgment of Sangeeta Arya (supra) specifically laid down that both spousal and parental consortium are payable which judgment we have already noticed above.*

43.*We may also notice one more Three-Judge Bench judgment of this Court in M.H. Uma Maheshwari and others versus United India Insurance Company Ltd (2020), 6 SCC 400. In the above case, the Tribunal had granted the amount of Rs.One Lakh towards loss of consortium to the wife and Rs.Three Lakhs for all the appellants towards loss of love and affection. The High Court in the above case had reduced the amount of compensation in the appeal filed by the Insurance Company. The High Court held that by awarding the amount of Rs.One Lakh towards loss of consortium to the wife, Tribunal had committed error while awarding Rs.One Lakh to the first appellant towards the head of 'loss of love and affection'. Allowing the appeal filed by the claimant, this Court maintained the order of MACT.*

44.*In the above judgment although rendered by Three-Judge Bench, there was no challenge to award of*

compensation of Rs.One Lakh towards the consortium and Rs.Three Lakhs towards the loss of love and affection. The appeal was filed only by the claimants and not by the Insurance Company. The Court did not pronounce on the correctness of the amount awarded under the head 'loss of love and affection'.

33. Hon'ble Apex Court in *Janabai and Others vs. ICICI Lombard Insurance Company Limited*, (2022) 10 SCC 512, in para Nos.14 and 15, has held as under:

*14. The appellant has claimed compensation on account of love and affection as well on account of spousal consortium for wife and for the parental consortium for the children in the calculation given to this Court but in view of **three Judge Bench judgment** reported as [United India Insurance Company Limited v. Satinder Kaur](#) (2021) 11 SCC 780, the compensation under the head on account of loss of love and affection is not permissible but compensation on account of spousal consortium for wife and for the parental consortium for children is admissible. This Court held as under:*

“30. [In Magma General Insurance Co. Ltd. v. Nanu Ram](#), (2018) 18 SCC 130, this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as 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.

31. 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 and affection, and their role in the family unit.

32. *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 permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.*

33. *[The Motor Vehicles Act, 1988](#) is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has 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 the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in [Pranay Sethi \[National Insurance Co. Ltd. v. Pranay Sethi, \(2017\) 16 SCC 680.](#)*

34. *At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in [Pranay Sethi \(supra\)](#) has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. [In Magma General Insurance Co. Ltd \(supra\)](#), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.*

35. *The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to*

award compensation towards loss of love and affection as a separate head.”

15.Therefore, keeping in view the income and the age and the future prospects in terms of judgment of this Court in **Pranay Sethi (supra)** the compensation is assessed as follows:

	Head	Amount
A	Loss of earnings @ monthly salary @ 10,000/- and future prospects @ 15% (6,670+1000 x 12 x 11)	Rs.10,12,440.00
B	Loss of estate	Rs.15,000.00
C	Spousal consortium for wife	Rs.40,000/-
	Parental consortium for two children (Appellants No.2 & 3) @ Rs.40,000/- each	Rs.80,000/-
D	Funeral expenses	Rs.15,000/-
	Total	Rs.11,62,440.00
	Rounded off	Rs.11,63,000.00

34. In **Rajbala and Others vs. Rakeja Begam and Others, AIR 2022 SC 5145**, Hon'ble Apex Court in para Nos.19, 20 & 21 has held as under:

19. While considering the question of interference with the compensation granted by the High Court under the head of 'love and affection' it is only appropriate to refer to a two Judge-Bench decision of this Court in **Jana Bhai and Ors. v. ICICI Lombard General Ins. Co. Ltd. AIR 2022 SC 3731** Evidently, the two Judge Bench took note of the fact that the **Constitution Bench in Pranay Sethi's case (supra)**, has recognized only three conventional heads

where compensation are awardable viz., 'loss of estate', 'loss of consortium' and the 'funeral expenses'. Then, the two Judge-Bench referred to the decision of this Court in **Magma General Ins. Co. Ltd. v. Nanu Ram** AIR 2019 SC (Suppl) 906, which, in turn, had virtually followed by three Judge Bench of this Court in **United Ins. Co. Ltd. v. Satinder Kaur** AIR 2020 SC 3076 It was held therein that as held in **Magma's case (supra)** though compensation under the head of 'love and affection' is impermissible compensation for 'loss of spousal consortium to wife and 'loss of parental consortium to children' are admissible.

20. After having held thus, it was further held in **Jana Bhai's case (supra)** that the amount to be awarded for 'loss of parental consortium' should be in uniformity with the amount fixed by the Constitution Bench in **Pranay Sethi's case (supra)**. In other words, the amount payable under the said head 'parental consortium' shall not exceed Rs. 40,000/- qua a single child. In the said circumstances, the amount of Rupees One lakh each granted by the High Court to Appellants 2 & 3 under the head 'love and affection' require to be deducted and at the same time, Rs. 40,000/- each, out of it can be granted, rather, adjusted against 'parental consortium' grantable to the minor children. Thus, an amount of Rs. 80,000/- has to be adjusted and can be granted to the minor children viz., Appellants No. 2 & 3 and the balance amount of Rs. 1,20,000/- has to be deducted.

21. In the light of the aforesaid findings and conclusions the compensation on account of the death of Shri Sudesh Kumar is re-assessed as under: -

S.No.	Head of Compensation	Calculation/Amount awarded
1	Income (Salary)	Rs.13,817/-
2	50% addition to the actual salary	Rs.13,817+Rs.6,908.50=Rs.20,725.50/-

	towards future prospects	
3	1/3 rd deduction towards personal and living expenses	Rs.20,725.50/3- Rs.6,908.50=13,817.50/-
4	Annual income	Rs.13,817.50 x 12+Rs.1,65,810/-
5	Compensation for loss of dependency, after identifying the multiplier as '16'	Rs.1,65,810 x 16=Rs.26,52,960/-
6	Additional (enhanced) compensation under the head 'loss of dependency'	Rs.26,52,960 – Rs.17,68,704=8,84,256
7	Conventional Heads (a)Funeral expenses (b)Loss of estate	Rs.15,000/- Rs.15,000/-
8	Loss of consortium (a) Loss of spousal consortium (b)Loss of parental consortium	Rs.40,000 – Rs.5,000=Rs.35,000/- (Rs.5,000/- granted by the Tribunal) Rs.80,000/-

	(to minor children/appellant No.s.2 and 3 at the rate of Rs.40,000/- each)	
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35. In *Smt. Anjali and Others vs. Lokendra Rathod and Others*, AIR 2023 SC 44, Hon'ble Apex Court in para Nos.17 & 18 has held as under:

17.A three-Judge Bench of this Court in [United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors.](#) (2021) 11 SCC 780 after considering *Pranay Sethi (Supra)*, has awarded spousal consortium at the rate of Rs.40,000/ (Rupees forty thousand only) and towards loss of parental consortium to each child at the rate of Rs.40,000/ (Rupees forty thousand only). The compensation under these heads also needs to be increased by 10%. Thus, the spousal consortium is awarded at Rs.44,000/ (Forty-four thousand only), and towards parental consortium at the rate of Rs.44,000/ each (Total Rs.1,32,000/) is awarded to the three children. 5 (2021) 11 SCC 780.

18. In light of the above mentioned discussion, the Appellants are entitled to the following amounts:

S.No.	Head	Compensation Awarded
1	Income	Rs.9,855/- per month
2	Future Prospects	Rs.3,942/- (i.e. 40% of income)
3	Deduction towards personal expenses	Rs.2300/- (i.e. 1/6 Rs.9.855+Rs.3942)
4	Total Annual Income	Rs.1,37,964/- (I.e.5/6 th Rs.9,855+Rs.3,942)x12
5	Multiplier	17

6	Loss of Dependency	Rs.23,45,388 (i.e. Rs.1,37,964 x 17)
7	Funeral Expenses	Rs.50,000/-
8	Loss of Estate	Rs.20,000/-
9	Loss of spousal consortium	Rs.44,000/-
10	Loss of parental consortium to each of the three children	Rs.44,000/- each
11	Total compensation to be paid	Rs.25,91,388/-

36. In *Harpreet Kaur and Others vs. Mohinder Yadav and Others*, AIR 2023 SC 111, Hon'ble Apex Court in para No.12 &13 has held as under:

12. *The judgment in [Rajesh v. Rajbir](#)(2013) 9 SCC 54 was followed in other decisions. However, the approach in these decisions, was disapproved by a five-judge bench decision in [National Insurance Co. v. Pranay Sethi](#) AIR 2017 SC 5157, where this court indicated what should be the correct approach in awarding amounts towards consortium:*

“52. [...] Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.”

Applying this principle, in [Magma General Insurance Co. v. Nanu Ram](#) (2018) 18 SCC 130 this court held as follows:

“20. MACT as well as the High Court have not awarded any compensation with respect to loss of consortium and

loss of estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognised by the Constitution Bench in *Pranay Sethi*. [The Motor Vehicles Act](#) is a beneficial and welfare legislation. The Court is duty-bound and entitled to award “just compensation”, irrespective of whether any plea in that behalf was raised by the claimant. In exercise of our power under [Article 142](#), and in the interests of justice, we deem it appropriate to award an amount of Rs 15,000 towards loss of estate to Respondents 1 and 2.

21.A Constitution Bench of this Court in [Pranay Sethi \[National Insurance Co. Ltd. v. Pranay Sethi, \(2017\) 16 SCC 680\]](#) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse : [[Rajesh v. Rajbir Singh, \(2013\) 9 SCC 54](#)].

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation”. [Black's Law Dictionary (5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training”.

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued

for their love, affection, companionship and their role in the family unit.

22. *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.*

23. [The Motor Vehicles Act](#) *is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has 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 Act. A few High Courts have awarded compensation on this count.⁷ However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.”*

13. *On an application of the principles indicated in **Magma General Insurance Company Limited vs. Nanuram and Others (2018) 18 SCC 130** this court is of the opinion that the filial and parental consortium have to be increased. Each of the children, and the mother of the deceased, is entitled to ₹40,000/-. Thus, the total amount payable towards filial and parental consortium is ₹1,20,000/-.*

37. Evidently decisions in ***Magma General Insurance Company Ltd, Satinder Kaur, Somvati, Janabai, Rajbala, Smt. Anjali, Harpreet Kaur (supra)*** have been rendered in between 2018 to 2023 & after judgments of ***Sarla Verma, Pranay Sethi (supra)***. It

also apparent from above that decisions in *Magma General Insurance Company Ltd, Satinder Kaur, Somvati, Janabai, Rajbala, Smt. Anjali, Harpreet Kaur (supra)* have been rendered after extensively referring & discussing *Pranay Sethi (supra)* & decision in *Satinder Kaur (supra)* is a *3 judge bench decision*.

38. So far as decision in *Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat (Civil Appeal No.2410-2412/2023), decided on 27.03.2023 (SC) (2 Judge Bench)&IFFCO TOKIO GENERAL INSURANCE COMPANY Ltd. Vs. Smt. BUDHWARIYA BAI (M.A. No.573 of 2022) decided on 21.06.2022 (M.P.)*, are concerned, perusal of above reveal that they have not discussed & distinguished earlier judgments in *Magma General Insurance Company Ltd, Satinder Kaur (3 Judge Bench), Somvati, Janabai, Rajbala, Smt. Anjali, Harpreet Kaur (supra)*.

39. Hence, from above pronouncements of Hon'ble apex court in *Magma General Insurance Company Ltd, Satinder Kaur, Somvati, Janabai, Rajbala, Smt. Anjali, Harpreet Kaur (supra)* following principles of law with respect to award of "consortium" can be culled out as under/can be summarized as under:-

i. As per *Magma General Insurance Company Ltd, Satinder Kaur, Somvati, Janabai, Rajbala, Smt. Anjali, Harpreet Kaur (supra)*, consortium can be claimed under the head of "Spousal Consortium", "Parental Consortium" & "Filial Consortium" @ of Rs.40,000/-, i.e. if there are wife, son, mother, then, each one of them is entitled to receive consortium @ of

Rs.40,000/-.Upper/outer limit prescribed in *Pranay Sethi (supra)* is with respect to consortium amount & not with respect to number of persons entitled to receive consortium under above categories of “Spousal Consortium”, “Parental Consortium” & “Filial Consortium”, i.e. per person consortium amount can not exceed Rs.40,000/-.

ii. Consortium can be awarded only under the head of “Spousal Consortium”, “Parental Consortium” & “Filial Consortium” & each one of them is well defined as above. Persons not coming under any of above category, are not entitled to receive consortium. Grand parents, sister,brother do not fall/come within any of the category of “Spousal Consortium”, “Parental Consortium” & “Filial Consortium”, hence they are not entitled to receive consortium. In *Magma General Insurance Company Ltd (supra)*, Hon’ble apex court awarded consortium to sister in the facts & circumstances of the case but therein, no general principle has been laid down that in each & every case sister is entitled to receive consortium.

iii. Perusal of para 37, 38, 40, 41, 42 of *Somvati (supra)* shows that Hon’ble apex has dealt with almost all the submissions raised by learned counsel for insurance company & the same has been negated.

Factual analysis:-

40. Learned counsel for the appellant after relying on Magma General Insurance Company Ltd. (supra) submits that Tribunal has

committed error in not awarding any amount for consortium to other claimants except wife of deceased. From discussion in foregoing paras, it is clearly established that grandparents (applicants No.4 & 5) are not dependent on deceased. In view of discussions in the foregoing paras, in this Court's considered opinion, grandparents of deceased are not entitled for consortium as they do not come within the purview of "filial consortium" or "parental consortium".

41. So far as deceased's sister applicant No.6 is concerned, it is correct that Hon'ble Apex Court in Magma General Insurance Co. Ltd. (supra) has awarded filial consortium to sister of the deceased but perusal of the said judgment reveal that therein Hon'ble Apex Court has held that " in the present case we deem it appropriate to award an amount of Rs.40,000/- each for loss of filial consortium." This Court has discussed/referred various decisions regarding grant of consortium in the preceding paras and therein consortium has been categorized/defined as "filial consortium", "parental consortium" and "spousal consortium" and in this Court's considered opinion, sister of deceased does not come within the purview of any of above categories of consortium. In Magma General Insurance Co. Ltd. (supra) Hon'ble Apex Court has awarded consortium to deceased's sister in the facts and circumstances of that case. Therefore, in view of above, in this Court's considered opinion, grandparents of deceased and sister are not entitled to receive consortium.

42. In the instant case, wife, father & mother of deceased each is entitled to receive Rs. 40,000/- as consortium, total consortium being

Rs.1,20,000/-.Perusal of impugned award reveals that Tribunal has awarded Rs.1 lakh as consortium to deceased's wife whereas as per Pranay Sethi (supra), maximum Rs.40,000/- can be awarded as consortium to wife of deceased. Hence, in view of above, under above head of consortium, appellants are entitled to receive a sum of Rs.1,20,000/-.

43. Perusal of impugned award reveal that Tribunal has awarded Rs.50,000/- as loss of estate and Rs.25,000/- as funeral expenses whereas as per Pranay Sethi (supra) Rs.15,000/- - Rs.15,000/- could have been awarded for above heads. Therefore, under above heads a Tribunal has awarded excess amount of Rs.45,000/-. This, amount has to be adjusted while calculating the total compensation.

Future Prospects:-

44. So far as future prospects is concerned, perusal of impugned award reveal that Tribunal has not awarded any amount for future prospects. In the instant case, Tribunal has held that at the time of accident deceased was aged 22 years and Tribunal has held that deceased was an unskilled labourer. Therefore, in view of para 61 (iv) of the judgment in the case of Pranay Sethi (supra), claimants are also entitled to get 40% of Rs.5,845/- as future prospects. In view of deceased's age multiplier of 18 would be applicable.

Calculation of total compensation:-

45. Hence, in view of discussion in the foregoing paras compensation is recalculated as under:-

Loss of dependency	Rs.11,78,280/- (i.e.5845+40% FP=8183 - 1/3 personal expenses=5455 x 12=65,460 x 18)
Consortium	Rs.1,20,000/- (i.e. Rs.40,000x3)
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
TOTAL Rs.	13,28,280/-

46. Thus, the just and proper amount of compensation in the instant case is Rs.13,28,280/- as against the award of the Tribunal of Rs.6,07,000/-. Accordingly, appellants 1, 2, 3 & 6 are entitled to an additional sum of Rs.6,81,280/- over and above the amount which has been awarded by the Tribunal. Out of compensation adjudged above, appellant Dal Singh is entitled to receive only Rs.40,000/- as consortium.

47. In the result, the appeal is partly allowed by enhancing the compensation amount by a sum of Rs.7,21,280/-. The enhanced amount shall bear interest at the same rate as awarded by the Tribunal. The other findings recorded by the Tribunal shall remain intact.

48. Appellants have valued the appeal only to the extent of Rs.4.5 lakhs and paid the Court fee accordingly. However, for the remaining amount of Rs.2,71,280/- the Court fee shall be paid by

the appellants within a period of one month and thereafter the amount shall be released by the Insurance Company on receiving the certificate. In case the certificate has not been filed before the Insurance Company up to a period of three months, the claimant shall not be entitled to receive the interest on the enhanced amount of compensation.

49. In the result, the appeal is allowed in part and to the extent indicated herein above.

(ACHAL KUMAR PALIWAL)

JUDGE

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