



IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

M.A.C.M.A.No.117 of 2018

Between:

1. Temburu Dhana Lakshmi,
W/o.Late Tirupathi Rao,
Hindu, Aged 43 years, R/o.15-51, Virat Nagar,
R.R.V.Puram Post, Gopalapatnam,
Visakhapatnam – 500 029.
2. Temburu Rohit Ram Charan Teja,
S/o.Late Tirupathi Rao,
Hindu, Aged 10 years(Minor), R/o.15-51, Virat Nagar,
R.R.V.Puram Post, Gopalapatnam,
Visakhapatnam – 500 029.
(The 2nd petitioner being minor represented by his mother and natural
guardian, the 1st petitioner) ... Appellants

And

1. Jaya Prakash, S/o.Krishnan Kutty K.,
Hindu, aged about 57 years, Driver of TN 04 A/C 8791,
R/o.H.No.150, Kamarajar Saalai, R.A.Puram,
Chennai-28.
2. The Corporation of Chennai,
Represented by its Commissioner,
Repon Building, Chennai.
3. The New India Assurance Company Limited,
Represented by its Regional Manager,
Regional Office, Chennai.
4. The New India Assurance Company Limited,
Represented by its Regional Manager,
Regional Office, 47-10-12, 3 & 4th Floors,
Pavan Paradise, 2nd Lane, Dwaraka Nagar,
Visakhapatnam-16.
5. Temburu Varahamma, W/o.Late Ramulu,
Hindu, Occupation Household works, Aged about 68 years,
R/o.18 Sengai Amman Kiol Street, 1st Street,
Madhuvankarai, Guidy, Chennai. ... Respondents

DATE OF JUDGMENT PRONOUNCED: **24.03.2023**

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE M.GANGA RAO
AND
HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

M.GANGA RAO, J

DUPPALA VENKATA RAMANA, J



*** HON'BLE SRI JUSTICE M.GANGA RAO**

AND

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

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! Counsel for Appellants : Smt.S.A.V.Ratnam

^ Counsel for 3rd & 4th Respondents : Sri M.R.K.Chakravarthy

< Gist:

> Head Note:

? Cases referred:

1999 (1) SCC 90

(2022) 1 SCC 317

(2007) 8 SCC 319

(2015) 2 ALT 702

2009 ACJ 1298 (SC)

2017 ACJ 2700 (SC)

2018 ACJ 2782 (SC)

This Court made the following:



THE HON'BLE SRI JUSTICE M.GANGA RAO
AND
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
M.A.C.M.A.No.117 of 2018

JUDGMENT:

(Per Hon'ble Sri Justice Duppala Venkata Ramana)

This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") is filed at the behest of the claimants, challenging the Judgment and Award dated 16.10.2017 passed by the Motor Accidents Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Visakhapatnam (for short "the Tribunal") in M.V.O.P.120 of 2015 awarding a sum of Rs.21,20,000/- with interest @ 6% per annum as compensation to the claimants from the date of petition till the date of realization against Respondents 1 to 4 jointly and severally.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed before the Tribunal in the claim petition.

3. The brief facts, as culled out from the record, are that this claim petition was filed by the claimants seeking compensation for the death of the deceased – T.Tirupathi Rao in a road traffic accident. On 06.11.2013 at 8.15 a.m., when the deceased was going on his motorcycle bearing No.TN 09 BS 9749 along with his two children - Neerajana and Rohit Ram Charan Teja to drop them at the school, and when he reached opposite to the Traffic Control Room, Sardar Patel Road, a garbage carrying vehicle bearing



No.TN 04 A/C 8791 owned by the 2nd respondent (Commissioner, Municipal Corporation, Chennai) driven by its driver, came in a rash and negligent manner and hit the motorcycle from behind due to which, he along with his two children fell on the ground, and sustained severe injuries. The said garbage vehicle ran over the rider of the motorcycle i.e., deceased – Tirupathi Rao and he died on the spot. Whereas, his son and daughter also sustained injuries and the daughter of the deceased died on the spot. His son was shifted to the hospital for treatment.

(b) The matter was reported to the Police by the brother of the deceased, namely, T. Shanmugha Rao, alleging that the accident took place as a result of rash and negligent driving of the said garbage vehicle bearing No.TN 04 A/C 8791 by its driver. Based on the report, a case in Crime No.560 of 2013 of J2 Adyar Police Station, Chennai, was registered for the offences under Sections 279, 337 and 304-A IPC. After the investigation of the case, a charge sheet was submitted to the Court by the Police against the accused driver – Jaya Prakash (1st respondent) for having committed the offence punishable under Sections 279, 338 and 304-A IPC.

(c) The claimants 1 and 2, who are the wife and son of the deceased filed an application claiming compensation of Rs.51,00,000/-, before the Tribunal under various heads, on account of the death of the deceased - T.Tirupathi Rao in the road traffic accident.



(d) The 1st respondent-driver filed a counter and the claimants are put to strict proof of mode of the accident, age, and income of the deceased. It is further contended that the accident occurred due to the negligence of the deceased. The compensation claimed by the claimants is excessive. It is further averred that the 1st respondent had a valid driving licence and the offending vehicle was covered by an insurance policy at the time of the accident and prayed to dismiss the petition.

(e) The 3rd respondent–New India Assurance Company filed a counter which was adopted by the 4th respondent and contending *inter alia* that the deceased drove the motorcycle in a rash and negligent manner without wearing a helmet and without having a valid driving licence at the time of the accident and violated the provisions of Sections 134(c) and 158(6) of the Act. It is further contended that the liability of the Insurance Company is subject to the terms and conditions of the policy. The driver of the offending vehicle (1st respondent) had no valid driving licence at the time of the accident and there was a contributory negligence on the part of both the vehicles. The claim of compensation is excessive and prayed to dismiss the petition.

(f) The 2nd respondent did not contest the matter and the 5th respondent, who is none other than the mother of the deceased, has not filed any counter.



(g) In view of the pleadings of the parties, the Tribunal framed the following issues:

- (1) *Whether the accident took place due to the rash and negligent driving of the driver of the garbage carrying vehicle bearing No.TN 04 A/C 8791 resulting in death of the deceased viz., Temburu Tirupathi Rao?*
- (2) *Whether the petitioners are entitled for compensation, and if so, what amount and against whom?*
- (3) *To what relief?*

(h) In order to establish the claim of the petitioners, at the time of enquiry, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 and Ex.X.1 were got marked. None were examined and no documents were marked on behalf of the respondents.

(i) On appreciation of the evidence of P.Ws.1 to 3 and placing reliance on Exs.A.1 to A.6 i.e., attested true copies of FIR, charge sheet, Post Mortem Report, original salary certificate etc., of the deceased- T.Tiruparthi Rao, the learned Tribunal, in the instant case, has come to a conclusion that, due to rash and negligent driving of the offending vehicle bearing No.TN 04 A/C 8791 by its driver, the accident occurred and fastened the liability against Respondents 1 to 4 and awarded a sum of Rs.21,20,000/- as compensation to the claimants and 5th respondent along with interest @ 6% per annum from the date of claim petition till realization.



(j) The total compensation awarded by the Tribunal under various heads by applying multiplier '11' is as follows:

S.No.	Heads of compensation	Amount of compensation awarded by the Tribunal in Rupees
1	Pecuniary Loss	19,80,000/-
2	Loss of consortium and loss of estate	1,00,000/-
3	Loss of love and affection	50,000/-
4	Funeral Expenses	5,000/-
	Total	21,35,000/-

But the Tribunal committed an error while calculating the amount awarded under the above heads as Rs.21,20,000/- instead of Rs.21,35,000/-.

(k) Aggrieved by, and dissatisfied with the said award passed by the learned Tribunal, the appellants/claimants have preferred the present appeal seeking enhancement of compensation awarded by the Tribunal.

4. Heard the learned counsel appearing for the appellants/claimants, and the learned counsel appearing for the respondents, and perused the material available on record.

5. Learned counsel appearing for the appellants/claimants would submit that the Tribunal ought to have awarded higher compensation. Further, he would submit that the learned Tribunal has not awarded compensation based on the gross salary drawn by the deceased in the preceding month of the alleged accident. He would further submit that the findings given by the learned Tribunal are contrary to law and the same need to be modified.



Further, he would submit that as per the principles laid down in the Judgment of the Hon'ble Supreme Court of India in **Helen C. Rebello (Mrs.) and others Vs. Maharashtra State Road Corporation and another**¹, receipt of family pension by the 1st petitioner/claimant, who is the wife of the deceased, cannot be termed as a pecuniary advantage while determining the compensation under the provisions of the Motor Vehicles Act. Therefore, the claimants would have got more compensation than awarded and the amount of compensation awarded by the Tribunal is not justified, and needs to be enhanced.

6. The learned standing counsel for the 3rd & 4th respondents would submit that the Tribunal has not properly appreciated the evidence on record and committed illegality in awarding higher compensation, contrary to the principles laid down in the judgments of the Hon'ble Apex Court. He would further submit that the figures/multiplier applied and the amount of compensation awarded by the Tribunal are not justified, and needs to be reduced calling interference of this Court.

7. In the light of the above rival arguments, the points for determination are:

- (1) *Whether the family pension received by the 1st petitioner-wife comes within the periphery of the Motor Vehicles Act, 1988 and to be termed as "pecuniary advantage" and liable for the deduction?*
And

¹ 1999 (1) SCC 90



(2) *Whether the quantum of compensation awarded by the Tribunal is just and reasonable?*

POINT Nos. 1 & 2:

8. Considered the submissions of the respective counsels representing the parties, perused and assessed the entire evidence including the exhibited documents. A perusal of the impugned award would show that the Tribunal has framed Issue No.1 as to whether the accident took place due to the rash and negligent driving of the driver of the garbage carrying vehicle bearing No.TN 04 A/C 8791 resulting in the death of the deceased, namely, Temburu Tirupathi Rao, to which the Tribunal, after considering the oral and documentary evidence, explained the manner in which the accident occurred. Further, a perusal of Ex.A.3 attested true copy of the Post Mortem Report would show that, unless the offending vehicle hit the motorcycle, the deceased would not have received such severe injuries, and the deceased and his daughter would not have died on the spot in the accident. Therefore, we are of the considered view that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle bearing No.TN 04 A/C 8791. It is further observed that the 1st and 3rd respondents have admitted in their counters that the offending vehicle was covered by an insurance policy by the date of the accident.

9. The 3rd respondent - New India Assurance Company though had taken a plea in their counter that the driver of the offending vehicle bearing



No.TN 04 A/C 8791 had no valid driving licence at the time of the accident, they had not placed any evidence or material to substantiate their contention and nothing was elicited from P.Ws.1 to 3 to show that the driver of the offending vehicle had not possessed a valid driving licence at the time of the accident and none were examined from the Transport Department to prove the same. Therefore, the contention raised by the 3rd respondent is not trustworthy and convincing.

10. Even assuming that the driver of the offending vehicle was not holding valid licence to drive the same, in the case of **Kurvan Ansari @ Kurvan Ali & Another Vs. Shyam Kishore Murmu & Another**² Hon'ble Apex Court held as follows:

“.....The entire compensation shall be paid to the appellants by Respondent 2 insurance company, and we keep it open to the insurance company to recover the same from Respondent 1 owner of the motorcycle by initiating appropriate proceedings as the motorcycle was driven by the driver who was not possessing valid driving licence on the date of the accident.

18. Accordingly, this civil appeal is allowed partly with directions as indicated above. No order as to costs.”

11. In view of the above decision, the 3rd & 4th respondents cannot escape from their liability. Therefore, the contention of the 3rd respondent on the above aspect, is not justifiable.

12. While assessing the compensation payable to the claimants, the Tribunal has deducted the family pension received by the 1st claimant, who

² (2022) 1 SCC 317



is the wife of the deceased, which cannot be termed as “pecuniary advantage” and the Tribunal committed an error in deducting the family pension while determining the compensation under the provisions of the Act.

13. The issue as to whether the pension received by the 1st claimant-wife comes within the periphery of the Motor Vehicles Act and to be termed as ‘pecuniary advantage’ and liable for the deduction, came up for consideration before the Hon’ble Apex Court in *Helen C. Rebello* case (supra) wherein at Para No.35 it was held as follows:

“35.....Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two.....”

..... Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the [Motor Vehicles Act](#) to be termed as 'pecuniary advantage' liable for deduction.....”

14. In another Judgment of the Hon’ble Apex Court in **Lal Dei and others Vs. Himachal Road Transport**³ at Para No.4 it was held as follows:

“4..... The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of

³ (2007) 8 SCC 319



family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello Vs. Maharashtra SRTC this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.....”

15. By applying the same analogy and the principles laid down in the judgments referred to above, this Court in the case of **Meesala Nageswamma and three others Vs. Siva Cheederla and another**⁴ at Para No.18 held as follows:

“18.....receipt of family pension by the first petitioner, who is the wife of the deceased, cannot be termed as pecuniary advantage warranting while determining the compensation under the provisions of the Motor Vehicles Act.....”

16. In view of the principles laid down in the decisions cited supra, the Tribunal committed an error while awarding pecuniary loss and deducted the family pension received by the 1st claimant, who is the wife of the deceased, which cannot be termed as ‘pecuniary advantage’, and such an amount will not come within the periphery of the Motor Vehicles Act which is to be termed as ‘pecuniary advantage’ liable for deduction. The Tribunal ought to have taken into consideration while awarding compensation the

⁴ (2015) 2 ALT 702



gross salary of the deceased after deducting income tax, if any. The family pension is earned by an employee for the benefit of his family in the form of his contribution, for the services rendered by him, in terms of the service conditions, receivable by the heirs after his death. The family pension amount paid to the 1st claimant-wife cannot be deducted while calculating the compensation awarded to the claimants and the 5th respondent.

17. The learned counsel for the claimants mainly submits that the finding of the Tribunal in deducting the family pension received by the 1st claimant-wife, while awarding compensation, is contrary to the law and the same needs to be modified. While assessing the compensation payable to the claimants, the Tribunal took into consideration the salary certificate of the deceased i.e., Ex.A.4 for the month of October, 2013 which shows the last drawn monthly gross salary by the deceased was Rs.35,150/-. By the date of the accident i.e., 06.11.2013 the deceased was working as Lab Assistant at Council for Scientific and Industrial Research, Chennai.

18. It is relevant to refer to the decision of the Hon'ble Supreme Court of India in **Sarla Verma Vs. Delhi Transport Corporation**⁵, wherein at Para 9 it was held as follows:

“9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and the

⁵ 2009 ACJ 1298 (SC)



(c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.”

19. In the light of the above-said decision, the Tribunal has to assess the age and income of the deceased, and the number of dependents, while determining the compensation. A perusal of Ex.A.4 the salary certificate of the deceased issued by the Drawing and Disbursing Officer dated 08.01.2016 would show that the date of birth of the deceased, as per the service record, is 20.05.1963 and therefore, by the date of death of the deceased, he was aged about 50 years 5 months and 16 days. Since the deceased was a Central Government salaried employee, and he was between the age group of 50 to 60 years by the date of the accident, 15% of his actual salary has to be added towards future prospects for the assessment of his income, as per the guidelines laid down in **National Insurance Company Vs. Pranay Sethi**⁶ wherein at Para 59.3 it was held as follows:

“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

⁶ 2017 ACJ 2700 (SC)



60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”

20. In view of the principles laid down in *Pranay Sethi’s* case (supra), the Tribunal ought to have added 15% of his actual income towards future prospects, for determination of his income. But, the Tribunal committed an error in not taking 15% of future prospects into consideration and committed an error in deducting the family pension of the 1st claimant-wife while assessing the compensation.

21. As per the judgment of the Hon’ble Apex Court in *Sarla Verma* (supra) the loss of dependency is thus re-assessed at Para 21 and it reads as under.

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (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, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

22. Evidently, the size of the family of the deceased is ‘three’ consisting of wife, son and mother. As such, 1/3rd deduction has to be made towards the personal expenses of the deceased, in view of the principles laid down in *Sarla Verma’s* case (supra). The observation of the Hon’ble Apex Court in *Sarla Verma’s* case is as under:

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having



considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

23. In the light of the judgment of the Constitution Bench of Hon'ble Supreme Court in *Pranay Sethi's* case (supra), the actual salary should be read as 'actual salary less tax'. Therefore, the Tribunal ought to have taken into consideration of the actual salary by applying the multiplier '11' as per *Sarla Verma's* case (supra). P.W.3 in her evidence has stated that she brought the original Service Register of the deceased and the date of birth of the deceased is 20.05.1963. Ex.A.4 is the salary certificate of the deceased. The annual income of the deceased after compulsory deductions will not come within the purview of the Income Tax. Taking into consideration of the above-said evidence, the Tribunal ought to have taken the gross salary of the deceased which was mentioned in Ex.A.4 salary certificate i.e., Rs.35,150/- per month. Similarly, 1/3rd income of the deceased has to be deducted towards his personal and living expenses, since the number of his dependent family members is 'three'. Evidently, the deceased was working as Lab Assistant at Council for Scientific and Industrial Research, Chennai, and he was a permanent employee of Central Government. At the time of his death, the deceased was between the age group of 50 to 60 years. Therefore,



15% of his actual income has to be added towards future prospects, for determination of his income, pursuant to the directions of the Hon'ble Supreme Court in *Pranay Sethi's* case vide Paragraph 59.3 cited (supra).

24. While assessing the compensation payable to the claimants, the Tribunal took into consideration the last pay certificate Ex.A.4 of the deceased which shows that the monthly salary last drawn by the deceased (preceding month of the accident) was a sum of Rs.35,150/-. Since the deceased was a salaried employee and he was between the age group of 50 – 60 years, an addition of 15% of his actual salary is to be added towards future prospects, for assessment of his income and the said 15% of his actual salary is worked out to $\text{Rs.35,150} \times 15\% = \text{Rs.5,272.50}$, which is rounded to Rs.5,272/-. The total monthly income of the deceased is thus worked out to Rs.40,422/- (Rs.35,150 + Rs.5,272). Thereafter, 1/3rd of the said amount is to be deducted towards his personal and living expenses. Said 1/3rd of the monthly income is worked out to $\text{Rs.40,422} \times 1/3 = \text{Rs.13,474/-}$. After deduction of the said amount from his monthly income towards living and personal expenses, the monthly income of the deceased came to be Rs.26,948/-(Rs.40,422 – Rs.13,474) and the annual income of the deceased is worked out at Rs.3,23,376/-(Rs.26,948 x 12). Since the deceased was 50 years 5 months and 16 days old at the time of his death, multiplier of '11' has to be applied for the assessment of loss of dependency, as per the judgment of the Hon'ble Supreme Court in the case of *Sarla*



Verma (supra) and the loss of dependency is to be assessed at Rs.3,23,376 x 11 = Rs.35,57,136/-. Having applied the said multiplier, the loss of dependency would be Rs.35,57,136/-. This Court finds that the Tribunal has not awarded appropriate compensation towards future prospects and loss of dependency. A reading of the Tribunal's award makes it clear that the Tribunal's approach does not accord at all with the current judicial opinion. Therefore, the claimants are entitled to a sum of Rs.35,57,136/- under the head of loss of dependency which would be substantive.

25. The Tribunal committed an error while awarding compensation under conventional heads viz., loss of estate, loss of consortium and funeral expenses, contrary to the principles laid down in *Pranay Sethi's* case (supra) and in the case of **Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram and others**⁷.

Funeral Expenses:

26. Under this conventional head, the Tribunal wrongly awarded a sum of Rs.5,000/-. The same is now enhanced from Rs.5,000/- to Rs.15,000/- (As per the decision of the Constitution Bench in *Pranay Sethi's* case).

⁷ 2018 ACJ 2782 (SC)



Loss of Estate

27. The Tribunal has committed an error while awarding compensation of Rs.1,00,000/- under the head of loss of estate and consortium. Therefore, this Court is of the view to award an amount of Rs.15,000/- under the head 'loss of estate' (As per the decision of the Constitution Bench in *Pranay Sethi's* case).

Loss of Consortium:

28. The Tribunal awarded a sum of Rs.1,00,000/- under the head of loss of estate and consortium, which is not in conformity with the judgment of the Hon'ble Apex Court in *Pranay Sethi's* case.

29. The Hon'ble Supreme Court has explained the concept of consortium in *Nanu Ram's* case (supra) and it was held that the consortium is a compendious term, which encompasses "spousal consortium", "parental consortium", as well as "filial consortium". Observations of the Hon'ble Apex Court in Paragraphs 21, 22, 23 and 24 are as follows:

"21. A Constitution Bench of this Court in Pranay Sethi 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, MAC.App 77/2019 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.

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."

30. Pursuant to the decision in *Nanu Ram's* case (supra), the 1st claimant, who is the wife of the deceased is entitled to the consortium of Rs.40,000/-, the 2nd claimant, who is the son of the deceased is entitled to the consortium of Rs.40,000/- for the loss of parental aid, protection, affection in society, discipline and guidance and training and the 5th respondent, being the mother of the deceased is also entitled to the consortium of



Rs.40,000/- for the loss of love, affection, care and companionship of the deceased, instead of compensation under the head of loss of love and affection. Therefore, this Court is of the view that the 1st claimant, being the wife, the 2nd claimant, being a son and the 5th respondent being the mother of the deceased, are entitled to a sum of Rs.40,000/- each under the head of loss of consortium.

31. In *Sarla Verma's* case (supra) the Hon'ble Apex Court, while elaborating the concept of 'just compensation' observed as under:

“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.”

32. In view of the principles laid down by the Hon'ble Apex Court in the judgments cited supra, and the calculations made above, the compensation payable to the claimants and the 5th respondent, is re-assessed as under.

S.No.	Heads of Compensation	Amount of compensation awarded
1	Loss of Dependency	Rs. 35,57,136.00 (Rs.26,948 x 12 x 11= Rs.35,57,136/-)
2	Loss of Estate	Rs. 15,000.00
3	Funeral Expenses	Rs. 15,000.00
4	Loss of Consortium To the wife, son, and mother Of the deceased 40,000 x 3	Rs. 1,20,000.00
	Total	Rs. 37,07,136.00
	(-) Compensation awarded by the Tribunal	Rs. 21,20,000.00
	Enhanced amount	Rs. 15,87,136.00



33. Therefore, the Tribunals are expected to make an award by determining the amount of compensation that appears to be just and proper. The compensation as awarded by the Tribunal, against the background of the facts and circumstances of this case, is not just and reasonable and the claimants and the 5th respondent are entitled to more compensation than the awarded amount.

34. Therefore, in view of the foregoing discussion, we are of the opinion that the amount of compensation awarded by the Tribunal is absolutely not justified, which calls for interference of this Court. The compensation awarded by the Tribunal is enhanced from Rs.21,20,000/- to Rs.37,07,136/-.

35. Therefore, the appeal stands partly allowed with proportionate costs, enhancing the compensation from a sum of Rs.21,20,000/- to Rs.37,07,136/- with interest @ 6% per annum from the date of the petition till the date of realization, against the Respondents 1 to 4 jointly and severally.

(ii) Respondents 1 to 4 are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

(iii) Rest of the directions given by the Tribunal with regard to the entitlement of the claimants and the 5th respondent in withdrawing the amount shall remain unaltered.



(iv) The impugned award of the learned Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

(v) As a sequel, interlocutory applications, if any, pending for consideration, shall stand closed.

JUSTICE M.GANGA RAO

JUSTICE DUPPALA VENKATA RAMANA

Date: 24.03.2023

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Dinesh

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THE HON'BLE SRI JUSTICE M.GANGA RAO
AND
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No.117 OF 2018

(Per Hon'ble Sri Justice Duppala Venkata Ramana)

24.03.2023

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