(A.F.R.)
Reserved on 28.10.2021
Delivered on 14.12.2021

Court No. - 39

Case :- FIRST APPEAL FROM ORDER No. - 1652 of 2009
Appellant :- Dr. Anoop Kumar Bhattacharya And Another
Respondent :- National Insurance Co. Ltd.
Counsel for Appellant :- Sanjay Singh, Amrendra Nath Rai
Counsel for Respondent :- Amit Manohar

Hon'ble Mrs. Sunita Agarwal,J.
Hon'ble Krishan Pahal,J.

(Delivered by Hon'ble Krishan Pahal,J.)

1. Heard Sri Sanjay Singh, learned counsel for the claimants-appellants and Sri Amit Manohar, learned counsel for the Insurance Company, arrayed as respondent no.1.

2. This First Appeal From Order (hereinafter referred to as 'FAFO') was instituted by the claimants-appellants, under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act, 1988'), assailing the judgment and order dated 24.01.2009 rendered by the Motor Accident Claims Tribunal/Additional District Judge/ Special Judge (E.C. Act), Bareilly (hereinafter referred to as 'Tribunal') in Motor Accident Claim Petition Case No.-881 of 2004.

3. A perusal of the order sheet indicates that this Court, vide order dated 02.11.2015, admitted this FAFO and issued notices. Accordingly, notices were sent to the respondents 1 & 2 by ordinary post. The office report dated 22.09.2021 reads '*notices sent by ordinary post to respondents 1 & 2 did not return after service*' indicating satisfactory service.

4. While Sri Amit Manohar, learned counsel, has put in appearance on behalf of the respondent no.1 the Insurance Company (hereinafter referred to as 'Insurer'), no one has appeared on behalf of the respondent no.2, the owner of truck involved in the accident (hereinafter referred to as 'offending truck') despite service of notice. The appeal is of the year 2009

and, thus, very old. It transpires from the record that the respondent no.2 did not contest the case even before the Tribunal, the judgment dated 24.01.2009 whereof is under challenge in this FAFO. The record indicates that though Vakalatnama was filed before the Tribunal by one Advocate Mohd. Rashid Malik on 14.12.2005 on behalf of the respondent no.2 but the respondent no.2 did not even file a written statement and the Tribunal vide order dated 25.09.2007 proceeded ex-parte against him. The respondent no.2, therefore, does not seems to be interested in putting up a defence despite ample opportunity.

FACTS

5. Before adverting to the issues which arise for consideration by this Court, it would be of profit to undertake a survey of the relevant facts of the case.

6. The claimants-appellants, namely Dr. Anoop Kumar Bhattacharya (who had unfortunately died during the pendency of the case before the Tribunal) and Smt. Leena Bhattacharya, on 16.12.2004, instituted Motor Accident Claim Petition (M.A.C.P.) No.-881/2004 before the Tribunal, under Section 166 of the Act, 1988, for grant of compensation on account of the unfortunate and tragic death of their only son, namely Abhishek Bhattacharya (hereinafter referred to as 'deceased'), who had died in a motor vehicle accident on 20.07.2004. Dr. Anoop Kumar Bhattacharya was claimant no.1 whereas Smt. Leena Bhattacharya was claimant no.2 (Dr. Anoop Kumar Bhattacharya and Smt. Leena Bhattacharya shall hereinafter individually be referred to as 'claimant no.1' and 'claimant no.2' respectively and jointly as 'claimants').

7. As per the claim petition, the deceased was 24 years old and was in the final year of MBA course at the Institute of Cost and Financial Accountants of India, Hyderabad (hereinafter referred to as 'ICFAI'). It was also contended that the deceased was in the part time employment of M/S Ivy Comptech, Hyderabad and was earning Rs.13,080. The case of

the claimants, as a matter of fact, can be conveniently looked into in its entirety from the particulars furnished under the head '*23. Other information that may be helpful in the disposal*' in the claim petition, which is extracted hereunder for ready reference: -

> *"On 20.07.2004, the claimant no.1 was travelling from Bareilly with the deceased in his Car No.-UA-06-A6970 on Bareilly-Delhi National Highway at a very low speed. The Truck No.-GJ-1-TT-8883 came from the front from Rampur side and was driven very rashly and negligently by its driver and collided into the car on the right side. The deceased was severely injured and was taken by the claimant no.1 to Dhanwatari Tomer Hospital, Bareilly with the help of people but he died. The claimant no.1 also received severe shock and injuries. FIR was lodged with PS Meerganj, Distt Bareilly.*
>
> *The deceased Abhishek was the only child of the claimants and was in the final year of MBA in Institute of Cost and Financial Accountants of India at Hyderabad, which is one of the best institutes of the country. Owing to his excellent performance, he was employed/ working with M/S Ivy Comptech at Hyderabad and drawing a starting salary of Rs.13080/-. He was a very promising young man and would have been absorbed by big corporate houses on very high salary of over Rs.50,000/- per month initially with further rise. He had a very bright future and had also received several awards for his performances. He had no bad habits of drinking, smoking etc. He was very good natured and was greatly loved in the whole family. Being the only child of the claimants, the life and future of the claimants has been completely shattered by his death and they are left with no one to look after in this old age."*

8. The claimants prayed for compensation of Rs.92 lacs (Rupees Ninety Two Lacs) along with interest at the rate of 18% per annum as also the cost of the petition. They also prayed for an interim award of Rs.50,000/- under Section 140 of the Act, 1988.

9. The claim petition was contested by the Insurer, who was arrayed as Opposite party No.1 in the claim petition. The Insurer filed its written statement on 28.08.2005. The factum of the accident was disputed; the age, income and occupation of the deceased was also disputed; the accident, if at all it took place, was alleged to have occurred due to the fault and negligence of the deceased and not because of the act of the driver of the offending truck; the dependency of the claimants on the deceased was disputed; the driver of the offending truck was alleged to have not holding a valid driving license at the time of the accident; the offending truck was alleged to have been driven in violation of the terms and conditions of the insurance policy. It, however, appears from the issues framed by the Tribunal, which we shall refer to shortly, that not all objections taken in the written statement were pressed into service.

10. Based on the pleadings of the contesting parties, the Tribunal framed five issues for determination which are extracted hereunder: -

"1- क्या दिनांक 20.7.04 को जब मृतक अभिषेक भट्टाचार्य अपने पिता डा० अनूप कुमार भट्टाचार्य के साथ कार संख्या - यू० ए०-06-ए-6970 से बरेली से दिल्ली जा रहा था, तब थाना मीरगंज से लगभग 5 किलोमीटर दूरी पर थाना मीरगंज जिला बरेली में अन्तर्गत ट्रक सं०-जी०जे०-1-टी०टी०-8883 के चालक द्वारा ट्रक को तेजी एवं लापरवाही से चलाकर कार में टक्कर मार दी, जिससे अभिषेक भट्टाचार्य को चोटें आयीं और उसकी मृत्यु हो गयी?

2- क्या यह दुर्घटना स्वयं कार चालक की गलती एवं लापरवाही के कारण हुई?

3- क्या दुर्घटना के समय ट्रक चालक के पास वैध ड्राइविंग लाईसेंस नहीं था?

4- क्या दुर्घटना के समय यह ट्रक विपक्षी संख्या - 1 नेशनल इंश्योरेन्स कम्पनी से बीमित था और बीमा पालिसी की किसी शर्त का कोई उल्लंघन नहीं किया गया था तथा ट्रकको वैध फिटनेस प्रमाण पत्र, परमिट आदि के आधार पर चलाया जा रहा था?

5- क्या याचीगण प्रतिकर की धनराशि पाने के अधिकारी है? यदि हाँ तो कितनी और किससे?"

"(i) On 24.07.2004, when the deceased was going to Delhi from Bareilly with his father in his Car No.- UP-06 A-6970, did the driver of the Truck No.- GJ 1 TT 8883 ram the truck into the car of the deceased driving the truck rashly and negligently, at about 5 km from P.S.-Meerganj, Bareilly, injuring the deceased and ultimately causing his death?

(ii) Did the accident take place due to the fault and negligence on the part of the car driver himself?

(iii) Did the truck driver not have a valid driving license at the time of the accident?

(iv) Was the truck, at the time of the accident, insured by the respondent no.1 and was not in violation of any of the terms and conditions of the insurance policy, and, was the truck being driven under a valid fitness certificate, permit, etc.?

(v) Are the claimants liable to be awarded compensation? If yes, the quantum of such compensation and by whom?"

(English Translation by Court)

11. The claimants adduced both documentary evidence and oral evidence to substantiate their claim. In oral evidence, the claimant no.2, Smt. Leena Bhattacharya was examined as PW-1 whereas one Chaturbhuj Shukla, who claimed to have witnessed the whole incident, was examined as PW-2. Both PW-1 and PW-2 were also subjected to cross-examination by the counsel for the Insurer. In the documentary evidence, the claimants, inter alia, filed: certified copy of the FIR dated 21.07.2004 lodged by the claimant no.1, under Sections 279, 304A & 427 IPC, against Raj Kishore, the driver of the offending truck, in connection with the accident at the Police Station Meerganj, Bareilly; certified copy of the post mortem report dated 21.07.2004 of the deceased; certified copy of the charge-sheet dated 06.08.2004, under Sections 279, 304A & 427 IPC, filed by the police against Raj Kishore; original copy of the appointment letter dated 24.07.2003 issued to the deceased by M/S Ivy Comptech, Hyderabad; original salary slip; attested photocopy of the driving license of the deceased; photocopy of the insurance policy whereunder the offending truck was insured; photocopy of driving license of Raj Kishore, the driver of the offending truck; photocopy of the site plan prepared by the police

during the course of investigation. The Insurer, on the other hand, did not adduce any documentary evidence or oral evidence.

12. In the wake of the evidence led and the arguments advanced, the Tribunal decided the issues framed as hereunder.

13. Issue No.-1 and Issue No.-2 were decided together by the Tribunal. The Tribunal observed that the onus to prove the factum of the accident lay upon the claimants whereas the onus to prove that there was contributory negligence on the part of the deceased lay on the Insurer. As regards the factum of the accident, the Tribunal held that since the Insurer admitted that the accident did take place, factum of the accident stood proved. On the question if the accident was caused solely by the rash and negligent driving on the part of the driver of the offending truck or did negligence on the part of the deceased also played a role, the Tribunal attributed the fault for the accident equally between both the deceased and the driver of the offending truck. The Tribunal observed that the claimants did not examine 'actual' eyewitnesses to prove the factum of the accident while the Insurer did not examine the driver of the offending truck to prove negligence on part of the deceased. It was, thus, reasonable to assume that both the deceased and the driver of the offending truck were equally at fault. The Tribunal referring to the record had observed that the record indicated that the accident resulted from a head on collision between the car driven by the deceased and the offending truck and that the deceased sustained injuries in the accident which ultimately led to his death, which, as per the Tribunal, justified the conclusion that the accident resulted from the fault of both the deceased and the driver of the offending truck.

14. On issue No.-3, the Tribunal found that the driving license was valid at the time of the accident.

15. Issue No.-4 entailed determination on the point if the offending truck was under insurance by the Insurer at the time of the accident and if

it was being driven in violation of terms and conditions of the insurance policy. The Tribunal examined the insurance policy document and found that the offending truck was insured by the Insurer for the period from 03.06.2004 to 02.06.2005 and, thus, Insurance policy was alive when the accident took place on 20.07.2004. The Tribunal also found that there was nothing on record to indicate that the offending truck was being driven in violation of the terms and conditions of the insurance policy when the accident occurred.

16. Issue No.5 concerned compensation. The Tribunal had to determine if the claimants were liable to receive any compensation, and, if so, the quantum of compensation and from whom. The Tribunal held that the claimants were liable to be compensated. The Tribunal then went on to determine the quantum of compensation. As per the pay slip filed by the claimants in evidence, the deceased was earning a monthly sum of Rs.13,080/-, which included Rs.5500/- in basic pay, Rs.1700/- in dearness allowance, Rs.800/- in transportation allowance, Rs.2200/- in house rent allowance, Rs.1000/- in medical allowance, Rs.1100/- in lunch allowance and Rs.780/- in LTA. The Tribunal held that for the purpose of quantification of compensation only basic pay and dearness allowance were relevant. The income of the deceased, for the purpose of determination of compensation, was, therefore, taken to be Rs.7200/- per month (Rs.5500/- in basic pay + Rs.1700/- in dearness allowance), which, on an annual basis, worked out to Rs.86,400/-. Thereafter, the Tribunal deducted one-third (1/3rd) of said income towards personal and living expenses which left Rs.57,600/- as the multiplicand. Applying an age-multiplier of 8 based on the age of the claimant no.2, who was 57 years old at the time of the accident, the figure for 'loss of dependency' was computed at Rs.4,60,800/- (8 x 57600). Said figure was then halved to Rs.2,30,400/- to account for the contributory negligence on the part of the deceased. Nothing was added either in the future prospects or under the conventional heads (loss of estate, loss of consortium, funeral expenses).

The compensation payable to the claimants was, resultantly, computed at Rs.2,30,400/-. Additionally, simple interest at the rate of 8 % per annum from the date of the decision was also awarded. The liability to pay the compensation to the claimants was fastened upon the Insurer.

17. Having thus determined the issues framed, the Tribunal proceeded to order the Insurer to pay the claimant no.2 (the claimant no.1 had already died during the pendency of MACP) Rs.2,30,400/- as compensation along with simple interest at the rate of 8 % per annum for the period from the date of the order to the date of disbursal of payment. The Insurer was directed to deposit a cheque of said amount with the Tribunal within a period of one month out of which Rs.1,50,000/- was directed to be deposited in a fixed deposit account in the name of the claimant no.2 in a nationalized bank and the rest was directed to be disbursed to the claimant no.2.

18. The aforesaid judgment and order dated 24.01.2009 rendered by the Tribunal has come to be challenged by the claimants before this Court by the instant FAFO.

RIVAL CONTENTIONS

19. The learned counsel for the claimants assailed the judgment and order dated 24.01.2009 rendered by the Tribunal on multiple grounds which are as follows: -

i) The Tribunal has erroneously disbelieved the testimony of PW-2 who had proved both the factum of the accident and also that the accident took place because of rash and negligent driving on the part of the driver of the offending truck;

ii) The finding that there was contributory negligence on the part of the deceased rendered by the Tribunal is absolutely arbitrary and unwarranted. The deposition of PW-2 proved that it was rash and negligent driving on the part of the driver of the offending truck which led to the accident. Even though said testimony could not be

shaken, it was arbitrarily disregarded by the Tribunal which went on to conclude, without any positive evidence that both the drivers were to blame for the incident. Reliance was placed on **Pramod Kumar Rasikbhai Jhaveri V. Karmasey Kunvargi Tak (2002 (6) SCC 155), Mohammed Siddique & Another V. National Insurance Company Ltd. & Others (2020 (3) SCC 57), Jiju Kuruvila & Others V. Kunjujamma Mohan & Others (2013 (9) SCC 166);**

iii) It was argued that the Tribunal, in its adjudication, has refused to take into consideration the FIR, the charge sheet and the site plan brought on record by the claimants contending that said documents, which were part of the police record, do not constitute evidence and that the claimants must produce their own evidence, whereas, on the other hand, the Tribunal, to justify its decision to ignore the testimony of PW-2, has contended that the testimony of PW-2 is liable to be disbelieved because even though he claimed to have witnessed the accident and to have taken the deceased and the claimant no.1 to the hospital, his name did not figure either in the FIR or in the list of witnesses set out in the chargesheet or in the hospital records. In the eyes of the Tribunal, the testimony of PW-2 was, therefore, suspicious. The reasoning adopted by the Tribunal is, therefore, inherently self-contradictory because one cannot rely on the same set of documents for one reasoning and reject it at the same time;

iv) The Tribunal has committed an error in opting to altogether ignore the FIR, the charge sheet and the site plan in its adjudication as the said documents were material to be taken into consideration for deciding as to who was at fault in the case of an accident, and the Tribunal cannot altogether ignore the said documents without any good reason;

v) The income of the deceased, for the purposes of quantification of compensation, was arbitrarily taken to be Rs.7,200/- even though it was clear from the pay slip filed in the evidence that the deceased earned Rs.13,080/- as monthly pay. Loss of future earnings was not taken into account in computing the income of the deceased. The multiplier was erroneously chosen based on the age of the claimant no.2 whereas it ought to have been chosen based on the age of the deceased. No amount was awarded for the future prospects. No amount was awarded under conventional heads. The Tribunal had also erred in awarding interest from the date of the decision instead of the date of the institution of the case. At any rate, the compensation awarded by the Tribunal amounts to a pittance. It does not amount to 'just compensation' and deserves to be modified. Reliance was placed on **Mohammed Siddique & Another V. National Insurance Company Ltd. & Others (2020 (3) SCC 57), Arvind Kumar Mishra V. New India Assurance Co. Ltd. & Another (2010 (10) SCC 254), Neeta W/O Kallappa Kadolkar & Others V. Div Manager, MSRTC, Kolhapur (2015 (16) SCC 680), National Insurance Company Ltd. V. Pranay Sethi & Others (2017 (16) SCC 680), Jabbar V. Maharashtra State Road Transport Corporation (2019 0 Supreme(SC) 2283).**

20. Per contra, the learned counsel for the Insurer has refuted the arguments advanced on behalf of the claimants. The contentions advanced by the learned counsel for the Insurer are as follows: -

(i) The Tribunal committed no error in disbelieving the testimony of PW-2 who had asserted that he had not only witnessed the accident but had also extricated the victims (the deceased and the claimant no.1) out of the wreckage with the help of the local people and had taken them to the hospital. The name of PW-2, however, did not find mention even in the hospital records. Moreover, the claimant no.1 who lodged the FIR regarding the

incident with the police on the next day did not mention anything about PW-2. Additionally, the charge sheet filed by the police in the matter did not include PW-2 in the list of witnesses. The learned counsel contends that said circumstances render the presence of PW-2 on the spot at the time of the accident doubtful and the Tribunal, therefore, had rightly concluded that the testimony of PW-2 was suspected and was liable to be disbelieved;

(ii) The finding that there was contributory negligence on the part of the deceased which led to the accident and that the driver of the truck could not be solely blamed for the accident was completely justified. The Tribunal had drawn adverse inference against the claimants for withholding the best evidence. The claimants examined PW-2 to prove that the accident resulted from rash and negligent driving on the part of the driver of the offending truck whose testimony was found suspected and his presence on the spot doubtful. The claimants examined PW-2, even though his name did not figure either in the hospital records or the FIR or the charge sheet, whereas they could instead have examined somebody who was actually listed as a witness in the charge sheet. As such, the Tribunal was completely justified in drawing an adverse inference against the claimants for not examining an actual witness and instead producing PW-2 whose presence on the spot was found doubtful. The finding of contributory negligence on the part of the deceased in the accident, therefore, requires no interference;

(iii) The approach adopted by the tribunal whereby it had opted to ignore the FIR, the charge sheet and the site plan in adjudicating the claim petition is based on the sound principles and is in consonance with with law;

(iv) The quantum of compensation awarded to the claimants by the Tribunal is erroneously computed and deserves to be modified. Contrary to the contention advanced on behalf of the

claimants, the income of the deceased, for the purpose of computation of quantum of compensation, was rightly taken to be Rs.7200/-. An error was, however, committed in deducting only 1/3rd of said income towards personal and living expenses. At the time of death, the deceased was only 24 years old and unmarried. The law is now settled that in case the deceased is a bachelor and the claimants are the parents, normally a 50% deduction shall be made towards personal and living expenses. The Tribunal was, therefore, in error in deducting only 1/3rd of the income of the deceased towards personal and living expenses. The tribunal had also erred in awarding interest at the rate of 8% which could only be awarded at the rate of 7.5%. To that extent, the quantum of compensation deserves to be modified. Reliance was placed on **Smt. Sarla Verma & Others V. Delhi Transport Corporation & Another (2009 2 SCC(Civ) 770) and National Insurance Company Limited V. Mannat Johal And Others ((2019) 15 Supreme Court Cases 260).**

ANALYSIS

21. We have heard the learned counsels for the contesting parties at length and have examined the record.

22. The following points arise for our consideration: -

i) Whether the tribunal had adopted a correct approach in opting to altogether exclude from evidence documents such as the FIR, charge sheet and site plan which formed part of the police record?

ii) Whether the tribunal was justified in disbelieving the testimony of PW-2 on the ground that his name did not figure either in the FIR or the charge sheet or the hospital records?

iii) Whether the claimants satisfactorily discharged the burden to prove the factum of the accident and negligence on the part of the driver of the offending vehicle?

iv) Whether the tribunal was justified in holding that there was contributory negligence on part of the deceased?

v) Whether the quantum of compensation determined by the Tribunal 'just' and in accordance with well settled legal principles? If not, what should be the quantum of compensation to which the claimants are entitled to?

23. We shall now proceed to answer the aforesaid questions.

24. The first point that falls for consideration concerns the correctness and validity of the approach adopted by the Tribunal in so far as the Tribunal opted to ignore and exclude from evidence documents such as the FIR, the charge sheet and the site plan, which formed part of the police record. In justification of its approach, the Tribunal invoked judgment rendered by the Punjab and Haryana High Court in **B D Bagri Vs Daulat Ram and Others**, reported in **1998 ACJ 1303**, along with the judgment delivered by the Orissa High Court in **Mata Ji Beva and Others Vs Hemant Kumar**, reported in **1994 ACJ 1303**. In **B D Bagri (supra),** the Punjab and Haryana High Court held that while dealing with a matter of compensation arising out of an accident, the Tribunal must decide on the strength of the evidence led before it and that no inference can be drawn from the contents of the FIR to confer liability on the driver of the vehicle involved in the accident. Placing reliance on **B D Bagri (supra),** the Tribunal observed that no inference can be drawn on the basis of the contents of the FIR and that based on the FIR it cannot be concluded that the driver of the offending truck was involved in the accident. On the other hand, in **Mataji Bewa (supra),** the Orissa High Court held that the contents of a charge sheet filed in the criminal case cannot possibly be treated as evidence in claim proceedings. Accordingly, the Tribunal opted to disregard the charge sheet filed in evidence by the claimants.

25. To our mind, what documents can and what documents cannot form part of the evidence in claim proceedings arising out of motor vehicle accidents must necessarily bear nexus with the character and complexion of the proceedings themselves. Thus, before we can hold forth on the correctness or otherwise of exclusion of the documents which form part of the police record from evidence in claim proceedings, we must first pause to remind ourselves of the nature of such claim proceedings.

26. It is well settled that the standard of proof applicable to claim proceedings arising out of motor vehicle accidents is that of preponderance of probabilities and not that of proof beyond reasonable doubt. In the case of **Anita Sharma and Others Vs The New India Assurance Co. Ltd. And Another**, reported in **2021 (1) SCC 171,** the Hon'ble Supreme Court, as regards applicability of the standard of preponderance of probabilities to claim proceedings arising out of motor vehicle accidents, observed thus: -

> *"22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in* ***Dulcina Fernandes and Others v. Joaquim Xavier Cruz and Others*** *reported in* ***(2013) 10 SCC 646*** *wherein this Court reiterated that:*
>
> > *"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was* ***required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]"***
>
> (*emphasis supplied)*

27. The principle of preponderance of probabilities as applicable in claim proceedings was spelt out by a Constitution Bench of the Hon'ble Supreme Court in the case of **M. Siddiq Vs. Suresh Das**, reported in **(2020) 1 SCC 1**, in the following terms: -

> *"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence.]"*

28. As such, it is clear that in claim proceedings arising out of motor vehicle accidents, the task of the tribunal is to evaluate the pleadings and the evidence with a view to form an opinion whether the case set up by a claimant is more probable or not.

29. We may now revert to the original question whether Tribunal was correct in altogether excluding from evidence the documents such as the FIR, the site plan and the charge sheet, which form part of the police record.

30. We have no doubt in our mind that the answer to the aforesaid question must be a resounding 'No'. The Tribunal opted to ignore the FIR, the charge sheet and the site plan on the ground that they do not establish either that the driver of the offending truck was involved in the accident or that he was guilty of rash and negligent driving. In our opinion, the Tribunal would have been correct had the standard of proof in claim proceedings been that of beyond reasonable doubt as is the case with criminal proceedings. Even in a criminal proceedings, these documents may be considered to corroborate the evidence led in the court and not to be completely disregarded or ignored. In any case, corroborative value of the police record cannot be ignored completely though decision may not

be based solely upon them. Moreover, the standard of proof in the claim proceedings is not that of proof beyond reasonable doubt but that of preponderance of probabilities. The Tribunal on assessment of evidence before it had to satisfy itself that it was more likely than not that the events as alleged in the claim petition had transpired. To our mind, the documents such as the FIR, the site map and the charge-sheet, which form part of the police record, even though they do not establish the occurrence when considered holistically and prudently could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant. Was the FIR promptly lodged or was it lodged after an undue delay? Does the site plan conform to the recital contained in the FIR? Do injuries sustained corroborate the recital contained in the FIR? Does the charge sheet bolster the allegations contained in the FIR? These are the factors which when considered fairly and prudently could help to assess if the case set up by the claimants was more probable or not. As such, we consider it an error to altogether ignore the said documents on the ground that they were not conclusive proof of the occurrence more sosince that is not the goal of claim proceedings in the first place.

31. We may also refer to the judgment of the Hon'ble Supreme Court in **Mangla Ram Vs. Oriental Insurance Company and Others**, reported in **(2018) 5 SCC 656**, wherein a somewhat similar factual situation arose. The claim proceedings arising out of an accident between a motorcycle and a jeep in which the rider of the motorcycle sustained severe injuries, leading to the amputation of his right leg below the knee, came to be instituted before the tribunal. Despite disbelieving the oral evidence adduced by the witnesses examined by the claimant, the tribunal eventually ruled in favour of the claimant placing reliance on the FIR and the charge sheet filed by the police and proceeded to award compensation to the claimant. The matter, thereafter, reached the Rajasthan High Court. The High Court did not concur, taking the view that the tribunal could not

have ruled in favour of the claimant by relying solely on the police record and set aside the judgment rendered by the Tribunal. The judgment delivered by the High Court was challenged by the claimant before the Supreme Court. The Supreme Court contradicted the observations of the High Court and confirmed the findings of the tribunal notwithstanding that they were based on documents which formed part of the police record. The Hon'ble Supreme Court observed thus:-

> *"16. The question is: whether this approach of the High Court can be sustained in law? While dealing with a similar situation, this Court in* ***Bimla Devi*** *(supra) noted the defence of the driver and conductor of the bus which inter alia was to cast a doubt on the police record indicating that the person standing at the rear side of the bus, suffered head injury when the bus was being reversed without blowing any horn. This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In paragraphs 11 to 15, the Court observed thus:*
>
> > *"11.* ***While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a postmortem report visà-vis the averments made in a claim petition.***
> >
> > *12. The deceased was a constable. Death took place near a police station. The postmortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of the constable had taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night*

particularly when it was lying at a busstand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. *The claimant was not at the place of occurrence.*

She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.

14. Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties*."*

(emphasis supplied)

17. The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside. Following the enunciation in Bimla Devi's case (supra), this Court in Parmeswari (supra) noted that when filing of the complaint was not disputed, the decision of the Tribunal ought not to have been reversed by the High Court on the ground that nobody came from the office of the SSP to prove the complaint. The Court appreciated the testimony of the eyewitnesses in paragraphs 12 & 13 and observed thus:

> *"12. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.*
>
> *13. The other socalled reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted……."*

18. It will be useful to advert to the dictum in ***N.K.V. Bros.(P) Ltd. Vs. M. Karumai Ammal and Others*** reported in ***(1980) 3 SCC 457****, wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negatived the said argument by observing that the nature of proof required to establish culpable rashness, punishable under the IPC, is more stringent than negligence sufficient under the law of tort to create liability. The observation made in paragraph 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus:*

> *"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties,*

technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider nofault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

*19. In **Dulcina Fernandes (supra)**, this Court examined similar situation where the evidence of claimant's eye witness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in **Bimla Devi (supra).** In paragraphs 8 & 9, of the reported decision, the dictum in **United India Insurance Co. Ltd. Vs. Shila Datta (supra)**, has been adverted to as under:*

> *"8. In **United India Insurance Co. Ltd. v. Shila Datta,** while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a threeJudge Bench of this Court has culled out certain propositions of which Propositions (ii), and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow: (SCC p. 518, para 10)*
>
> *'10. (ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in*

a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

****

Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. ...

The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."

9. The following further observation available in para 10 of the Report would require specific note: (Shila Datta case, SCC p. 519)

'10. ... We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute'."

*In paragraph 10 of the reported decision [**Dulcina Fernandes and Ors.** (supra)], the Court opined that non examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability.*

20. In the above conspectus, the appellant is justified in contending that the High Court committed manifest error in reversing the holistic view of the Tribunal in reference to the statements of witnesses forming part of the chargesheet, FIR, Jeep Seizure Report in particular, to hold that Jeep No.RST4701 driven by respondent No.2 was involved in the accident in question."

32. In the light of the foregoing analysis, we hold that the tribunal had erred in opting to ignore documents such as the FIR, the charge sheet and the site plan, which formed part of the police record. The said documents ought to have been taken into consideration by the tribunal in adjudication of the case of the claimants. In so far as the authorities relied upon by the tribunal are concerned, we humbly and respectfully disagree to the extent that the said authorities run contrary to the observations of the Hon'ble Supreme Court in **Mangla Ram (supra)**.

33. The second point which falls for consideration is that if the Tribunal was correct in disbelieving the testimony of PW-2 on the ground that his name did not figure either in the FIR or the charge sheet or the hospital records?

34. An examination of the record indicates that one Chaturbhuj Shukla was examined by the claimants as PW-2 who in his deposition, had stated that on 20.07.2004, as he was on his way from Rampur to Shahjahanpur in a jeep bearing registration number UP-31/0169, he saw a truck bearing registration number GJ 1 TT 8883, which was loaded with wood, going on the wrong side and ramming into a car bearing registration number UA 06A 6970 which was coming from the opposite direction. The car in question was being driven by the deceased. The truck in question which was being driven very fast and negligently in the middle of the road suddenly veered to its right without any warning dashing into the car driven by the deceased. PW-2 further deposed that after the accident, a lot of people gathered on the spot and that he, with the help of other local people, extricated the deceased and the claimant no.1 from the wreckage and took them to Dhanwantri Tomar Hospital in Bareilly. PW-2 deposed that the accident took place at about 4 pm. Furthermore, PW-2 categorically and unequivocally deposed that the accident was caused due to the fault of the driver of the offending truck who was driving the truck rashly and negligently. The record further indicates that PW-2 was subjected to cross-examination by the counsel for the Insurer. In the cross-examination, PW-2 revealed that he was a driver by profession and that he had brought his driving license along with him. The jeep in which he was in travelling belonged to one Shri Pal Yadav and that he was coming from Rampur and was headed to Shahjahanpur. PW-2 further revealed that he had been tailing the offending truck for 2-3 kms and that there was a distance of about 20-25 m throughout between the truck in question and the jeep he was in. He also revealed that the jeep was moving at 50 km/hour throughout. It also appears from the record that PW-2, in the

cross-examination, deposed that neither did he lodged the FIR in connection with the incident nor did he give his particulars at the hospital where the deceased and the claimant no.1 were brought in for treatment. PW-2 further revealed that he did not know any of the people who gathered on the spot after the accident and that he gave his name and address in writing to the claimant no.1. PW-2 refuted the suggestion that he was not present on the spot at the time of the accident and that he did not witness the accident. He also refused the suggestion that the driver of the truck was not at fault and responsible for the accident. On overall appreciation of oral testimony of PW-2, it is clear that his version of the events that came to transpire on the fateful day was not shaken. He clearly laid the blame for the accident on the rash and negligent driving on the part of the driver of the offending truck. He steadfastly held his ground in the cross-examination and nothing could be elicited from him which could be said to have contradicted or rendered unbelievable the details of the accident as divulged by him.

35. The testimony of PW-2 was, however, disbelieved by the tribunal solely on the ground that his name did not figure either in the FIR or the charge sheet or the hospital records though PW-2 claimed to have brought the deceased and the claimant no.1 to the hospital. Further that he did not lodge an FIR which was lodged the next day by the claimant no.1 who did not even mention the name of PW-2 as a witness in the FIR. The name of PW-2 also did not figure in the list of witnesses set out in the charge sheet filed by the police after investigation. The fact that the name of PW-2 did not appear either in the hospital records or the FIR or the charge sheet, in the eyes of the tribunal, rendered his presence at the time and place of the accident doubtful and his testimony suspicious. Thus, the Tribunal discarded his testimony in toto.

36. We do not concur with the reasoning of the Tribunal.

37. Let us first deal with the absence of the name of PW-2 from the hospital records and the FIR. Does it render the testimony of PW-2 suspected and liable to be disbelieved?

38. In **Anita Sharma (supra)**, the Rajasthan High Court set aside the judgment of the Tribunal awarding compensation to the claimant, inter alia, on the ground that the eyewitness, the testimony of whom the Tribunal had relied on, could not have been believed because he had failed to report the accident to the police and because even though he asserted that he had brought the injured to the hospital the same was not borne out from the hospital records. The hospital records instead indicated that the injured was brought in by the police. The judgment of the High Court was assailed before the Supreme Court. Contradicting the reasoning of the High Court, the Supreme Court observed thus: -

> *"**12.** It is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses. Hence, it is highly likely that the name of Ritesh Pandey or other persons who accompanied the injured to the hospital did not find mention in the medical record. There is nothing on record to suggest that the police reached the site of the accident or carried the injured to the hospital. The statement of AW3, therefore, acquires significance as, according to him, he brought the injured in his car to the hospital. Ritesh Pandey (AW3) acted as a good samaritan and a responsible citizen, and the High Court ought not to have disbelieved his testimony based merely on a conjecture. It is necessary to reiterate the independence and benevolence of AW3. Without any personal interest or motive, he assisted both the deceased by taking him to the hospital and later his family by expending time and effort to depose before the Tribunal.*
>
> ***13.** It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to Police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW3 to lodge a report once again to the police at a later stage either.*
>
> ***14.** Unfortunately, the approach of the High Court was not sensitive*

enough to appreciate the turn of events at the spot, or the appellant claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State. Close to the facts of the case in hand, this Court in ***Parmeshwari v. Amir Chand***[1]***,*** *viewed that:*

> *"**12.** The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1.* ***Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim****.*
>
> **x x x**
>
> ***15.*** *In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter.* ***It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants.*** *The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

39. It is clear that the Supreme Court did not concur with the approach adopted by the Rajasthan High Court in discarding the testimony of an eyewitness on the ground that he did not report the incident to the police and that his name did not appear in the hospital records even though he claimed to have brought the injured to the hospital.

40. In a telling and insightful commentary on the general tendencies of everyday actors, the Supreme Court observed that it is very common-place that people are hesitant to give their details to the hospitals in cases of accidents for the fear of getting embroiled in tedious and cumbersome legal proceedings. The testimony of a witness, who claims to have brought the victim of an accident to the hospital, therefore, does not automatically become doubtful and suspicious simply on account of the fact that the concerned individual's name was missing from the hospital

records. In fact, such a circumstance is highly likely. The Hon'ble Supreme Court also opined that it is unrealistic to expect that a person who decides to stop and help the injured by taking the injured to the hospital should also simultaneously go to the police station and lodge the FIR. Placing reliance on its judgment in the case of **Parmeshwari Vs Amir Chand**, reported in **(2011) 11 SCC 635**, the Supreme Court opined that an eye-witness, who helps the victim of an accident get to the hospital, acts as a good Samaritan and cannot be disbelieved simply because he did not file a complaint with the police. The decision to discard the testimony of such a witness cannot be based solely on conjecture. A holistic view of the matter must be taken without losing sight of the distress caused to the victim. It must be borne in mind that strict proof of accident is not required and the case of the victim has to be tested only according to the standard of preponderance of probabilities.

41. Applying the aforementioned guiding principles to the case at hand, we do not have any doubt that the mere omission of the name of PW-2 from the hospital records and the fact that PW-2 did not lodge an FIR, do not take away from the integrity of the testimony of PW-2 and cannot be held against him. The contrary position adopted by the tribunal cannot be countenanced.

42. PW-2, in his deposition before the Tribunal, asserted that after the accident a lot of people gathered on the spot and that he, with the help of other local people, extricated the deceased and the claimant no.1 from the wreckage and took them both to Dhanwantri Tomar Hospital in Bareilly. In the FIR, lodged the very next day after the accident, the claimant no.1 also stated that people who were nearby helped him and the deceased get to the Dhanwantri Tomar Hospital in Bareilly. There is, therefore, no disconnect or contradiction between the version in the FIR and the testimony of PW-2 as to how the deceased and the claimant no.1 were admitted to the hospital. Both indicate that the people who were nearby at the time of the accident helped the two got to the hospital. There is

nothing doubtful or unbelievable per se about the assertion by PW-2 that he, with the aid of other local people, took the deceased and the claimant no.1 to the hospital. During the course of cross-examination, when confronted with the fact that his name did not appear in the hospital records, PW-2 stated that he did not give his particulars at the hospital. He was not interrogated any further on why he did not do so. PW-2 was also confronted with the fact that his name did not figure in the FIR. To that PW-2 responded that he did not lodge the FIR. Once again, he was not interrogated any further on why he did not. At this stage, we may briefly pause to take note of the importance of cross-examination. The Hon'ble Supreme Court in **Anita Sharma (supra)** has made some pertinent observations on the importance of cross-examination which may be profitably reproduced herein below: -

> *"20. The importance of crossexamination has been elucidated on several occasions by this Court, including by a Constitution Bench in* ***Kartar Singh v. State of Punjab****, which laid down as follows:-*
>
> > *"278. Section 137 of the Evidence Act defines what cross examination means and Sections 139 and 145 speak of the mode of crossexamination with reference to the documents as well as oral evidence.* ***It is the jurisprudence of law that cross-examination is an acid test of the truthfulness of the statement made by a witness on oath in examinationinchief****, the objects of which are:*
> >
> > > *a. to destroy or weaken the evidentiary value of the witness of his adversary;*
> > >
> > > *b. to elicit facts in favour of the crossexamining lawyer's client from the mouth of the witness of the adversary party;*
> > >
> > > *c. to show that the witness is unworthy of belief by impeaching the credit of the said witness;*
> > >
> > > ***and the questions to be addressed in the course of cross examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character****.*

279. The identity of the witness is necessary in the normal trial of cases to achieve the above objects and the right of confrontation is one of the fundamental guarantees so that he could guard himself from being victimised by any false and invented evidence that may be tendered by the adversary party." (emphasis supplied)

*21. Relying upon **Kartar Singh (supra)**, in a MACT case this Court in **Sunita v. Rajasthan State Road Transport Corporation**[3] considered the effect of nonexamination of the pillion rider as a witness in a claim petition filed by the deceased of the motorcyclist and held as follows:*

> ***"30.** Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (A.D.2) evidence from the viewpoint of him not being named in the list of eye witnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation [as set out in Parmeshwari (supra) and reiterated in Mangla Ram (supra)] that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. **What is essential is that the opposite party should get a fair opportunity to cross examine the concerned witness. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross examination, for which opportunity was granted to the respondents by the Tribunal**.*
>
> x x x

> ***32.*** *The High Court has not held that the respondents were successful in challenging the witnesses' version of events, despite being given the opportunity to do so. The High Court accepts that the said witness (A.D.2) was cross examined by the respondents but nevertheless reaches a conclusion different from that of the Tribunal, by selectively overlooking the deficiencies in the respondent's case, without any proper reasoning."*
>
> *(emphasis supplied)*

43. In view of the above, in the absence of proper cross-examination, it cannot be assumed, based on nothing but conjecture, that the reason why PW-2 did not lodge an FIR and why his name is missing from the hospital record was that he was not present at the spot when the accident occurred and that his whole testimony is nothing but a bundle of lies. We have already noticed the observations of the Supreme Court in **Anita Sharma (supra)** that very often eyewitnesses, who come to the aid of the victims of accidents, do not give their names at hospital to avoid getting entangled in legal proceedings. It was also opined that it was unrealistic to expect that an eyewitness who stopped to help the victim get to the hospital should simultaneously also go to the police station and lodge the FIR. We have no reason to take a contrary view in the matter at hand. Nothing could be elicited from PW-2 during the course of cross-examination to persuade us otherwise.

44. We may also advert to the suggestion that claimant no.1 did not mention the name of PW-2 in the FIR even though PW-2, during the course of cross-examination, admitted to have given his name and address to the former in writing, the implication being that the testimony of PW-2 is concocted. In our opinion, this does not help the Insurer. It is well-settled that an FIR is not an encyclopedia. As such, simply because PW-2 was not mentioned by claimant no.1 in the FIR, the testimony of PW-2 cannot be rendered unbelievable.

45. Accordingly, we hold that mere absence of the name of PW-2 from the hospital records and the FIR does not render the testimony of PW-2 suspicious and liable to be disbelieved.

46. The Tribunal also found the testimony of PW-2 unreliable on the ground that his name did not find place in the list of witnesses set out in the charge sheet filed by the police. Does the testimony of an eyewitness lose credibility and is rendered suspicious and unreliable simply because he does not find place among the list of witnesses set out in the charge sheet?

47. In the case of ***Sunita Vs. Rajasthan State Transport Corporation,*** reported in ***(2019) SCC Online SC 195***, the testimony of an eyewitness was sought to be impeached, inter alia, on the ground that his name did not find mention in the list of witnesses in the charge-sheet. The argument was, however, repelled by the tribunal. The tribunal observed that in case of an accident everybody who witnesses the accident is an eyewitness but it is not necessary that every such person may be mentioned as a witness in the charge-sheet by the police. The mere fact that such a person is not listed as a witness in the charge-sheet, in and of itself, does not render the testimony of an eyewitness suspicious and liable to be discarded. The tribunal also took notice of the fact that during the course of cross-examination the concerned witness was not interrogated about giving statement to the police or about not having his name in the list of witnesses. If the veracity of one's testimony had to be impeached on the ground that one's name did not appear in the list of witnesses in the chargesheet, one ought to have been interrogated on that aspect for any doubt to emerge. Since the witness was not interrogated on the subject, the opportunity to weaken his testimony on that account was foregone. The Rajasthan High Court, however, took an opposite view of the matter. The fact that the name of the eyewitness did not appear in the list of witnesses in the chargesheet, in the opinion of the High Court, rendered the testimony of the witness suspicious and liable to be disbelieved. The

Supreme Court, however, sided with the tribunal and did not concur with the approach of the High Court. While observing that the tribunal had dealt with the matter 'substantially' and 'correctly', the Supreme Court termed the approach of the High Court 'mystifying'. The Supreme Court faulted the High Court for not only failing to provide reasons as to why absence from the list of witnesses in the charge-sheet was fatal but also for failing to notice the absence of cross-examination on the issue. The relevant observations of the Supreme Court are extracted hereunder: -

> "*27. The next question is whether the purported shortcomings in the evidence of Bhagchand Khateek (A.D.2) and the lack of evidence of the pillion rider on the motorcycle, Rajulal Khateek, would be fatal to the appellants' case. As regards the evidence of Bhagchand, the High Court found that the deposition of the said witness was unreliable because his name was not mentioned in the list of witnesses in the criminal proceedings and also because he was unable to tell the age of the pillion rider. Besides, the said witness lived in Pakhala village, which was 3 (three) kilometres away from the accident spot and hence, he could not have been near the said spot when the accident occurred. The Tribunal had dealt with these objections quite substantially and, in our opinion, correctly, in its judgment, wherein it records:*
>
> > *"In the present case the petitioners have got examined the eyewitness A.D.2 Bhag Chand son of Ram Dev.* ***Admittedly the name of the witness Bhag Chand is not mentioned in the list of witnesses in exhibit2 charge sheet but if the interrogation with this witness is perused then the opponent in order of not considering this witness as eyewitness, has not asked about giving police statement or not having his name in the list of witnesses.*** *The witness A.D.2 Bhag Chand Khateek, in interrogation on behalf of opponents has accepted this that he neither knows Banwari nor after the incident he has seen Banwari.*
> >
> > *During interrogation the statement of the witness has been that I was near the place of incident itself. That time I was returning after relieving myself.* ***The argument of the opponents has been that the witness Bhag Chand is resident of village***

Pakhala whereas the place of incident is at distance of 3 k.m. therefore, the statement of going to toilet is false. Therefore, he should not be considered eyewitness. But the witness A.D.2 Bhag Chand Khateek has stated in his main statement that one day from dated 28.10.2011, he had come to his brother's house at village Shivad. In such a Situation, in our humble opinion, the witness being at a distance of 3 k.m. from spot of incident, being resident of Pakhala village, this cannot be considered that this witness would not be considered eyewitness.

Whereas there is question of his name not being in the chargesheet as witness, definitely due to this fact, each such witness cannot be considered eyewitness who gives little statement about incident. ***But the evidence which the witness A.D.2 Bhag Chand Khateek has given on oath, in order to prove that distrust worthy, the opponents have not done any such interrogation from which there is suspicion in the statements of witness. The witness Bhag Chand Khateek was not even this suggestion that his police statement was not taken or the police had not interrogated him. In our humble opinion, in cases like accident occurring suddenly, the persons present near the place of incident are eyewitness of the incident. But during investigation this is not necessary that the investigation agency should name all the eyewitnesses as witness in the charge sheet. Therefore, the statement of witness A.D.2 Bhag Chand Khateek cannot be considered distrust worthy that his name in the charge sheet is not mentioned as witness.****"*

(emphasis supplied)

28. Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (A.D.2) evidence from the viewpoint of him not being named in the list of eye witnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying,

*especially in light of this Court's observation [as set out in **Parmeshwari** (supra) and reiterated in **Mangla Ram** (supra)] that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross examine the concerned witness. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross examination, for which opportunity was granted to the respondents by the Tribunal."*

48. In light of the above, it is untenable to contend that the testimony of a witness who claims to have seen the accident is liable to be disbelieved on the ground that he is not cited as a witness in the charge-sheet filed by the investigating agency. Even otherwise, it is not necessary for the investigating agency to mention the name of every person who may have witnessed the accident in the list of witnesses in the charge-sheet. Everybody who witnesses the accident is an eyewitness notwithstanding whether his or her name appeared in the list of witnesses in the charge-sheet or not. Therefore, simply because one is not cited as a witness in the charge-sheet does not automatically render his testimony suspicious and liable to be disbelieved.

49. Accordingly, we have no hesitation is observing that the Tribunal committed an error in discarding the testimony of the PW-2 as suspicious on the ground that his name was not mentioned in the list of witnesses in the charge-sheet. We may also take note of the absence of any suggestion to PW-2 during the course of cross-examination about his name not having been mentioned in the list of witnesses in the charge-sheet. It cannot be ignored that PW-2 was not interrogated about the very aspect, which, it is contended, cuts at the root of his testimony and undermines its

integrity. The Insurer had ample opportunity to interrogate PW-2 about non-inclusion of his name in the list of witnesses in the charge-sheet but the opportunity was foregone. The tribunal erred in not taking into account the same.

50. In conclusion, on the point whether the Tribunal was correct in discarding the testimony of PW-2 as unbelievable, a discordant note must be struck. We hold that none of the reasons recorded by the Tribunal to justify its decision to disbelieve the testimony of PW-2 withstand scrutiny and are, accordingly, overruled.

51. The third point which falls for consideration is whether the claimants satisfactorily discharged the burden to prove the factum of the accident and negligence on the part of the driver of the offending vehicle.

52. In the case of ***U.P.S.R.T.C. Vs. Km. Mamta and Others***, reported in ***AIR 2016 SC 948***, the Supreme Court, after discussing the powers of the first appellate court under Section 96 of Code of Civil Procedure, 1908, held that an appeal under Section 173 of the Act, 1988 is essentially in the nature of an appeal under Section 96 of the Code of Civil Procedure, 1908. The relevant observations of the Hon'ble Supreme Court are extracted hereunder-

> *"14) The powers of the first appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra.*
>
> *15) As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the CPC in Kurian Chacko vs. Varkey Ouseph, AIR 1969 Kerala 316, reminded the first appellate court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:*
>
> > *"1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the*

suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation….."

(Emphasis supplied)

16) This Court also in various cases reiterated the aforesaid principle and laid down the powers of the appellate Court under Section 96 of the Code while deciding the first appeal.

17) We consider it apposite to refer to some of the decisions.

18) In Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179, this Court held (at pages 188-189) as under:

"…….the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court……while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it "

19) The above view was followed by a three-Judge Bench decision of this Court in Madhukar & Ors. v. Sangram & Ors.,(2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

20) In H.K.N. Swami v. Irshad Basith,(2005) 10 SCC 243, this Court (at p. 244) stated as under: (SCC para 3)

> *"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."*

21) Again in Jagannath v. Arulappa & Anr., (2005) 12 SCC 303, while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court (at pp. 303-04) observed as follows: (SCC para 2)

> *"2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion"*

22) Again in B.V Nagesh & Anr. vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this court reiterated the aforementioned principle with these words:

> *"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:*
>
> *(a) the points for determination;*
>
> *(b) the decision thereon;*
>
> *(c) the reasons for the decision; and*
>
> *(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*
>
> *4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its*

conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179 at p.188, para 15 and Madhukar v. Sangram, (2001) 4 SCC 756 at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

23) The aforementioned cases were relied upon by this Court while reiterating the same principle in State Bank of India & Anr. vs. Emmsons International Ltd. & Anr., (2011) 12 SCC 174.

24) An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See National Insurance Company Ltd. vs. Naresh Kumar & Ors. ((2000) 10 SCC 198 and State of Punjab & Anr. vs. Navdeep Kuur & Ors. (2004) 13 SCC 680].

53. As such, having recorded our disapproval of the approach adopted by the tribunal, it is incumbent on us as the court of first appeal to

consider the matter in the correct perspective and record our findings after an independent examination of the record.

54. The burden on the claimants was to establish, on the standard of preponderance of probabilities- (a) the factum of the accident and (b) that the accident was caused by the negligence on the part of the driver of the offending truck.

55. We may begin by scrutinizing the documentary evidence adduced by the claimants.

56. We have already held that the Tribunal erred in ignoring documents such as the FIR, site plan, charge sheet, etc., brought on record by the claimants. Said documents, therefore, shall be taken into consideration by us.

57. A certified copy of the FIR lodged by the claimant no.1 is on record. The FIR was lodged on 21.07.2004, a day after the accident which took place on 20.07.2004, naming Raj Kishore, the driver of the offending truck as the culprit. There is, therefore, no delay much less undue delay in registration of the FIR. The FIR reads that on 20.07.2004, a truck bearing registration number GJ-1-TT-8883, driven rashly and negligently by one Raj Kishore, rammed into the car bearing registration number UA-06A/6970 in which the deceased and the claimant no.1 were travelling and which was being driven by the deceased. The accident took place at around 4 pm. The deceased and the claimant no.1 were headed to Pant Nagar from Bareilly via Rampur on the Delhi Road. The car was severely damaged on the right-hand side. Both the car and the truck were at the site of the accident. People who were nearby helped the deceased and the claimant no.1 get to the Dhanwantri Tomar Hospital in Bareilly but the deceased could not be saved and breathed his last.

58. The FIR attested to the factum of the accident. It is also categorically alleged in the FIR that the driver of the offending truck was driving rashly and negligently. The fact that the FIR was lodged promptly

without any undue delay lends it a veneer of believability. Though, we may not say just yet that the factum of the accident and the negligence on the part of the driver stand proved and must wait for more corroborating evidence.

59. Certified copy of the post mortem report dated 21.07.2004 is also on record. It records multiple ante-mortem injuries on the body of the deceased. The cause of death is recorded as shock and hemorrhage due to ante-mortem injuries.

60. The post mortem report clearly bears out the recital contained in the FIR. The number and nature of injuries recorded in the post mortem report strongly point to the deceased having met with an accident lending credence to the allegations contained in the FIR.

61. A copy of the site plan dated 22.07.2004 is also on record. It appears from the site plan that the truck veered to its right and rammed into the right-hand side of the car driven by the deceased which was coming from the opposite direction. The truck and the car were found at the site of the accident and the front right wheel of the truck had come off.

62. Site plan clearly points to an accident. It also hints at the fault of the driver of the offending truck, inasmuch as, it indicates that it was the truck that veered from its path causing the accident. The impact appears to have caused the front right wheel of the offending truck to come off.

63. Also on record is the certified copy of the charge-sheet dated 06.08.2004 filed by the police, under Sections 279, 304A and 427 IPC, against Raj Kishore, the driver of the offending truck.

64. The submission in the charge sheet against the driver of the offending truck undoubtedly bolsters the allegations contained in the FIR. It reinforces that not only did the accident occur but that the driver of the offending truck was at fault. The police after investigation and based on statements of multiple witnesses who are cited in the charge sheet have

found that a case for criminal prosecution under Sections 279, 304A and 427 IPC was made out.

65. It is noteworthy that nothing has been brought on record to indicate that either the FIR or the charge sheet have been challenged before any forum. No attempt has been made to impeach the veracity of the FIR or the charge sheet. In fact, the authenticity of none of the above noted documents had been called into question. We may also note that certified copies of the FIR, the post mortem report and the charge sheet were brought on record. Under Section 79 of the Evidence Act, 1872, a presumption of genuineness is attached to such copies, which the Insurer could not dislodge. Additionally, it is not contended that the claimants acted out of malice or mala fide. No animus or bad blood is alleged. The claimants had no reason to falsely implicate the driver of the offending truck.

66. We now turn to the oral evidence led by the claimants which include depositions of the claimant no.2(PW-1) and one Chaturbhuj Shukla (PW-2).

67. The testimony of claimant no.2(PW-1) was ignored by the tribunal on the ground that she was admittedly not an eyewitness. PW-2 claimed to be an eyewitness. The tribunal, however, found his presence at the site of the accident doubtful and discarded his testimony. We have already held that the reasons recorded by the Tribunal to discard the testimony of PW-2 are unsustainable. We, therefore, proceed to examine the testimony of PW-2.

68. It is not necessary to re-state the testimony of PW-2 in entirety since we have already done so earlier. Briefly stated, PW-2 testified that on 20.07.2004, while on the way from Rampur to Shahjahanpur in a jeep, he witnessed the offending truck, which was ahead by 20-25 m, suddenly veered to its right and rammed into the car which was being driven by the deceased and was coming from the opposite direction. PW-2 categorically

pinned the blame for the incident on the driver of the offending truck, who, PW-2 stated, was driving the truck very rashly and negligently in the middle of the road. PW-2 also testified that he, with the help of other people, extricated the deceased and the claimant no.1 from the wreckage and helped them get to the hospital.

69. During cross-examination, PW-2 repulsed the suggestion that he was not present at the spot when the accident took place. He also repelled the suggestion that the driver of the offending truck was not at fault.

70. We may also note that during cross-examination, PW-2 revealed that he had been travelling behind the offending truck for about 2-3 km, maintaining a distance of 20-25 m all along. PW-2 also revealed that he was moving at a speed of 50km/hr throughout. The said line of questioning appears to be geared to suggest that the offending truck was not speeding. Since the jeep PW-2 was in, was moving at 50 km/hr while maintaining a distance of 20-25m all along, the offending truck, it was sought to be implied, could not have been moving much faster than the jeep itself or else it would have pulled away. The suggestion is that the offending truck was not over-speeding and, therefore, it could not be said that it was being driven rashly and negligently, implication being that the testimony of PW-2 stands contradicted.

71. We are not impressed. Rash and negligent driving does not always equate to over-speeding. Even though one may be driving within the speed limit, it is conceivable that one may still be driving rashly and negligently. We may profitably refer to the observations of the Supreme Court in the case of **Ravi Kapur V. State of Rajasthan**, reported in **(2012) 9 SCC 984**, to substantiate our point. The Hon'ble Supreme Court observed thus: -

> *"10. In order to examine the merit or otherwise of contentions (b) and (c) raised on behalf of the appellant, it is necessary for the Court to first and foremost examine (a) what is rash and negligent driving; and (b) whether it can be gathered from the attendant circumstances. Rash and*

> *negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct.* ***Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of Section 279 IPC****. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted."*
>
> (emphasis supplied)

72. As such, even if it is accepted that the offending truck was not over-speeding, it does not imply automatically that it was not being driven rashly and negligently. Failure to exercise due care and caution while driving, even when within speed limit, would still constitute rash and negligent driving. Thus, even if it is accepted that the offending truck was not over-speeding, it is not enough to contradict and render doubtful the testimony of PW-2.

73. Overall, it appears to us that the testimony of PW-2, about the events which transpired on the fateful day, could not be shaken and remained intact. He held his ground in cross-examination and nothing could be elicited from him which could be said to render his testimony contradictory or liable to be disbelieved. It is also noteworthy that there is nothing on record to indicate that the testimony of PW-2 was motivated by ulterior motives or that his actions were prompted by anything other than a sense of moral and civic duty. PW-2 had no reason to falsely implicate the driver of the offending truck. There is no allegation that PW-

2 had colluded with the claimants and was siding with them. No interrogation along that line was done during cross-examination. We, therefore, find the testimony of PW-2 believable.

74. On a holistic appreciation of the testimony of PW-2 along with the documentary evidence including the FIR, post-mortem report, charge-sheet and the site plan, we have no hesitation in holding that it appears more probable than not that not only did the accident take place but that it was caused by rash and negligent driving on the part of the driver of the offending truck.

75. Accordingly, we hold that when examined against the standard of preponderance of probabilities, the claimants have proved both the factum of the accident and the negligence on the part of the driver of the offending truck.

76. The fourth point which falls for consideration by this Court is whether the Tribunal was justified in holding that there was contributory negligence on the part of the deceased.

77. The Tribunal apportioned the fault for the accident equally between both the deceased and the driver of the offending truck. The Tribunal observed that though the burden to prove the factum of the accident was on the claimants, they did not examine any ‘actual’ eyewitness to the accident. The Tribunal further observed that though the burden to prove negligence on the part of the deceased was on the Insurer which could have been discharged by examining the driver of the offending truck, the Insurer failed to do so. As such, the Tribunal thought it fit to assume that both the deceased and the driver of the offending truck were equally at fault. Furthermore, the conclusion that both drivers were at fault was also sought to be justified by referring to the record, which, the Tribunal observed, revealed that both the vehicles involved in the accident were four-wheelers and the accident resulted from a head on collision and that

the deceased sustained injuries in the accident which ultimately led to his death, thereby, indicating that both the drivers were to blame.

78. To our mind, the reasons recorded by the Tribunal to hold that the deceased and the driver of the offending truck were both at fault for the accident are entirely unsustainable.

79. The Tribunal took an adverse view of the fact that the claimants examined PW-2, who was purportedly not an 'actual' eyewitness as his presence at the spot when the accident occurred was found doubtful by the tribunal, even though the claimants had the option to examine other 'actual' eyewitnesses cited in the charge-sheet filed by the police. The Tribunal had found the testimony of PW-2 suspicious and liable to be disbelieved because even though he claimed to have witnessed the accident and to have taken the deceased and the claimant no.1 to the hospital, his name did not figure either in the FIR or in the list of witnesses set out in the chargesheet or in the hospital records.

80. We have already held that the Tribunal was not correct in disbelieving the testimony of PW-2 as suspicious and unreliable. On an independent examination, we have found the testimony of PW-2 reliable. As such, the very foundation of the charge against the claimants that they did not examine an 'actual' eyewitness is taken away rendering the finding of contributory negligence unsustainable.

81. The other reasons advanced by the Tribunal merit notice only to be rejected. It was observed that the record indicated that at the time of the accident the deceased was driving the car and that he sustained injuries in the accident leading to his death. It was contended that it was, therefore, reasonable to assume that both drivers were at fault. We absolutely fail to understand the logic. How exactly does negligence on the part of the deceased stand established by the fact that the deceased was driving the car at the time of the accident and that he sustained injuries and later died, eludes us. It was also observed that both the vehicles involved in the

accident were four-wheelers and were involved in a head-on collision indicating that there was negligence on the part of both the drivers. We yet again fail to see the connection. Not to mention that the record indicates that the offended truck veered from its path and rammed into the side of the car, which can't be labelled a head-on collision. We, therefore, have no doubt in our mind that the reasons recorded by the Tribunal for holding that the deceased was also at fault for the accident are entirely unsustainable.

82. We may also advert to the authorities placed before us by the learned counsel for the claimants to assail the finding of the tribunal that there was contributory negligence on the part of the deceased. Reliance was placed on **Pramod Kumar Rasikbhai Jhaveri V. Karmasey Kunvargi Tak [2002 (6) SCC 155], Mohammed Siddique & Another V. National Insurance Company Ltd. & Others [2020 (3) SCC 57]** and **Jiju Kuruvila & Others V. Kunjujamma Mohan & Others [2013 (9) SCC 166].**

83. In **Pramod Kumar Rasikbhai Jhaveri (supra),** the Supreme Court has held that '*the question of contributory negligence arises when there has been some act or omission on the claimants part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as negligence'*. In **Mohammed Siddique (supra),** the Supreme Court held that '*where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked*'. In **Jiju Kuruvila (supra),** the Supreme Court observed that '*in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver*'.

84. A scrutiny of the record, bearing in mind the aforesaid authorities, reveals that besides a bald assertion in the written statement that the deceased was himself at fault for the accident, no evidence was adduced by the Insurer to substantiate said contention. In fact, not only was no

evidence led on this aspect, the Insurer also failed to interrogate the witnesses led by the claimants on the aspect. Not once was it suggested either to PW-1 (claimant no.2) or PW-2 that the accident was caused by negligence on the part of the deceased himself. Said failure on the part of the Insurer must be read as a tacit admission that there was in fact no negligence on the part of the deceased.

85. Accordingly, we hold that the Tribunal was not justified in attributing contributory negligence to the deceased. The inference that both the deceased and the driver of the offending truck were equally at fault for the accident is unsustainable and untenable. We have undertaken an independent scrutiny of the record but have nothing to persuade us to take the view that there was contributory negligence on the part of the deceased. We, therefore, hold that there was no contributory negligence on the part of the deceased.

86. The fourth and last point which falls for consideration by this Court concerns the quantum of compensation awarded by the Tribunal? Is the compensation correctly computed? Is the compensation just?

87. Both parties have faulted the computation of compensation as carried out by the Tribunal albeit on distinct grounds. Scrutiny is, therefore, warranted.

88. The steps which are to be followed in determination of compensation in claim proceedings arising out of motor vehicle accidents were clearly laid out by the Supreme Court in the case of **United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur and Others**, reported in **AIR 2020 SC 3076**. The Supreme Court observed thus: -

> **8. <u>Relevant principles for assessment of compensation in cases of death as evolved by judicial dicta.</u>**
>
> The criteria which are to be taken into consideration for assessing compensation in the case of death, are : (i) the age of the deceased at the time of his death; (ii) the number

of dependants left behind by the deceased; and (iii) the income of the deceased at the time of his death.

In *Sarla Verma & Ors.* v. *Delhi Transport Corporation & Anr.*, this Court held that to arrive at the loss of dependency, the tribunal ought to take into consideration three factors :–

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 to the age of the deceased. In order to provide uniformity and consistency in awarding compensation, the following steps are required to be followed :–

*"**Step 1 (Ascertaining the multiplicand)***

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier

should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family. Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added."

(emphasis supplied)

89. With the aforesaid observations as our guiding light, we now proceed to examine whether the compensation determined by the Tribunal is just and proper and if not what quantum of compensation are the claimants entitled to.

90. The first step in determination of compensation is ascertaining the multiplicand. The multiplicand is income of the victim less amount to be deducted towards personal and living expenses. So in order to arrive at the multiplicand, the income of the victim and the amount to be deducted towards personal and living expenses are to be computed.

91. Let us first deal with the question of income of the deceased.

92. According to the claimants, at the time of the accident, the deceased was a final year MBA student at ICFAI, Hyderabad. Moreover, the deceased was also in the part time employment of one M/S Ivy Comptech, Hyderabad and was earning Rs.13,080/- as monthly pay. As per the claimants, the deceased was a 'very promising young man and would have been absorbed by a big corporate house on very high salary of over Rs.50,000/- per month initially with further rise'.

93. As evidence, the claimants brought on record the original copy of the appointment letter dated 24.07.2003 issued to the deceased by M/S Ivy Comptech, Hyderabad along with the original copy of salary slip for the month of June, 2004. Additionally, the claimant no.2 entered the witness box and deposed that the deceased, at the time of the accident, was a final year MBA student and was working for M/S Ivy Comptech, earning Rs.18,000/- as monthly pay. Claimant no.2 was cross-examined. During the course of cross-examination, claimant no.2 revealed that the claimants had paid Rs. 3 lacs in fees for the MBA course which the deceased was pursuing. When confronted with the suggestion that the deceased was not doing MBA at the time of the accident, the claimant no.2 held steadfast and repulsed the suggestion. She also rebuffed the suggestion that the deceased was not in the employment of M/S Ivy Comptech and that she had lied about the income of the deceased. No further interrogation was done on the subject and nothing contradictory could be elicited. No evidence to the contrary was brought on record by the Insurer. Importantly, the veracity of the appointment letter and pay slip could not be questioned.

94. Scrutiny of the record reveals that the appointment letter bears the signature of one Sanjay Ratha, who, it appears, was the Manager-HR at M/S Ivy Comptech, when the deceased was appointed to said company. The pay slip bears no endorsement and appears to be a system-generated document, carrying a note at the bottom which reads 'Please Send Your Queries to info @india-life.com'. It was not for a moment contended that

said documents were forged or fabricated and, thus, liable to be disbelieved.

95. To our mind, when considered together, the testimony of the claimant no.2 along with the appointment letter and the pay slip brought on record, are sufficient to establish that the deceased, at the time of the accident, was a final year MBA student and was employed with M/S Ivy Comptech on a monthly salary of Rs.13,080/-. The appointment letter, the original copy whereof is on record, is duly signed by one Sanjay Ratha, Manager-HR. The veracity of the document was not questioned. It is not the case of Insurer that the signature on the document is forged. The pay slip is not endorsed but it is a system-generated copy and it is common knowledge that such system generated copies ordinarily do not bear endorsement and are meant only for informational purposes. Thus, the pay slip is not rendered suspect simply because it bears no endorsement. At any rate, the Insurer did not contend that the pay slip was fabricated. In cross-examination, suggestion to the effect that the deceased was not an MBA student and that he was not employed when the accident took place was repulsed by the claimant no.2. The suggestion that she was lying about the income of the deceased was also repulsed by her. Nothing contradictory could be elicited from her. The record reveals that not once was it suggested to the claimant no.2 that the appointment letter and the pay slip were forged. By failing to do so, the opportunity to cast a cloud of doubt over the authenticity of documents in question was foregone. Under the circumstances, we are inclined to take the view that it stood proved that the deceased, at the time of the accident, was a final year MBA student and in employment of M/S Ivy Comptech, Hyderabad on a monthly pay of Rs.13,080/-.

96. A perusal of the judgment of the Tribunal reveals that the failure on the part of the Insurer to question the veracity of the appointment letter and the pay slip brought on record by the claimants weighed on the mind of the Tribunal which proceeded to determine the income of the deceased

based on the pay slip. The Tribunal noted that as per the pay slip in question, the deceased was earning a monthly sum of Rs.13,080/-, which included Rs.5,500/- in basic pay, Rs.1700/- in dearness allowance, Rs.800/- in transportation allowance, Rs.2200/- in house rent allowance, Rs.1000/- in medical allowance, Rs.1,100/- in lunch allowance and Rs.780/- in LTA. The Tribunal further observed that for the purpose of quantification of compensation only basic pay and dearness allowance were liable to be construed as income. The income of the deceased was, therefore, taken to be Rs.7200 per month (Rs.5500/- in basic pay + Rs. 1700 in dearness allowance), which worked out to Rs.86,400/- per annum.

97. We do not concur.

98. In claim proceedings arising out of motor vehicle accidents involving students, notional income is required to be determined. In the case of **Kirti V. Oriental Insurance Co. Ltd**., reported in **2021 SCC OnLine SC 3**, the Supreme Court delineated two categories of cases where the Court is called upon to determine notional income of the victim. The Supreme Court observed thus: -

> *"2. There are two distinct categories of situations wherein the Court usually determines notional income of a victim. The first category of cases relates to those wherein the victim was employed, but the claimants are not able to prove her actual income, before the Court. In such a situation, the Court "guesses" the income of the victim on the basis of the evidence on record, like the quality of life being led by the victim and her family, the general earning of an individual employed in that field, the qualifications of the victim, and other considerations.*
>
> *3. The second category of cases relates to those situations wherein the Court is called upon to determine the income of a nonearning victim, such as a child, a student or a homemaker. Needless to say, compensation in such cases is extremely difficult to quantify.*
>
> *4. The Court often follows different principles for determining the compensation towards a nonearning victim in order to arrive at an amount which would be just in the facts and circumstances of the case. Some of these involve the determination of notional income. Whenever notional income is determined in such cases, different considerations and factors are taken into account. For instance, for students, the Court*

often considers the course that they are studying, their academic proficiency, the family background, etc., to determine and fix what they could earn in the future. [See M. R. Krishna Murthi v. New India Assurance Co. Ltd., 2019 SCC OnLine SC 315]"

99. As such, in the case at hand notional income of the deceased, who was a final year MBA student, had to be determined.

100. In **M. R. Krishnamurthy V. The New India Assurance Co. Ltd**., reported in **2019 SCC OnLine SC 315**, the Supreme Court has dealt with the issue of determination of notional income students in depth. Said case entailed assessment of compensation in a motor vehicle accident claim case involving a school-going student who was not earning anything. After adverting to multiple judgments, the Supreme Court culled out certain principles for determination of notional income of students, observing thus-

"23) From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poser would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning*.*

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc. If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) ***There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.***

> *(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case."*

101. It is clear that notional income of the deceased was required to be ascertained by factoring in loss of future earnings. The deceased was an MBA student. It was required to be assessed as to what the deceased could have earned had he not tragically died in the accident and had gone on to complete his MBA and got a job thereafter. Relevant factors to consider were the academic record, job prospects, etc. The fact that the deceased was earning Rs.13,080/- in monthly pay in a part-time job even before completing MBA was also a relevant consideration.

102. In computing the income of the deceased, the Tribunal did not appreciate the fact that the information that the deceased was earning Rs.13,080/- in monthly pay in a part-time job was only meant to be an input. The Tribunal did not appreciate that based on said input, supplemented by other relevant considerations, a holistic analysis was required to be undertaken so as to make a logical and meaningful extrapolation to arrive at the notional income of the deceased. Instead, the basic pay and dearness allowance components of the salary of the deceased were simply added to arrive at the income of the deceased. Other components were ignored claiming they were not relevant and were not liable to be construed as income. No reasons were provided as to why not. We have no hesitation in stating that the approach of the Tribunal was not correct. As a result, it falls on us to determine the notional income of the deceased in consonance with the principles spelt out by the Supreme Court in **M**. **R. Krishnamurthy (supra)**. We may note that the learned counsel for the claimants also placed before us the judgment rendered by the Supreme Court in **Arvind Kumar Mishra V. New India Assurance Co. Ltd**., reported in **2010 (10) SCC 254**, to contend that the Tribunal erred in not factoring in the bright future of the deceased while computing

the income of the deceased. We may note that **Arvind Kumar Mishra (supra)** was considered in **M. R. Krishnamurthy (supra)** whereon we propose to largely rely on in our analysis.

103. The deceased was a final year MBA student. It is contended in the claim petition that the deceased was a promising student. Nothing, however, was brought on record wherefrom an opinion could be formed about the academic track record of the deceased. Be that as it may, the deceased was in the employment of M/S Ivy Comptech and was earning Rs.13080/- in monthly pay. The fact that the deceased had managed to secure part time employment even though still a student is in itself a positive factor. It is a matter of common knowledge that the job market in the private sector is very competitive. Many apply but private entities are very particular about their recruitment standards and select only the most suitable candidates. As such, there is no reason to doubt that the deceased was a bright and promising young boy.

104. Furthermore, it is contended in the claim petition that the deceased, after completing MBA, could easily have found employment with any big corporate house and could have easily earned Rs.50,000/- per month in starting salary. Said contention merits closer scrutiny. It is not a secret that MBAs command a higher salary in the private sector. Top level management positions in private entities are more often than not occupied by MBAs who definitely command a premium. Of course, other factors also play a role. The institution whereat one pursues MBA is important. Academic performance and past work experience are also important. The deceased was a final year MBA student at ICFAI, Hyderabad. In the absence of any material on the record, we do not think it would be appropriate for us to comment on the quality of the institution. Suffice to say that said institution is not unheard of and is not an obscure institution. We have already noted that there is nothing on the record to enable us to draw an inference about the academic performance of the deceased. We do, however, know that the deceased was in the part time employment of

M/S Ivy Comptech and was earning Rs.13,080/- in monthly pay. We have no doubt that the job experience gained by the deceased would have played out to his advantage when he would have applied for full-time positions after completing MBA. The deceased was already earning Rs.13,080/- while still studying. It is fair to presume that he would have landed a higher paying position after completing MBA. Question is, in the situation, what could be fairly taken to be his notional income.

105. We may take guidance from the judgment rendered by the Supreme Court in the case of **Oriental Insurance Company Limited V. Deo Patodi and Others**, reported in **(2009) 13 SCC 123**. The facts of **Deo Patodi (supra)** are somewhat similar to that of the matter at hand.

106. In **Deo Patodi (supra)**, the victim had done a course in business administration in the United Kingdom (UK). While studying, he was also working on a part-time basis and was earning equivalent of Rs.80,000/- per month. He was also offered a job in the United States of America (USA) at a pay equivalent of Rs.18 lacs per annum which he turned down because he wanted to pursue higher studies and do an MBA in Australia. The victim died, aged 22 years, in a motor vehicle accident which took place on 12.06.2003. The Tribunal and the High Court both computed the notional income of the victim at Rs.18,000/- per month. The Supreme Court, however, found said computation inadequate and revised the figure to Rs.25,000/- per month, at one-third of the salary the victim was drawing while working part-time in UK. Relevant observations of the Supreme Court are extracted hereunder:-

> *"9. The question in regard to the calculation of loss of dependency, it is trite, would vary from case to case.*
>
> *The fact that the deceased was a brilliant student is not in dispute. He had graduated in Business Administration in U.K. Even as a student, in a job on a part-time basis he was being paid a salary of Rs.80,000/- per month ((UK # 1008.31). He paid his income-tax even in U.K. After his graduation, he came back to India. He was offered a job as EU Controller by GOA LLC, a company based in Chicago, USA at an annual salary of Rs.18 lakhs (i.e. $ 41,600/-). However, when the accident took place he*

> *was not working; having not accepted the said offer. He was still a student. It would have been hazardous for the Tribunal to calculate the amount of compensation towards the loss of dependency on that basis.*
>
> *10. The Tribunal and the High Court, however, in our opinion, keeping in view the aforementioned backdrop might not be correct in holding that he would have earned only Rs.18,000/- per month. It is true that the cost of living in the western countries would be higher. The standard of living in the western countries cannot be followed; in the absence of any material placed before this Court it should not be followed in India. Even in a case where the victim of an accident was earning salary in U.S. Dollars, this Court opined that a lower multiplier should be applied."*
>
> *"11. It is in the aforementioned situation, we are of the opinion that the fair amount of compensation should have been calculated at Rs.25,000/- per month being about 1/3rd of the amount which he was receiving in U.K."*

107. The victim in **Deo Patodi (supra)** and the deceased share similar academic backgrounds inasmuch as both were students of business administration. Both worked while still studying. Both belonged to similar age group and the accidents in both cases occurred only about an year apart. No doubt there are certain disparities. The victim in **Deo Patodi (supra)** had done his course and had worked in U.K. whereas the deceased was studying and working in India. The former, it appears, had done only a graduate level course and intended to do an MBA whereas the deceased was doing MBA. The victim in **Deo Patodi (supra)** was offered a job in USA at a salary equivalent to Rs.18 lacs per annum whereas there is nothing on record to indicate that the deceased had a full-time job offer on the table.

108. Taking all the of the above into account, we are of the view that the notional income of the deceased can be fairly assessed at Rs.20,000/- per month which is about 1.5 times what the deceased was earning in part time employment while still studying. Accordingly, notional income of deceased on a per annum basis works out to Rs.2,40,000/-.

109. We now come to the subject of deduction towards personal and living expenses, the second ingredient in determination of multiplicand.

110. The Tribunal has deducted one-third (1/3) of the income of the deceased towards personal and living expenses. The learned counsel for the Insurer contended that the Tribunal ought to have deducted one-half (1/2) of the income towards personal and living expenses and not one-third (1/3). It was contended that the deceased was a 24 years old bachelor at the time of the accident and that the law is now settled that in such cases a 50% deduction is to be made towards personal and living expenses. The learned counsel, to substantiate his contention, placed reliance on the judgment rendered by the Supreme Court in **Smt. Sarla Verma and Others V. Delhi Transport Corporation and Another**, reported in **2009 (3) Supreme 487**.

111. We find force in the submission of the learned counsel for the Insurer. In **Sarla Verma (supra)**, the Supreme Court held that if the deceased was a bachelor and the claimants were the parents of the deceased, the deduction towards personal and living expenses should ordinarily be 50%. Said observation was subsequently affirmed by a three-judge bench of the Supreme Court in **Reshma Kumari & Others V. Madan Mohan and Another**, reported in **(2013) 9 SCC 65**, wherein, in respect of deduction for personal and living expenses, it was observed the principle formulated in **Sarla Verma (supra)** must be adhered to unless a case for departure was made out. The observations in **Sarla Verma (supra)** and **Reshma Kumari (supra)**, as regards deduction towards personal and living expenses, were subsequently reaffirmed by a Constitution Bench of the Supreme Court in **National Insurance Co. Ltd. V. Pranay Sethi and Others**, reported in **(2017) 16 SCC 680**. The law on the subject was subsequently summarized in **Satinder Kaur (supra)**, wherein the Supreme Court, on the subject of 'deduction towards personal and living expenses', observed thus:-

> **(a) Deduction for personal and living expenses**
>
> The personal and living expenses of the deceased should be deducted from the income, to arrive at the

contribution to the family. In *Sarla Verma (supra)* (paras 30, 31 and 32), this Court took the view that it was necessary to standardize the deductions to be made under the head personal and living expenses of the deceased.

Accordingly, it was held that :

a) where the deceased was married, the deduction towards personal and living expenses should be 1/3rd if the number of dependant family members is two to three;

b) 1/4th if the number of dependant family members is four to six; and

c) 1/5th if the number of dependant family members exceeds six.

d) If the deceased was a bachelor, and the claim was filed by the parents, the deduction would normally be 50% as personal and living expenses of the bachelor.

Subject to evidence to the contrary, the father was likely to have his own income, and would not be considered to be a dependant. Hence, the mother alone will be considered to be a dependant.

In the absence of any evidence to the contrary, brothers and sisters of the deceased bachelor would not be considered to be dependants, because they would usually either be independent and earning, or married, or dependant on the father.

Thus, even if the deceased was survived by parents and siblings, only the mother would be considered to be a dependant. The deduction towards personal expenses of a bachelor would be 50%, and 50% would be the contribution to the family.

However, in a case where the family of the bachelor was large and dependant on the income of the deceased, as in a case where he had a widowed mother, and a large number of younger non-earning sisters or brothers, his

personal and living expenses could be restricted to 1/3rd, and contribution to the family be taken as 2/3rd.

A three-judge bench in *Reshma Kumari & Ors.* v. *Madan Mohan & Anr.*, affirmed the standards fixed in *Sarla Verma (supra)* with respect to the deduction for personal and living expenses, and held that these standards must ordinarily be followed, unless a case for departure is made out. The Court held :

> *"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.*
>
> *In our view, the standards fixed by this Court in Sarla Verma 2009 (6) SCC 121 on the aspect of deduction for personal living expenses in paragraphs 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out."*
>
> *In what we have discussed above, we sum up our conclusions as follows:*
>
> *…*
>
> *43.6. In so far as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma 2009 (6) SCC 121 subject to the observations made by us in para 38 above. …"*
>
> (emphasis supplied)

> A Constitution Bench of this Court in *National Insurance Co. Ltd.* v. *Pranay Sethi & Ors.*,[3] held that the standards fixed in *Sarla Verma (supra)* would provide guidance for appropriate deduction towards personal and living expenses, and affirmed the conclusion in para 43.6 of *Reshma Kumari (supra)*.

112. As such, we hold that the Tribunal erred in deducting only one-third (1/3) of the income of the deceased towards personal and living expenses and should have instead deducted one-half (1/2) of the income towards said expenses.

113. We have computed the notional income of the deceased at Rs.2,40,000/- per annum. One-half (1/2) of said income or Rs.1,20,000/- has to be deducted towards personal and living expenses.

114. To compute the multiplicand, the amount to be deducted towards personal and living expenses must first be subtracted from the figure for notional income. Deducting Rs.1,20,000/- from Rs.2,40,000/- we are left with Rs.1,20,000/-. But Rs.1,20,000/- is not the multiplicand. To arrive at the multiplicand, an amount towards future prospects has to be added to Rs.1,20,000/-.

115. In **Satinder Kaur (supra)**, the Supreme Court, on future prospects, observed thus:-

> **(b) Future Prospects**
>
> In the wake of increased inflation, rising consumer prices, and general standards of living, future prospects have to be taken into consideration, not only with respect to the status or educational qualifications of the deceased, but also other relevant factors such as higher salaries and perks which are being offered by private companies these days. The dearness allowance and perks from which the family would have derived monthly benefit, are required to be

taken into consideration for determining the loss of dependency.

In ***Sarla Verma (supra)***, this Court held :

> *"24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."*
>
> (emphasis supplied)

In *Pranay Sethi (supra)*, the Constitution Bench evaluated all the judicial precedents on the issue of future prospects including *Sarla Verma (supra)*, and devised a fixed standard for granting future prospects. It was held :

> *"57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just*

compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

59. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it

appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self- employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

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

…

While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component. *…"*

(emphasis supplied)

116. Whether or not future prospects are to be granted to those with notional income was considered by the Supreme Court in **Kirti (supra).** Holding that future prospects are also to be granted to those with notional income, the Supreme Court observed thus: -

III. Addition of Future Prospects

"13. Third and most importantly, it is unfair on part of the respondent insurer to contest grant of future prospects considering their submission before the High Court that such compensation

ought not to be paid pending outcome of the Pranay Sethi (supra) reference. Nevertheless, the law on this point is no longer res integra, and stands crystalised, as is clear from the following extract of the aforecited Constitutional Bench judgment:

*"**59.4. In case the deceased was selfemployed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component**."*

[Emphasis supplied]

14. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation induced increase in wages. It would be sufficient to quote the observations of this Court in Hem Raj v. Oriental Insurance Co. Ltd., as it puts at rest any argument concerning non payment of future prospects to the deceased in the present case:

*"**7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made**.."*

[Emphasis supplied]

117. Accordingly, future prospects have to be granted in the instant case.

118. The deceased was 24 years old at the time of the accident. Accordingly, an addition of 50% has to be made towards future prospects. As such, an additional amount of Rs.60,000/- (50% of Rs.1,20,000/-) has to be added in future prospects. The Tribunal erred in awarding nothing in future prospects.

119. The multiplicand, thus, works out to Rs.1,80,000/-(Rs.1,20,000/- + Rs.60,000/-) First step in the computation of quantum of compensation stands completed.

120. Second step in the quantification of compensation is 'ascertaining the multiplier'.

121. The Tribunal has applied a multiplier of 8 based on the age of the claimant no.2, the mother of the deceased. The learned counsel for the claimants contended that the Tribunal committed an error inasmuch as the multiplier has to be chosen bearing in mind the age of the deceased. The learned counsel placed reliance on **Mohammed Siddique & Another V. National Insurance Co. Ltd. & Others**, reported in **2020 (3) SCC 57**. In **Mohammed Siddique (supra)**, the Supreme Court, on the subject of choice of multiplier, observed thus: -

> *"19. Coming to the last issue relating to the multiplier, the Tribunal applied the multiplier of 18, on the basis of the age of the deceased at the time of the accident. But the High Court applied a multiplier of 14 on the ground that the choice of the multiplier should depend either upon the age of the victim or upon the age of the claimants, whichever is higher. According to the High court, this was the ratio laid down in General Manager, Kerala SRTC Vs Susamma Thomas, and that the same was also approved by a three Member Bench of this Court in UPSRTC Vs. Trilok Chandra (supra).*
>
> *20. The High Court also noted that the choice of the multiplier with reference to the age of the deceased alone, approved in Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr, was found acceptance in two subsequent decisions namely (1) Reshmi Kumari & Ors. Vs. Madan Mohan & Anr. and (2) Munna Lal Jain Vs. Vipin Kumar Sharma5. But the High court thought that the decisions in Susamma Thomas and Trilok Chandra were directly on the point in relation to the choice of the multiplier and that the issue as envisaged in those 2 decisions was neither raised nor considered nor adjudicated upon in Sarla Verma. According to the High court, the impact of the age of the claimants, in cases where it is found to be higher than that of the deceased, did not come up for consideration in Reshma Kumari and Munnal Lal Jain. Therefore, the High court thought that it was obliged to follow the ratio laid down in Trilok Chandra (2009) 6 SCC 121 4 (2013) 9 SCC 65 5 JT 2015 (5) SC 1.*
>
> *21. But unfortunately the High Court failed to note that the decision in Susamma Thomas was delivered on 06.01.1993, before the insertion of the Second Schedule under Act 54 of 1994. Moreover what the Court was concerned in Susamma Thomas was whether the multiplier method*

involving the ascertainment of the loss of dependency propounded in Davies v. Powell (1942) AC 601 or the alternative method evolved in Nance v. British Columbia Electric Supply Co. ltd (1951) AC 601 should be followed.

22. Trilok Chandra merely affirmed the principle laid down in Susamma Thomas that the multiplier method is the sound method of assessing compensation and that there should be no departure from the multiplier method on the basis of section 110B of the 1939 Act. Trilok Chandra also noted that the Act stood amended in 1994 with the introduction of section 163A and the second schedule. Though it was indicated in Trilok Chandra (in the penultimate paragraph) that the selection of the multiplier cannot in all cases be solely dependent on the age of the deceased, the question of choice between the age of the deceased and the age of the claimant was not the issue that arose directly for consideration in that case.

23. But Sarla Verma, though of a two member Bench, took note of Susamma as well as Trilok Chandra and thereafter held in paragraphs 41 and 42 as follows:

> *"41. Tribunals/ courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [set out in Column (2) of the table above]; some follow the multiplier with reference to Trilok Chandra, [set out in Column (3) of the above]; some follow the multiplier with reference to Charlie [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in column (5) of the table above]; and some follow the multiplier actually adopted in the Second schedule while calculating the quantum of compensation [set out in column (6) of the table above]. For example, if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in Column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second schedule to the MV Act. some Tribunals as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A of the MV Act. in cases falling under section 166 of the MV Act Davies methods is applicable.*
>
> *42. 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 5 years, that is M17 for 26 to 30 years, M16 to 31 to 35 years, M15 for 36 to 40 years, M14 for 41 to 45 years and M13 for 46 to 50 years, then reduced by 2 units for every 5 years, i.e., M11 for 51 to 55*

> *years, M9 for 56 to 60 years, M7 for 61 to 65 years, M5 for 66 to 70 years."*

24. What was ultimately recommended in Sarla Verma, as seen from para 40 of the judgment, was a multiplier, arrived at by juxtaposing Susamma Thomas, Trilok Chandra and Charlie6 with the multiplier mentioned in the Second Schedule.

25. However when Reshma Kumari v. Madan Mohan came up for hearing before a two member Bench, the Bench thought that the question whether the multiplier specified in the second schedule should be taken to be a guide for calculation of the amount of compensation in a case falling under section 166, needed to be decided by a larger bench, especially in the light of the defects pointed out in Trilok Chandra in the Second Schedule. The three member Bench extensively considered Trilok Chandra and the subsequent decisions and approved the Table provided in Sarla Verma. It was held in para 37 of the report in Reshma Kumari that the wide variations in the selection of multiplier in fatal accident cases can be avoided if Sarla Verma is followed. 6 (2005) 10 SCC 720

26. In Munna Lal Jain, which is also by a bench of three Hon'ble judges, the Court observed in para 11 as follows:

> *" Whether the multiplier should depend on the age of the dependents or that of the deceased has been hanging fire for sometime: but that has been given a quietus by another three judge bench in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased, but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc. is to be taken."*

27. In the light of the above observations, there was no room for any confusion and the High Court appears to have imagined a conflict between Trilok Chandra on the one hand and the subsequent decisions on the other hand.

28. It may be true that an accident victim may leave a 90 year old mother as the only dependent. It is in such cases that one may possibly attempt to resurrect the principle raised in Trilok Chandra. But as on

date, Munna Lal Jain, which is of a larger Bench, binds us especially in a case of this nature."

122. The above noted observations of the Supreme Court in **Mohammed Siddique (supra)** leave no doubt that the age of the deceased is to be the basis for ascertaining the multiplier. In **Satinder Kaur (supra),** Supreme Court was called upon to consider if the principle that age of the deceased must be the basis for determining the multiplier is valid even when the deceased is a bachelor. Holding that said principle applied even if the deceased was a bachelor, the Supreme Court observed thus: -

(c) Age of the deceased must be the basis for determining the multiplier even in case of a bachelor.

"In Sarla Verma (supra), this Court held that the multiplier should be determined with reference to the age of the deceased. This was subsequently affirmed in Reshma Kumari (supra), and followed in a line of decisions.

A three-judge bench in Munna Lal Jain & Ors. v. Vipin Kumar Sharma & Ors., held that the issue had been decided in Reshma Kumari (supra), wherein this Court held that the multiplier must be with reference to the age of the deceased. The decision in Munna Lal Jain (supra) was followed by another three-judge bench of this Court in Sube Singh & Ors. v. Shyam Singh (dead) & Ors.

The Constitution Bench in National Insurance Company Limited v. Pranay Sethi & Ors., affirmed the view taken in Sarla Verma (supra) and Reshma Kumari (supra), and held that the age of the deceased should be the basis for applying the multiplier.

Another three-judge bench in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors., traced out the law on this issue, and held that the compensation is to be computed based on what the deceased would have contributed to support the dependants. In the case of the death of a married person, it is an accepted norm that the age of

the deceased would be taken into account. Thus, even in the case of a bachelor, the same principle must be applied.

The aforesaid legal position has recently been re-affirmed by this Court in Sunita Tokas and Ors. v. New India Insurance Co. Ltd. and Ors."

123. Accordingly, we have no hesitation in holding that the Tribunal committed a serious error in determining the multiplier by taking the age of the claimant no.2 as reference. The law on the subject is settled. The multiplier has to be ascertained on the basis of the age of the deceased, even when the deceased is a bachelor.

124. Having held that the multiplier applied by the Tribunal was wrong, the obvious question we are faced with is what is the correct multiplier to be applied in the instant case.

125. We may again refer to **Satinder Kaur (supra)** and the observations therein on the subject of 'determination of multiplier' which are reproduced hereunder: -

(d) Determination of Multiplier

With respect to the multiplier, the Court in *Sarla Verma (supra)*, prepared a chart for fixing the applicable multiplier in accordance with the age of the deceased, after considering the judgments in *General Manager, Kerala S.R.T.C., Trivandrum* v. *Susamma Thomas & Ors.*, *U.P.S.R.T.C. & Ors.* v. *Trilok Chandra & Ors.*, and *New India Assurance Co. Ltd.* v. *Charlie & Ors.*

The relevant extract from the said chart i.e. Column 4 has been set out hereinbelow for ready reference :–

Age of the deceased	**Multiplier (Column 4)**
Upto 15 years	-
15 to 20 years	18
21 to 25 years	18

26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	9
61 to 65 years	7
Above 65 years	5

The Court in Sarla Verma (supra) held :–

"42. 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."

(emphasis supplied)

In Reshma Kumari (supra), this Court affirmed Column 4 of the chart prepared in Sarla Verma (supra), and held that this would provide uniformity and consistency in determining the multiplier to be applied. The Constitution Bench in Pranay Sethi (supra) affirmed the chart fixing the multiplier as expounded in Sarla Verma (supra), and held :–

"44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less than the tax paid. The multiplier

has already been fixed in Sarla Verma which has been approved in Reshma Kumari with which we concur.

...

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment."

(emphasis supplied)

126. It is, therefore, clear that the multiplier has to selected from the Table laid out in **Sarla Verma (supra)** read in conjunction with the observations in paragraph 42 of the said judgment. The said table, along with paragraph 42 of **Sarla Verma (supra)**, can be found in the excerpt from **Satinder Kaur (supra)** which we have reproduced above.

127. In the case at hand, the deceased was 24 years old when the accident happened. We find that a multiplier of 18 is to be applied when the victim belongs to the age bracket of 21 to 25. As such, multiplier of 18 is to be applied in the case at hand. The second step of computation of compensation stands completed.

128. The third step of computation of compensation entails actual calculation. The multiplicand is multiplied by the multiplier to compute the figure for 'loss of dependency'. To said figure, additional amounts under the heads of loss of estate, loss of consortium and funeral expenses are to be added.

129. We have computed the multiplicand to be Rs.1,80,000/-. The multiplier to be applied is 18. The figure for 'loss of dependency' thus works out to Rs.32,40,000/- (1,80,000 x18).

130. To the above, additional amounts under the three conventional heads which are loss of estate, loss of consortium and funeral expenses are to be added. The learned counsel for the claimants faulted the Tribunal for failing to award any amount under the conventional heads. Reliance was placed on **Pranay Sethi (supra)**. We concur with the learned counsel. Observations of the Supreme Court in **Satinder Kaur (supra)** on the

three conventional heads, summarizing the law on the subject, are extracted hereunder: -

(e) 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

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 recognised the right of a spouse to get compensation even during the period of temporary disablement.

In *Magma General Insurance Co. Ltd.* v. *Nanu Ram & Ors*.,12 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.

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.

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.

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 (supra)*.

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.

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.

c) Funeral Expenses – Rs. 15,000 to be awarded

The aforesaid conventional heads are to be revised every three years @10%.

131. As such, we hold that the Tribunal erred in not awarding any amount under the three conventional heads. The claimants are entitled to the following amounts: (a) Rs.15,000/- for loss of estate; (b) Rs.80,000/-

(40,000 x 2) for loss of filial consortium; and (c) Rs.15,000/- towards funeral expenses.

132. We may note that the learned counsel for the claimants contended that the claimants were also liable to receive an amount under the head of loss of love and affection. Reliance was placed on **Jiju Kuruvila (supra).** The contention of the learned counsel is not sustainable. In **Satinder Kaur (supra),** the Supreme Court, while deliberating on the concept of 'loss of consortium', has faulted Tribunals and High Courts for awarding compensation for both 'loss of consortium' and 'loss of love and affection'. It was observed that the Constitution Bench in **Pranay Sethi (supra)** has recognized only three conventional heads whereunder compensation can be granted which are loss of estate, loss of consortium and funeral expenses. It was further observed that in **Magma General Insurance Co. Ltd. V. Nanu Ram and Others**, reported in **(2018) 18 SCC 130**, consortium has been interpreted expansively to include spousal consortium, filial consortium and parental consortium and that loss of consortium subsumed within it loss of love and affection. In light of said observations of the Supreme Court in **Satinder Kaur (supra)**, no amount is liable to be awarded under a separate head of 'loss of love and affection' once we have already awarded compensation under the head of 'loss of filial consortium'. We have also considered the judgment in **Jiju Kuruvila (supra)**. We find that the Supreme Court has awarded Rs.1,00,000/- each towards love and affection of two children of the victim who died in an accident. Said compensation, notwithstanding the description utilized, is clearly compensation for loss of parental consortium suffered by the two children of the victim. It is not as if said compensation was awarded in addition to compensation for loss of parental consortium. **Jiju Kuruvila (supra)**, therefore, cannot be relied on to claim compensation under the head of 'loss of love and affection' in addition to compensation for loss of consortium. The contention of the learned counsel for the claimants is, accordingly, rejected.

133. The tribunal had also deducted 50% of the compensation on account of contributory negligence. We have already set aside the finding that there was contributory negligence on the part of the deceased as unsustainable. Accordingly, no deduction on account of contributory negligence is warranted.

134. Total compensation payable to the claimants works out to Rs.33,50,000/- (32,40,000 + 15,000 + 80,000 +15,000). Step three of the computation stands completed.

135. For ready reference, we summarize our findings on the question of quantum of compensation as follows:-

Per Annum Notional Income:	Rs. 2,40,000/-
Deduction towards personal and living expenses:	Rs.1,20,000/- (1/2 x 2,40,000)
Future Prospects:	Rs.60,000/-
Multiplicand:	Rs.1,80,000/- (1,20,000 + 60,000)
Multiplier:	18
Loss of Dependency:	Rs. 32,40,000/- (1,80,000 x 18)
Funeral Expenses:	Rs.15,000/-
Loss of Estate:	Rs.15,000/-
Loss of Filial Consortium:	Rs.80,000/- (40,000 x 2)
Total Compensation:	Rs.33,50,000/-
Deduction on account of Contributory Negligence:	0
Total Compensation to be paid:	**Rs.33,50,000/-**

136. The Tribunal has awarded the claimants simple interest at the rate of 8 % per annum from the date of the decision till realization of payment. The tribunal had declined to award interest from the date of institution of the claim petition stating that the claimants were themselves responsible for the delay in disposal of their case. No reason is recorded to substantiate said observation. The learned counsel for the claimants contended that the interest should be awarded from the date of filing of the claim and not from date of decision. The learned counsel for the Insurer, on the other hand, contended that while the tribunal was correct in awarding interest from the date of decision, it erred in awarding interest at the rate of 8%. The learned counsel, relying on the judgment of the Supreme Court in the case of **National Insurance Company Limited V. Mannat Johal and Others**, reported in **(2019) 15 SCC 260**, contended that at best interest at the rate of 7.5% could have been awarded and no more.

137. Section 171 of the Act, 1988 provides that when a claim for compensation is allowed, the Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as the Tribunal may specify. Section 171 of the Act, 1988 is extracted hereunder for ready reference: -

> ***"171. Award of interest where any claim is allowed-*** *Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf".*

138. From the aforesaid provision, it follows that-

a. It is within the discretion of the Tribunal to direct payment of interest. The provision reads that the Tribunal 'may' direct payment of interest as opposed to 'shall' direct payment of interest. The Tribunal, thus, may or may not direct payment of interest;

b. If payment of interest is directed, it is open to the Tribunal to prescribe not only the rate of interest but also the date from which such interest is payable. The provision clearly reads that the Tribunal can direct payment of interest at 'such rate' and from 'such date' as the Tribunal may specify. The only limitation is that the date from which interest is ordered to be paid should not be earlier than the date on which the claim was instituted.

139. We are of the opinion that technically speaking the order of the Tribunal directing payment of 8% simple interest from the date of decision till realization of payment does not run afoul of Section 171 of the Act, 1988. The judgment in **Mannat Johal (supra)**, relied on by the learned counsel for the Insurer, does not lay down any hard and fast rule that interest can never be awarded at a rate exceeding 7.5%. In said case, Tribunal had awarded interest at the rate of 12% which the High Court revised to 7.5%. The Supreme Court only observed that 12% was '*too high a rate in comparison to what is ordinarily envisaged in these matters*' and that the decision of the High Court to reduce it to 7.5% did not warrant interference. The observations of the Supreme Court can hardly be construed as capping the rate of interest which may be awarded in claims arising out of motor vehicle accidents at 7.5%. The order of the Tribunal as to interest, therefore, cannot be faulted on that account.

140. Yet, we are of the opinion that the facts of the case warrant that the order of the Tribunal as to interest be modified so as to direct payment of interest from the date of institution of the claim petition instead of from date of the disposal of the claim petition.

141. Claim petition was originally filed in the year 2004. The Tribunal itself has noted that at the time of the accident claimant no.1 was about 61 years old and claimant no.2 was about 57 years old. About 17 years have elapsed since. In the year 2007, claimant no.1 also died. Claimant no.2 is about 74 years old today. We can only imagine the pain and agony suffered by claimant no.2. First, she lost her only son and then she lost her

husband too. Against daunting odds, she has spent the later years of her life fighting a long and lonely battle enduring a fate we do not wish on anyone. The Tribunal did not award interest from date of filing of the claim only on the ground that the claimants themselves were to blame for the delay in disposal of claim petition. Said observation is not substantiated by referring to the record. Be that as it may, we are of the opinion that given the peculiar facts of the case, in the interest of justice, the order of the Tribunal as to interest deserves to be modified so as to direct payment of interest from the date of institution of the claim petition instead of from date of the disposal of the claim petition.

CONCLUSION

142. Accordingly, we direct the following: -

a. The quantum of compensation awarded by the Tribunal stands enhanced to Rs.33,50,000/-. The amount already paid to the claimants shall be adjusted against the total payable compensation determined above. The balance amount shall be disbursed to the claimant no.2 (as claimant no.1 is no longer with us) by the Insurer within eight weeks;

b. In addition to the above, simple interest at the rate of 8% per annum is directed to be paid to claimant no.2 on the total payable compensation determined above from the date of institution of the claim petition till realization of the payment.

143. This FAFO is, accordingly, disposed of in the aforesaid terms.

144. No order as to costs.

Order Date :- 14.12.2021
Siddhant

(Krishan Pahal, J.) (Sunita Agarwal, J.)