



HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.250 of 2011

Smt. Pushpa Farasi & Others

...Appellants

Versus

New India Insurance Company Ltd.
& Others

...Respondents

Presence:-

Mr. Pawan Mishra, learned counsel for the appellants

Mr. V.K. Kohli, learned Senior Counsel assisted by Mr. I.P. Kohli, learned counsel for the respondent – New India Insurance Company Ltd.

Hon'ble Shri Justice Subhash Upadhyay, J.

1. The present appeal from order has been preferred by the appellants/claimants against the judgment and award dated 11.04.2011 passed by Motor Accident Claims Tribunal/District Judge, Dehradun in M.A.C.P. No.20/2009, whereby the learned Tribunal has allowed the claim petition of the appellants/claimants for compensation of ₹ 4,52,000/- and has held the respondent no.1-New India Insurance Company Limited and respondent no.2-owner of the car jointly and severally liable. The Tribunal fastened the liability to pay the compensation upon respondent no.1 and directed it to pay the same to the claimants within



two months from the date of passing of the order, failing which, the claimants would be entitled to get interest @ 7% per annum from the date of filing of the claim petition. It was further directed that out of the amount of compensation, appellant no.1/claimant no.1 Smt. Pushpa Farasi would be entitled to get ₹ 2,00,000 and the remaining amount would be equally payable in favour of rest of the claimants. Since appellant no.2/claimant no.2 was minor, hence, his share was directed to be kept in a FDR till he attains the age of majority.

2. Facts of the case, in brief, are that the appellants/claimants filed a claim petition before the Motor Accident Claims Tribunal, Dehradun stating that on 23.11.2008 Prakshep Farasi (*hereinafter referred to as the 'deceased'*) was going towards Rajpur Road on his motorcycle bearing registration no.UA07-L-7917 and at 09.30 a.m. when he reached near Mussoorie Ring Road, he was hit by an Ambassador car bearing registration No.UA07-B-0272, which was being driven by its driver in a rash and negligent manner. As a result of the said accident, the deceased sustained grievous injuries. He was immediately taken to Param Hospital,



Dehradun, where he was admitted and provided medical treatment. However, despite receiving treatment, his condition did not improve and ultimately on 13.12.2008 he succumbed to the injuries sustained in the accident. In the claim petition, it was stated that the deceased was educated and possessed Diploma in Fitter and Computer and had also undergone courses in Electronics, etc.; he was earning more than ₹ 7,000/- per month from doing electrical work. With these averments, claim petition was filed by the claimants, who are wife, son, mother and father of the deceased, claiming compensation of ₹ 17,95,000/-.

3. The New India Insurance Company Limited was impleaded as respondent no.1, and the owner and driver of the offending vehicle were impleaded as respondent nos.2 and 3, respectively in the claim petition. The respondent no.1 Insurance Company filed its written statement denying the averments made in the claim petition and, *inter-alia*, pleaded that it was a case of contributory negligence. Respondent nos.2 and 3 filed a joint written statement and contended that the deceased was not wearing a helmet and was driving his motorcycle rashly and negligently and was coming from



wrong side and the accident had occurred due to the own negligence of the deceased. Learned Tribunal, on the basis of pleadings of the parties, framed two issues, which are as follows:-

- (i) Whether on 23.11.2008 at about 09:30 am at Mussoorie Bypass Ring Road an accident occurred on account of rash and negligent driving of Ambassador car no.UA07-B-0272 by its driver, in which Prakshep Farasi sustained injuries?
- (ii) Whether the claimants are entitled to get the compensation? If yes, to what amount and from which party?

4. The Tribunal, on the basis of evidence adduced before it, decided issue no.1 in favour of the claimants and held the respondent nos.1 and 2 jointly and severally liable but as the offending vehicle was insured with the respondent no.1 Insurance Company on the relevant date and time, it directed the respondent no.1 Insurance Company to pay the compensation to the claimants. Learned Tribunal considered the statement of appellant no.1 Pushpa Farasi (PW1), wife of deceased; PW2 Manjeet Singh,



who claimed to be the eyewitness, PW3 Dr. V.K. Nautiyal, the doctor who treated the deceased. Learned Tribunal also considered the documentary evidence produced before it and came to the conclusion that the incident had occurred due to rash and negligent driving by driver of Ambassador car no.UA07-B-0272. The findings recorded by the learned Tribunal on issue no.1 have not been put to challenge by the respondents and the same has attained finality. This Court has also taken into consideration the statements of the prosecution witnesses and the evidence adduced before the Tribunal and does not find any infirmity in the findings recorded by the Tribunal with regard to issue no.1.

5. Thus, the only issue which arises for consideration in the present appeal is with regard to the findings recorded on issue no.2 i.e. the quantum of compensation awarded by the Tribunal, which according to the appellants/claimants is on lower side, and it was their further case that the Tribunal has failed to award appropriate compensation under several permissible heads.

6. While deciding issue no.2, the learned Tribunal noted that there was no dispute regarding the insurance of the offending vehicle with respondent no.1 on the relevant date. Accordingly, the liability to satisfy the award was fastened upon the Insurance Company.



7. Learned Tribunal assessed the income of the deceased to be ₹ 3,000/- per month as the claimants were not able to prove the income of the deceased to be ₹ 7,000/- per month. As per the high school certificate of the deceased, the date of birth of the deceased was 03.06.1972 and as such he was aged about 36 years on the date of incident and accordingly the Tribunal applied the multiplier of '16'. The Tribunal further recorded that the deceased would have spend $1/3^{\text{rd}}$ on himself towards his personal and living expenses as such deduction of $1/3^{\text{rd}}$ was made from the income of the deceased. Learned Tribunal also granted a sum of ₹ 57,459/- for medical expenses and ₹ 10,000/- towards funeral expenses and loss of estate. In total, compensation to the tune of ₹ 4,52,000/- was awarded in favour of the claimants. The findings recorded by the Tribunal in the impugned judgment are as follows:-

“याचीगण की ओर से मृतक की मासिक आय के संबंध में कोई आय प्रमाण पत्र पत्रावली पर दाखिल नहीं किया गया है जिससे मृतक की निश्चित मासिक आय का आकलन किया जा सके। ऐसी स्थिति में मृतक की न्यूनतम आय माना जाना न्यायोचित होगा । अतः मृतक की 3000/- रुपये मासिक न्यूनतम आय मानते हुये उसकी वार्षिक आय 36,000/- रुपये होती है। यदि मृतक जीवित होता तो वह इस आय में से एक तिहाई स्वयं अपने ने उपर व्यय करता। इस प्रकार: मृतक की 24000/- रुपये वार्षिक आय आश्रित हानि हेतु निर्धारित की जाती है । इस धनराशि में 16 का गुणांक लगाये जाने पर यह धनराशि अकनं 3,84,000/- रुपये होती है। याचीगण द्वारा मृतक के उपर उसकी मृत्यु से पूर्व दवाई व परीक्षण आदि पर अकनं 57,459/- रुपये व्यय किया जाना साबित



है। यह धनराशि भी याचीगण को दिलाया जाना न्यायोचित माना जाता है। याचीगण को मृतक के दाह संस्कार पर भी कुछ धनराशि व्यय करनी पड़ी होगी और मृतक की असामयिक मृत्यु पर मृतक के परिवारजन उसके प्रेम, स्नेह व सानिध्य से वंचित हो गये। अतः सभी बातों को ध्यान में रखते हुये इस हेतु याचीगण को 10.000 /- रुपये एक मुश्त दिलाया जाना भी न्यायोचित माना जाता है। इस प्रकार कुल प्रतिकर धनराशि 4,51,459/- रुपये होती है, जिसे राउण्ड फीगर में 4,52,000/- (चार लाख बावन हजार) रुपये माना जाता है। तदनुसार प्रस्तुत केस में याचीगण अकंन- 4,52,000/- रुपये क्षतिपूर्ति के रूप में प्राप्त करने की अधिकारी पाये जाते हैं।”

8. Learned Tribunal directed the respondent no.1 Insurance Company to pay the amount of compensation to the claimants within two months from the date of order, failing which the claimants would be entitled to receive interest @ 7% per annum from the date of filing of the claim petition.

9. The said Award has been assailed by the appellants/claimants in the present appeal seeking enhancement of compensation. Learned counsel for the appellants made the following submissions:-

- (i) The deceased had undergone one year certificate course of Fitter from the Garhwal Jal Sansthan, Dehradun and also possessed the Diploma in Computer Programming, as such, it is clear that the deceased was skilled worker and therefore notional income was wrongly assessed by the Tribunal as ₹



3,000/- per month whereas it ought to have been ₹ 7,000/- per month as claimed by the claimants.

- (ii) The Tribunal committed an error in making deduction of one-third towards personal and living expenses; as there were four persons dependent upon the deceased i.e. the wife, son, mother and father, the deduction should have been one-fourth.
- (iii) The Tribunal has not granted any amount towards future prospects and it ought to have been 50% of the income of the deceased.
- (iv) The Tribunal has erred in awarding interest only in case of non-payment of compensation within two months from the date of order and the interest @ 7% was payable from the date of filing of the claim petition till the date of realisation of compensation and as such the award of conditional interest was not proper.

10. In support of his submissions, learned counsel for the appellants/claimants has placed reliance on the following judgments of Hon'ble Apex Court:-

- (i) Sarla Verma and others vs. Delhi Transport



Corporation and another, (2009) 6 SCC 121

- (ii) Kirti and another vs. Oriental Insurance Company, (2021) 2 SCC 166
- (iii) Jitendra Khimshankar Trivedi vs. Kasam Daud Kumbhar and others, (2015) 4 SCC 237

11. Per contra, learned counsel appearing for the respondent no.1 - New India Insurance Company, while supporting the Award passed by the Tribunal, made the following submissions:-

- (i) The accident pertains to the year 2008 and in view of judgment of this Court in “Ishwari Dutt Joshi and another vs. State of Uttarakhand” (2008) 1 UD 148, the notional income of ₹ 3,000/- per month was rightly taken into consideration as the claimants had failed to prove the income of the deceased as ₹ 7,000/- per month.
- (ii) A conditional simple interest @ 7% per annum has been rightly awarded by the Tribunal.
- (iii) The amount of ₹ 10,000/- towards funeral expense and loss of estate looking to the year of incident is also justified and proper.



(iv) The judgments on which the learned counsel for the appellants has placed reliance are not applicable to the facts and circumstances of the case.

12. Heard learned counsel for the parties and perused the entire record.

13. So far as the income of the deceased is concerned, record reveals that the claimants have not produced any evidence to substantiate their claim that the deceased was earning more than ₹ 7,000/- per month. Thus, in absence of any proof of income, the Tribunal has rightly taken into consideration the concept of notional income and has rightly assessed the income of the deceased to be ₹ 3,000/- per month. The said notional income is in conformity with the minimum wages payable to a skilled worker at the relevant time in the State of Uttarakhand.

14. The next question is with regard to the deduction towards the personal and living expenses of the deceased. On this count, the Tribunal has made 1/3rd deduction, which looking to the number of dependants of the deceased is erroneous and



unjustified. The deceased left behind four dependants, namely, his wife, son, mother and father. In view of **Sarla Varma case** (supra), where the dependants are between four to six, the deduction towards personal and living expenses would be $1/4^{\text{th}}$, thus, the Tribunal has erred in making deduction of $1/3^{\text{rd}}$ from the income of the deceased and it should be $1/4^{\text{th}}$.

15. The appellants/claimants have also claimed an addition towards future prospects. Hon'ble Apex Court in "**National Insurance Company Ltd. v. Pranay Sethi and others**" (2017) 16 SCC 680, in para 59.4 of judgment, has held that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Paragraph 59.4 of the judgment is reproduced as under:-

"59.4. 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."



16. In the present case, the deceased was aged about 36 years. Hence, in view of aforesaid judgment, an addition of 40% on the income of the deceased towards future prospects should be made.

17. The Hon'ble Apex Court in **New India Assurance Company Limited v. Somwati and Others, (2020) 9 SCC 644**, after considering the earlier decisions in *Magma General Insurance Company Limited v. Nanu Ram*, (2018) 18 SCC 130, and *United India Insurance Company Limited v. Satinder Kaur*, (2021) 11 SCC 780, recognized that consortium is not confined to spousal consortium and may include parental and filial consortium. Paragraph nos. 35 to 45 of judgment are reproduced as under:-

“35. The word “consortium” has been defined in Black's Law Dictionary, 10th Edn. The Black's Law Dictionary also, simultaneously, notices the filial consortium, parental consortium and spousal consortium in the following manner:

“Consortium¹. The benefits that one person, esp. A spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium.

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

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

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



36. In *Magma General Insurance Co. Ltd.* [*Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] as well as *United India Insurance Co. Ltd.* [*United India Insurance Co. Ltd. v. Satinder Kaur*, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410] , the three-Judge Bench laid down that the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In para 87 of *United India Insurance Co. Ltd.* [*United India Insurance Co. Ltd. v. Satinder Kaur*, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410] , “consortium” to all the three claimants was thus awarded. Para 87 is quoted below:

“87. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] and *Magma General* [*Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , the following amounts are awarded under the conventional heads:

(i) Loss of estate : Rs 15,000

(ii) Loss of consortium:

(a) Spousal consortium : Rs 40,000

(b) Parental consortium : 40,000 × 3 = Rs 1,20,000

(iii) Funeral expenses : Rs 15,000”

37. The learned counsel for the appellant has submitted that *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] has only referred to spousal consortium and no other consortium was referred to in the judgment of *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] has referred to amount of Rs 40,000 to the “loss of consortium” but the Constitution Bench had not addressed the issue as to whether consortium of Rs 40,000 is only payable as spousal consortium. The judgment of *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.



38. *The three-Judge Bench in United India Insurance Co. Ltd. [United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410] has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of the three-Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.*

39. *We, thus, found the impugned judgments [Somwati v. Dharmendra Kumar, 2019 SCC OnLine All 3897] ‘ [Sangita Devi v. New India Assurance Ltd., 2019 SCC OnLine Del 10877] ‘ [New India Assurance Co. Ltd. v. Azmati Khatoon, 2019 SCC OnLine Del 10530] ‘ [Cholamandalam MS General Insurance Co. Ltd. v. Umarani, 2019 SCC OnLine Mad 29630] ‘ [Pinki v. Rajeev, 2019 SCC OnLine Del 11882] ‘ [Nanak Chand v. New India Assurance Co. Ltd., 2020 SCC OnLine Del 62] ‘ [Oriental Insurance Co. Ltd. v. Rinku Devi, 2019 SCC OnLine Del 10493] of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. We, however, accept the submissions of the learned counsel for the appellant that there is no justification for award of compensation under separate head “loss of love and affection”. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head “loss of love and affection”.*

40. *We may also notice the three-Judge Bench judgment of this Court relied upon by the learned counsel for the appellant i.e. Sangita Arya v. Oriental Insurance Co. Ltd. [Sangita Arya v. Oriental Insurance Co. Ltd., (2020) 5 SCC 327 : (2020) 3 SCC (Civ) 254 : (2020) 2 SCC (Cri) 905] The counsel for the appellant submits that this Court has granted only Rs 40,000 towards “loss of consortium” which is an indication that “consortium” cannot be granted to children. In the above case, Motor Accidents Claims Tribunal has awarded Rs 20,000 to the widow towards loss of consortium and Rs 10,000 to the minor daughter towards “loss of love and affection”. The High Court has reduced [Oriental Insurance Company Ltd. v. Sangita Arya, 2016 SCC OnLine Utt 970] the amount of consortium from Rs 20,000 to Rs 10,000. Para 16 of the judgment is to the following effect : (Sangita Arya case [Sangita Arya v. Oriental Insurance Co. Ltd., (2020) 5 SCC 327 : (2020) 3 SCC (Civ) 254 : (2020) 2 SCC (Cri) 905] , SCC p. 330, para 10)*

“10. The consortium payable to the widow was reduced [Oriental Insurance Company Ltd. v. Sangita Arya, 2016 SCC OnLine Utt 970] by the High Court from Rs 20,000 (as awarded by



MACT) to Rs 10,000; the amount awarded towards loss of love and affection to the minor daughters was reduced from Rs 10,000 to Rs 5000. However, the amount of Rs 5000 awarded by MACT towards funeral expenses was maintained.”

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

42. It is relevant to notice the judgment of this Court in *United India Insurance Co. Ltd. [United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410]* which was delivered shortly after the above three-Judge Bench judgment of Sangeeta Arya [*Sangita Arya v. Oriental Insurance Co. Ltd., (2020) 5 SCC 327 : (2020) 3 SCC (Civ) 254 : (2020) 2 SCC (Cri) 905*] specifically laid down that both spousal and parental consortium are payable which judgment we have already noticed above.

43. We may also notice one more three-Judge Bench judgment of this Court in *M.H. Uma Maheshwari v. United India Insurance Co. Ltd. [M.H. Uma Maheshwari v. United India Insurance Co. Ltd., (2020) 6 SCC 400 : (2020) 3 SCC (Cri) 274 : (2020) 3 SCC (Civ) 744]* decided on 12-6-2020. In the above case, the Tribunal had granted the amount of rupees one lakh towards loss of consortium to the wife and rupees three lakhs for all the appellants towards loss of love and affection. The High Court in the above case had reduced the amount of compensation in the appeal filed by the insurance company. The High Court held [*United India Insurance Co. Ltd. v. M.H. Uma Maheshwari, 2017 SCC OnLine Kar 6258*] that by awarding the amount of rupees one lakh towards loss of consortium to the wife, the Tribunal had committed error while awarding rupees one lakh to the first appellant towards the head of “loss of love and affection”. Allowing the appeal filed by the claimant, this Court maintained the order of MACT.

44. In the above judgment although rendered by the three-Judge Bench, there was no challenge to award of compensation of rupees one lakh towards the consortium and rupees three lakhs towards the loss of love and affection. The appeal was filed only by the claimants and not by the insurance company. The Court did not pronounce on the correctness of the amount awarded under the head “loss of love



and affection”.

45. We may also notice the additional submission advanced in Civil Appeal No. 3099 of 2020 [arising out of SLP (C) No. 8250 of 2020], Oriental Insurance Co. Ltd. v. Rinku Devi & Others. As noted above, we have taken the view that the order [Oriental Insurance Co. Ltd. v. Rinku Devi, 2019 SCC OnLine Del 10493] of the High Court awarding compensation towards “loss of love and affection” @ Rs 50,000 to each of the claimants is unjustified which is being set aside in this appeal. We, further, in the above appeal also set aside the directions of the High Court in para 9 by which statutory amount along with interest accrued thereon was directed to be deposited in AASRA fund.”

18. The aforesaid principle has been reiterated by the Hon’ble Apex Court in its recent judgment rendered in the case of **“Neelam and others vs. Ganga Singh & Others” (2026) SCC Online SC 888.**

19. Accordingly, while the assessment of the monthly income of the deceased at ₹3,000/- is maintained, the deduction towards personal and living expenses is modified from one-third to one-fourth. An addition of 40% towards future prospects shall also be made, keeping in view the age of the deceased. The claimants shall further be entitled to compensation under the appropriate conventional heads, including loss of consortium, in accordance with the applicable principles laid down by the Hon'ble Supreme Court.

20. In view of the foregoing discussion, the appeal filed by the appellants/claimants deserves to be



allowed and the compensation awarded by the learned Tribunal is liable to be enhanced. The appellants/claimants would be entitled to get enhanced compensation of ₹ 7,94,800/- under the following heads:-

S.No.	Compensation Heads	Amount
1.	Monthly income	3,000/- per month i.e. 36,000/- per annum
2.	Future prospects @ 40%	36,000 + 14,400 = 50,400
3.	Multiplier '16'	50,400 x 16 = 8,06,400
4.	One-fourth deduction towards personal and living expenses	8,06,400 – 2,01,600 = 6,04,800
5.	Loss of consortium @ 40,000 per person	1,60,000
6.	Loss of Estate	15,000
7.	Funeral expenses	15,000
8.	Total compensation	7,94,800

21. This amount of compensation would carry interest @ 7 % per annum from the date of filing of the claim petition till the date of its realisation. Out of the amount of compensation, the appellant no.1/claimant no.1 would be entitled to get 50% and the remaining amount would be equally divided amongst appellant nos.2, 3 and 4. The amount already paid by the respondent no.1-New India Insurance Company Ltd., if



any, shall be adjusted towards the final compensation payable to the appellants/claimants. The amount of compensation along with interest shall be paid by the respondent no.1 to the claimants within two months from the date of this order.

(Subhash Upadhyay, J.)

Dt. 29.09.2026
Rajni