

(2022)07ILR A283
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.05.2022

BEFORE

THE HON'BLE J.J. MUNIR, J.

First Appeal From Order No. 866 of 2011

Connected with

First Appeal From Order Nos. 867 of 2011, 868 of 2011, 869 of 2011, 870 of 2011, & 871 of 2011

Smt. Shanti & Ors.

...Appellants

Versus

Anil Awasthi @ Anil Kumar Awasthi & Anr.

...Respondent

Counsel for the Appellants:

Balendu Shekhar, Prakash Chandra

Counsel for the Respondent:

A.K. Shukla, Anil Srivastava

(A) Civil Law - Motor Vehicles Act, 1988 - Sections 163-A, 168 - UP Motor Vehicles Rules, 1998 - Rule-220-A(2)(i), 220-A(3), 220-A(3)(iii), 220-A(4) - Indian Penal Code, 1860 - Sections 279, 304-A, 427: - Claimants' Appeals - seeking similar question of quantum of compensation - six MACP are filed by claimants against an accident in question - awarded separately - since, common questions of facts like FIR, Charge sheet, DL, site plan, inquest report & insurance papers, registration certificate, tax receipts of offending vehicle and question of law arises in all the appeals are similar - as such, connected & heard together and decided through a common judgment - however, the distinguishing features of each case in the matter of determining the compensation. (Para - 5)

(B) Civil Law- Motor Vehicles Act, 1988 - Section -163-A, 168 - UP Motor Vehicles Rules, 1998 - Rule-220-A(2)(i), 220-A(3), 220-A(3)(iii), 220-A(4) - Indian Penal Code, 1860 - Sections 279, 304-A & 427: - Claimants' Appeals - quantum of compensation - No cross appeals are filed - no issue about factum of negligence, accident, contributory negligence or the liability of insurers - only single issue of enhancement of award - in view of law laid down by the by Apex Court, claimants are entitled for consideration of their claim for enhancement of compensation. (Para 11)

(C) Civil Law - Motor Vehicles Act, 1988 - Sections 163-A, 168 - UP Motor Vehicles Rules, 1998 - Rule-220-A(2)(i), 220-A(3), 220-A(3)(iii), 220-A(4) - Indian Penal Code, 1860 - Sections 279, 304-A & 427 - Claimants' Appeals - quantum of compensation - there are three law points would be considerable in these appeal respectively i.e. (i) Whether awarded compensation is requires scrutiny?, (ii) Whether the tribunal was right in denying any compensation towards future prospects?, (iii) Whether the award of compensation under the conventional heads is in accordance with law? - Determination of all law points - positively - all appeals are allowed - claimants in each of the appeals shall be entitled to enhanced compensation, accordingly. (Para 16, 72)

(D) Civil Law- Motor Vehicles Act, 1988 - Section -163-A, 168 - UP Motor Vehicles Rules, 1998 - Rule-220-A(2)(i), 220-A(3), 220-A(3)(iii), 220-A(4) - Indian Penal Code, 1860 - Sections - 279, 304-A & 427 - Claimants' Appeals - quantum of compensation - determination - question of law regarding future prospects - there is no scope to doubt that the principle relating to future prospects are to be determined in accordance with Rules of 1998 not in accordance with the decision in Pranay Sethi's Case - as the Rules, 1998 afford better & greater benefits to the claimants - claimants are entitled to enhanced compensation - in their respective appeals accordingly. (Para - 19, 20, 21, 22)

(E) Civil Law - Motor Vehicles Act, 1988 - Sections 163-A, 168 - UP Motor Vehicles Rules, 1998 - Rule-220-A(2)(i), 220-A(3), 220-A(3)(iii), 220-A(4) - Indian Penal Code, 1860 - Sections 279, 304-A & 427 - Claimants' Appeals - quantum of compensation - determination - question of law regarding deduction towards personal expenses - it would be admissible/based on the decision of the Supreme Court in 'Sarla Verma' & 'Pranay Shethi's & 'Satinder Kaur's' cases - claimants are entitled to enhanced compensation accordingly, in their respective appeals. (Para - 25, 26)

(F) Civil Law- Motor Vehicles Act, 1988 - Sections 163-A & 168 - UP Motor Vehicles Rules, 1998 - Rule-220-A(2)(i), 220-A(3), 220-A(3)(iii), 220-A(4) - Indian Penal Code, 1860 - Sections 279, 304-A & 427 - Claimants' Appeals - quantum of compensation - determination so far as compensation towards Conventional Heads - court is of opinion that what is to be awarded for loss of estate, loss of consortium, funeral expenses, loss of filial consortium etc - held, to be entitled thereof - as per law laid down by the constitution bench of Hon'ble Apex Court in '*Pranay Shethi's as well as Magma General Insurance Co. Ltd. Cases* - since Pranay Sethi would prevail over that under the Rules of 1998 - each of claimants are entitled to enhanced compensation - in respective appeals, accordingly.(Para - 28, 29, 30, 31)

Appeal Allowed. (E-11)

List of Cases cited: -

1. National Insurance Co. Vs Pranay Sethi & ors., (2017) 16 SCC 680
2. Sarla Verma Vs DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002
3. New India Assurance Co. Ltd Vs Urmila Shukla & ors., 2021 SCC OnLine SC 822
4. Sushil Kumar & ors. Vs M/s. Sampark Lojastic Pvt. Ltd. & ors., F.A.F.O. No. 2581 of 2011, decided on 26.04.2017
5. United India Insurance Co. Ltd. Vs Satinder Kaur @ Satwinder Kaur & ors., 2020 SCC OnLine SC 410
6. Magma General Insurance Co. Ltd. Vs Nanu Ram @ Chuhru Ram & ors., (2018) 18 SCC 130
7. Kurvan Ansari alias Kurvan Ali & anr. Vs Shyam Kishore Murmu & anr., (2022) 1 SCC 317
8. Roop Lal & anr. Vs Suresh Kumar Yadav & ors., 2022 SCC OnLine All 25.
9. Jiuti Devi & ors. Vs Manoj Kumar Rai & ors., 2022 SCC OnLine All 46

(Delivered by Hon'ble J.J. Munir, J.)

This judgment will dispose of the present appeal and connected Appeal Nos. 867 of 2011, 868 of 2011, 869 of 2011, 870 of 2011 and 871 of 2011.

2. This appeal arises out of a judgment and award of Mr. Balendu Singh, Motor Accident Claims Tribunal/Additional District Judge, Court No. 1, Lucknow dated 26.10.2010 passed in Motor Accident Claim Petition No. 141 of 2005.

3. The appeal has been preferred by the claimants, who seek enhancement of the compensation awarded by the Tribunal. The claimants are the dependents of one Keshan (Krishna), who died in a motor accident on March the 8th, 2005 at about 5 O' Clock in the morning at a place beyond Bhitariya near Badaila-Narayanpur Chauraha, falling within the local limits of P.S. Ramsanehi Ghat in the District of Barabanki. According to the claimants, the deceased had boarded a tractor trolley, bearing Registration No. U.P. 78 A-9585, along with other natives of the village to do darshan of Mahadeva at Barabanki. On way to destination on the date, time and place indicated, the passengers on board the tractor trolley got down to answer the nature's call, the tractor trolley being parked on the left hand side of the road. Some passengers proceeded to the nearby fields and some stayed on board. There were still others, who de-boarded, but stood about the parked vehicle. At that time, a DCM truck bearing Registration No. U.P. 78 AN 4185, proceeding from the opposite direction, driven rashly and negligently, hit the stationary tractor trolley. The right side of the tractor trolley was damaged. In consequence of the accident, the deceased suffered serious injuries, of which he died.

4. A first information report of the accident was lodged with the Police by one Krishna Pal Singh, a passenger on board the ill-fated tractor trolley, on 8th March, 2005 at about 05:45 a.m. The information was registered as Case Crime No. 106 of 2005, under Sections 279, 304-A, 427 IPC, P.S.

Ramsanehi Ghat, District Barabanki against the unknown driver of the DCM truck. This was so because after the accident, the offending truck was apprehended but the driver made good his escape. The inquest and autopsy of the dead body was done in accordance with law and the Police, after investigation, filed a charge-sheet against the driver of the offending vehicle, Suresh Kumar Mishra. The Police, as part of the case diary, also drew up a site plan of the accident.

5. Besides MACP No. 141 of 2005 giving rise to the present appeal, MACP Nos. 142 of 2005 to 146 of 2005 were filed by the dependents of the other deceased-victims of the aforesaid accident. All the claim petitions were tried together and decided by separate judgments and awards, all dated 26.10.2010 passed by the same Tribunal. The connected Appeal Nos. 867 of 2011 to 871 of 2011 arise out of the judgments and awards passed in the claim petitions instituted by the dependents of the other victims of the accident. Since common questions of fact and law arise in all the appeals, these were connected, heard together and are being decided by a common judgment, as already said. FAFO No. 866 of 2011 shall be treated as the leading case. However, the distinguishing features of each case in the matter of determining the compensation shall be indicated during the course of this judgment.

6. Heard Mr. Balendu Shekhar, learned counsel for the appellants and Mr. Anil Srivastava, learned counsel for respondent no. 2, United India Insurance Company Ltd. in the leading case and in all connected appeals, where parties are identically arrayed. The appellants shall hereinafter be referred to as the 'claimants', whereas the United India Insurance Company-respondent no. 2 shall be called the 'Insurance Company'. In the claim petition giving rise to the leading appeal, the owner of the offending truck, Anil Awasthi was arrayed as opposite party no. 1. Anil Awasthi, the owner of the vehicle shall hereinafter be referred to as the 'owner'.

7. A written statement was filed on behalf of the owner, who has generally denied the case in the claim petition in almost evasive terms, but pleaded that the offending vehicle was in his registered ownership and that it was duly insured with the Insurance Company. It was not seriously pleaded that the offending vehicle was not involved in the accident but a clear case was set up that the liability, if any, adjudged by the Tribunal would fall on the shoulders of the Insurance Company. A separate written statement was filed on behalf of the Insurance Company, which wholesomely and specifically denied the case in the claim petition - the factum of accident and their liability under the law to indemnify. Defences of fact and law were raised by the Insurance Company, including those regarding the validity of the driver's licence on the date of accident, as also the validity of the offending vehicle's permit, registration papers and fitness certificate. The following issues were framed by the Tribunal in the claim petition giving rise to the leading appeal (translated from Hindi into English):-

(1) Whether on 08.03.2005 at 05:00 O' Clock in the morning at a place ahead of Bhitariya near Badaila-Narayanpur Crossing within the local limits of P.S. Ramsanehi Ghat, District Barabanki, the driver of truck DCM No. U.P. 78 AN 4185, driving it rashly and negligently, hit the stationary tractor trolley, leading to severe injuries suffered by Keshan (Krishna), who was standing near it and in consequence whereof he died?

(2) Whether at the time of accident, the driver of truck DCM No. U.P. 78 AN 4185 had a valid and effective driving licence?

(3) Whether at the time of accident, truck DCM No. U.P. 78 AN 4185 was insured with opposite party no. 2, United India Insurance Company Ltd. and driven according to the conditions of the policy?

(4) Whether the accident occurred on account of contributory negligence of the driver of the DCM truck and that of the tractor?

(5) Are the claimants entitled to any relief? If yes, to what sum of money and from which opposite party?

8. The claimants in all the appeals filed copies of the FIR, relative inquests, the postmortem reports, copy of the charge sheet filed against the driver of the offending vehicle and the site plan. Besides these documents, copies of the insurance cover/policy, the registration certificate, additional tax receipt relating to the offending vehicle and the driving licence of the driver thereof were all filed by Anil Awasthi, the owner.

9. PW-1 Bhaiya Lal was examined to prove the occupation, age and monthly income of the deceased, whereas PW-2 Sumat Lal was examined to prove the factum of accident. Sumat Lal is an eye witness and was a passenger on board the ill-fated tractor trolley. No oral evidence was admittedly led on behalf of the Insurance Company or the owner of the offending vehicle. It must be remarked here that in all the connected appeals, there are identical issues and similar evidence recorded, where Sumat Lal is a common witness about the accident. PW-1 differs in each case and is either the father or the son of the deceased concerned, examined to prove the occupation, age, income and other relevant facts about the deceased, necessary to work out the dependency.

10. Issue nos. 2 and 3 regarding the validity of the driving license and the insurance cover were not pressed by the insurance company at the hearing of the claim petition. Issue nos. 1 and 4 were answered in favour of claimants and against the Insurance Company. A sum of Rs. 4,41,500/- was awarded in favour of the claimant in the leading appeal with simple interest @ 6% per annum from the date of institution of the claim petition and compensation directed to be paid within 30 days of the date of award. In the event of default, the Tribunal directed 9% simple interest per annum to be paid to the claimants. There are some ancillary directions in the award as regards the inter se share of the claimants, besides its investment with a nationalized bank in an interest bearing account for a period of five years.

11. In all other appeals, different sums of money towards compensation have been awarded to the respective claimants. In all cases, the liability has been fastened upon the Insurance Company to satisfy the award. The claimants are disillusioned by the quantum of compensation awarded and have, therefore, appealed. No cross appeal has been preferred on behalf of the Insurance Company. In the present appeal and the connected appeals, there appears to be no issue about the factum of negligence, the accident, the contributory negligence or the liability of the Insurance Company. The only issue that arises for consideration in the leading appeal, as well as connected appeals, is about the quantum of compensation to which the claimants are entitled.

12. Learned counsel for the claimants, Mr. Balendu Shekhar has assailed the award, saying that compensation is far from adequate. It is, according to Mr. Shekhar, not a just award. He has particularly emphasized that the future prospects of the deceased have not at all been taken into consideration by the Tribunal and a deduction of 1/3rd has been made in each case towards personal expenses without reference to the number of dependents. He has also assailed the award for the quantum of compensation under the conventional heads of consortium, loss of estate and funeral expenses. Learned counsel for the claimants in support of his contention on the above score has placed reliance upon the decision of the Constitution Bench of the Supreme Court in **National Insurance Company v. Pranay Sethi and others, (2017) 16 SCC 680**.

13. Mr. Anil Srivastava, learned counsel for the Insurance Company, on the other hand, has supported the award saying that just compensation has been ordered.

14. It would now be apposite to deal with the facts of each of the appeals, commencing with the leading case, in order to determine the validity of the award vis-a-vis the compensation awarded.

15. In the leading case, the deceased Keshan *alias* Krishna is survived by five dependents, to wit, his widow Smt. Shanti, two minor children, a son named Sumer and a daughter Km. Manisha aged 4 years and 6 months, respectively at the time the cause of action arose. Bhaiya Lal and Smt. Devrati, are the deceased's father and mother, respectively. The deceased's widow was aged 23 years, his father, 55 and mother 48. The deceased was aged 25 years. The deceased was a labourer and the Tribunal, going by the rate of daily-wages earned at the relevant time, determined the deceased's income at a figure of Rs. 3000/- as against Rs. 4000/- claimed. A deduction of 1/3rd was ordered towards the money that the deceased would spend on himself. The annual dependency was determined at a sum of Rs. 24,000/- and applying the multiplier of 18, the Tribunal worked out the substantive compensation in the sum of Rs. 4,32,000/- (other than conventional heads). Under the conventional heads a sum of Rs.

5000/- was awarded to the widow towards loss of consortium, Rs. 2000/- towards funeral expenses and Rs. 2500/- towards loss of estate. Thus, the total compensation worked out is a figure of Rs.4,41,500/-.

16. Considering the submissions advanced by the learned counsel for the parties, there are three points on which the awarded compensation requires scrutiny and a just award made. It is to be seen whether the Tribunal was right in denying any compensation towards future prospects and that if the Tribunal was right in directing a deduction of 1/3rd of the deceased's income, given the number of his family members. It is also to be seen whether the award of compensation under the conventional heads is in accordance with law. The law regarding future prospects was summarized by the Supreme Court in **Pranay Sethi (supra)**, where it is held:

"56. The seminal issue is the fixation of future prospects in cases of deceased who are self-employed or on a fixed salary. *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, 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 standardisation 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.

58. 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* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] thinks it appropriate not to add any amount and the same has been approved in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826]. 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."

17. The question whether future prospects are to be awarded in accordance with the principle laid down in **Pranay Sethi** or Rule 220-A(3) of the Uttar Pradesh Motor Vehicles Rules, 1998 (for short, the Rules of 1998) fell for consideration of the Supreme Court in **New India Assurance Co. Ltd v. Urmila Shukla and others, 2021 SCC OnLine SC 822**. The said appeal arose out of a decision of this Court, and, therefore, there is not the slightest doubt that the principle there squarely applies to the determination of future prospects in the State of U.P. In **Urmila Shukla (supra)**, the question that arose for consideration before their Lordships is set forth in paragraph no. 4 of the report. It reads:

"4. The basic ground of challenge by the appellant is that sub-rule 3(iii) of Rule 220A is contrary to the conclusions arrived at by the Constitution Bench of this Court in **National Insurance Company Ltd v. Pranay Sethi** reported in (2017) 16 SCC 680."

18. In the case of **Urmila Shukla**, it was held :

"9. It is to be noted that the validity of the Rules was not, in any way, questioned in the instant matter and thus the only question that we are called upon to consider is whether in its application, sub-Rule 3(iii) of Rule 220A of the Rules must be given restricted scope or it must be allowed to operate fully.

10. The discussion on the point in **Pranay Sethi** was from the standpoint of arriving at "just compensation" in terms of Section 168 of the Motor Vehicles Act, 1988.

11. If an indicia is made available in the form of a statutory instrument which affords a favourable treatment, the decision in **Pranay Sethi** cannot be taken to have limited the operation of such statutory provision specially when the validity of the Rules was not put under any challenge. The prescription of 15% in cases where the deceased was in the age bracket of 50-60 years as stated in **Pranay Sethi** cannot be taken as maxima. In the absence of any governing principle available in the statutory regime, it was only in the form of an indication. If a statutory instrument has devised a formula which affords better or greater benefit, such statutory instrument must be allowed to operate unless the statutory instrument is otherwise found to be invalid.

12. We, therefore, reject the submission advanced on behalf of the appellant and affirm the view taken by the Tribunal as well as the High Court and dismiss this appeal without any order as to costs."

19. There is thus no cavil that in the State of U.P., so long as Rule 220-A(3) is on the statute-book, future prospects have to be determined according to the Rules of 1998 and not by the figures for determination thereof as laid down in **Pranay Sethi**.

20. There is one more question that arises for consideration. The question is whether Rule 220-A (3) of the Rules of 1998, that was inserted by Notification No. 777/XXX-4-2011-4(3)-2010 dated 26 September, 2011 (Eleventh Amendment) Rules, 2011, would apply retrospectively to an accident like the one here, that happened much prior to the introduction of Rule 220-A of the Rules of 1998. Here, the accident is one that took place on 08.03.2005. The said question fell for consideration before a Division Bench of this Court in **F.A.F.O. No. 2581 of 2011, Sushil Kumar and others v. M/s. Sampark Logistic Private Limited and others, decided on 26.04.2017**. In **Sushil Kumar (supra)**, it was held by their Lordships of the Division Bench :

"30. Rule 220-A was inserted in the Uttar Pradesh Motor Vehicles Rules, 1998 in view of the various decisions of the law courts for providing benefit on account of future prospects of the injured/deceased. It provides for addition of certain percentage of the income of the injured/deceased in his actual income depending upon the age of the injured/deceased for the purposes of determination

of the compensation. The aforesaid Rule came into effect on 26.09.2011 after the decision of the claim petition but before filing of the appeal though the accident took place on 08.05.2010 much before the enforcement of the above Rule.

31. It is in view of the above that an argument is being raised that Rule 220-A of the Rules which came into effect on 26.09.2011 would not apply to the accident which had taken place on 08.05.2010.

32. In *Ram Sarup Vs. Munshi* AIR 1963 SC 553 it was laid down that a change in law during the pendency of an appeal has to be taken into account and will cover the rights of the parties.

33. The view expressed above was followed by the Supreme Court in *Mula Vs. Godhu* AIR 1971 SC 89.

34. In *Dayawati Vs. Inderjit* AIR 1966 SC 1423 the court had observed as under:-If the new law speaks in language, which expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance.

35. In *Amarjit Kaur Vs. Pritam Singh* AIR 1974 SC 2068 effect was given to the change in law during the pendency of an appeal as the hearing of an appeal under the procedural law of this country is in the nature of rehearing of the suit by superior court.

36. It was in the light of the above decisions that in *Lakshmi Narayan Guin and others Vs. Niranjan Modak* AIR 1985 SC 111 it was held that a change in law during the pendency of an appeal has to be taken into account and will cover the right of the parties.

37. The aforesaid decision was followed by a Division Bench of this court in *U.P. State Road Transport Corporation Vs. Smt. Madhu Sharma and others*, 2003 (4) AWC 2620 which was a case in relation to the provisions of the Motor Vehicles Act and it was observed that it is apparent that the change in law during the pendency of the original proceedings has to be taken into account so as to cover the rights of the parties.

38. In view of above decision the view expressed by the Division Bench of this court in *ICICI Lombard (Supra)* is not of good law as it does not takes into account the decisions referred to above in holding that the Rule 220-A of the Rules which came into effect on 26.09.2011 would not apply to the accident that took place prior to the said date only for the reason that the Rule was not specifically stated to be retrospective in nature."

21. Nothing has been brought to the notice of this Court that the decision of the Division Bench in *Sushil Kumar* has been expressly or impliedly overruled by a larger Bench or by their Lordships of the Supreme Court. The said decision still, therefore, continues to hold the field and is binding on this Court. Thus, there is no scope to doubt the principle relating to future prospects that are to be determined in accordance with Rule 220-A (3) of Rules of 1998.

22. It must also be remarked that for the same reason, whatever issues are governed by Rule 220-A would be dealt with according to its provisions and not in accordance with the decision in *Pranay Sethi*, insofar as the Rules of 1998 'afford better or greater benefit' to the claimants, to borrow the expression of their Lordships in *Urmila Shukla*.

23. Rule 220-A of the Rules of 1998 reads:

220-A. Determination of Compensation-

(1) X X X

(2) X X X

(3) The future prospects of a deceased, shall be added in the actual salary or minimum wages of the deceased as under-

(i) *Below 40 years : 50% of the salary of age*

(ii) *Between 40-50 : 30% of the salary years of age*

- (iii) *More than 50 : 20% of the salary years*
- (iv) *When wages not : 50% towards inflation sufficiently and price index. proved*

24. Going by the aforesaid position of law, it is evident that the deceased, a self-employed man well below the age of 40 years, would entitle his dependents, that is to say, the claimants, to add 50% to his income by way of future prospects.

25. Again, the deduction of that part of the deceased's income from the claimants dependency that he would have spent on himself, or so to speak, his personal expenses, in the opinion of this Court ought to be 1/4th, and not 1/3rd as directed by the Tribunal. This deduction towards personal expenses of the deceased is based on the decision of the Supreme Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** that has been followed and approved by the Constitution Bench of the Supreme Court in **Pranay Sethi**, and, later on, followed in **United India Insurance Company Ltd. vs. Satinder Kaur alias Satwinder Kaur and others, 2020 SCC OnLine SC 410**. In **Sarla Verma (supra)**, it has been held :

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra* [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

26. It must be noticed that the scale regarding deduction towards personal and living expenses of a married person under Rule 220-A(2)(ii) is also the same as in **Sarla Verma**.

27. This Court notices that the deceased has left behind five dependents, all of whom have claimed. There is no case that the deceased's parents were not dependent upon him. In usual circumstances, the father would have to be left out of the count of dependents assuming that he would have an income of his own, or else, the claimants would have to be burdened with the onus of producing evidence that he was dependent upon the deceased. Here, however, it is noticed that the father is 55 years old and the deceased was a labourer, a young man of 25 years, who was providing for the entire family. Considering the two minors to be a unit of one, the widow and the deceased's father and mother would make for a total of four dependents. In the circumstances, the number of the deceased's dependents are in the bracket of 4 to 6; to be precise 4. This would lead to the inevitable conclusion that the personal expense has to be fixed at a fraction of 1/4th, instead of 1/3rd, as directed by the Tribunal.

28. Again, so far as the conventional heads are concerned, this Court is of opinion that far less than what is to be awarded for the loss of estate, loss of consortium and funeral expenses has been directed by the Tribunal. Moreover, loss of consortium is not confined to the widow alone, but the parents too are entitled to be compensated for the loss of filial consortium. The two minor children are entitled to compensation on account of loss of parental consortium. In this regard, the holding of the Constitution Bench in **Pranay Sethi** is again of much relevance, where it is observed:

"48. This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule to the Act. The said Schedule has been found to be defective as stated by the Court in *Trilok Chandra* [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362]. Recently, in *Puttamma v. K.L. Narayana Reddy* [Puttamma v. K.L. Narayana Reddy, (2013) 15 SCC 45 : (2014) 4 SCC (Civ) 384 : (2014) 3 SCC (Cri) 574] it has been reiterated by stating : (SCC p. 80, para 54)

"54. ... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."

49. As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also provides for general damages in case of death. It is as follows:

"3. General damages (in case of death):

The following general damages shall be payable in addition to compensation outlined above:

- (i) Funeral expenses Rs 2000
- (ii) Loss of consortium, Rs 5000
if beneficiary is the
spouse
- (iii) Loss of estate Rs 2500
- (iv) Medical expenses -- Rs 15,000"
actual expenses
incurred before death
supported by
bills/vouchers but
not exceeding

50. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in *Trilok Chandra* [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs 1,00,000 was granted towards consortium in *Rajesh* [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]. The justification for grant of consortium, as we find from *Rajesh* [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149], is founded on the observation as we have reproduced hereinbefore.

51. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh* [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]. It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh* [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to *Santosh Devi* [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167], it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be

quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seems to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads." (emphasis by Court)

29. The principles governing award of compensation under conventional heads, particularly with regard to award for loss of consortium, have been laid down by the Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130**. In **Magma General Insurance Company Ltd. (supra)**, it has been held:

"21. A Constitution Bench of this Court in *Pranay Sethi*[*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse : [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

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

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

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

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [*Rajasthan High Court in Jagmala Ram v. Sohi Ram*, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; *Uttarakhand High Court in Rita Rana v. Pradeep Kumar*, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; *Karnataka High Court in Lakshman v. Susheela Chand Choudhary*, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570] . However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in *Pranay Sethi* [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium."

(emphasis by Court)

30. It must be noted that under Rule 220-A(4) of the Rules of 1998, compensation or damages under the non-pecuniary heads or the conventional heads have been stipulated. But, these are disadvantageous to the claimants and do not confer better or greater benefit upon them in comparison to the liquidated figures laid down in *Pranay Sethi*, where the figures under the conventional heads have been arrived at, bearing in mind the price index, falling bank interest, escalation of rates in different cases. There is a provision for 10% upward revision to be done in a span of three years. By contrast, the Rules of 1998, that have been amended to bring in Rule 220-A more than ten years ago, in the year 2011, cannot serve as a realistic index to award compensation under the conventional heads. The determination of compensation in *Pranay Sethi* would, therefore, be applicable. The revised and dynamic determination of compensation payable under the conventional heads stipulated in *Pranay Sethi* would prevail over that under the Rules of 1998. It is held, accordingly.

31. Here, each of the claimants are entitled to compensation for the loss of consortium. The widow is entitled to compensation for loss of spousal consortium, the parents to filial consortium and the two minor children to parental consortium. Of course for loss of estate, the award has to be enhanced to Rs. 15,000/- and an equal sum of money in compensation awarded towards funeral expenses in one set each. But, for the loss of consortium, each of the claimants are entitled to a sum of Rs. 40,000/- going by the principle laid down in *Pranay Sethi* and Magma General Insurance Company Ltd.

32. It is to be noted that the learned Counsel for the claimants has not disputed the finding of the Tribunal about the income of the deceased which, therefore, has to be held to be a sum of Rs. 3000/- per month.

33. There is no quarrel about the multiplier because it is the same according to the Second Schedule appended to the Motor Vehicles Act, 1988 (for short, "the MV Act") (as was then in force) framed under Section 163-A and in paragraph no. 42 of the decision of the Supreme Court in *Sarla Verma*. In case of conflict, it is to be determined in accordance with the decision in *Sarla Verma*. Accordingly, the compensation payable in the leading case is worked out as follows:-

- (i) Monthly Income (of the deceased) = 3000/-
- (ii) Monthly Income + Future Prospects(monthly income x 50%) = 3000+1500 = 4500/-
- (iii) Annual Income (of the deceased) = 4500 x 12 = 54,000/-
- (iv) Annual Dependency = Annual Income - one-fourth deduction towards personal expenses of the deceased = 54,000 - 13500 = 40,500/-
- (v) Total Dependency = Annual Dependency x Applied Multiplier = 40,500 x 18 = 7,29,000/-
- (vi) Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium = 15,000 + 15,000 + 40,000x5 = 2,30,000/-

The total compensation would therefore, work out to a figure of Rs. 7,29,000 + Rs.2,30,000= 9,59,000/-

34. The aforesaid sum of money would carry simple interest at the rate of 7% per annum in accordance with Rule 220-A(6) of the Rules of 1998 from the date of institution of claim petition until realization. However, the sum of money already deposited (paid or invested in terms of the impugned award or interim order of this Court) shall be adjusted.

In re. : FAFO No. 867 of 2011

35. The other facts and issues in this appeal do not arise for consideration as there is no quarrel about the factum of accident, the identity of the vehicle and the liability of the Insurance Company to satisfy the award. The deceased here was Anand Prakash Singh alias Pintu. He was standing near the tractor trolley at the time of the accident. He is survived by four dependents, where claimant nos. 1 and 2 to the claim petition are the father and mother respectively, whereas claimant nos. 3 and 4 are the deceased's brothers. There is no evidence to show that the deceased's brothers were, in any way, dependent upon him nor are they Class-I heirs, as the Tribunal has remarked. However, the dependency for the deceased's parents has to be worked out, which the Tribunal too has accepted. The deceased's age at the time of the accident was 15 years. It is claimed by his father Om Prakash Singh, who has testified as PW-1, that the deceased was a student but would help him with farming. The deceased had an income of Rs. 3000/- per month from his exertions in the fields that the family utilized. The Tribunal accepted the deceased's income, not on the basis of what the father stated in the witness box, but going by the notional income indicated in the Second Schedule to the MV Act (as was then in force) framed under Section 163-A of the Act. The Tribunal deducted 1/3rd towards personal expenses. The Tribunal has applied a multiplier of "15" also going by the Second Schedule to the Act. Thus, deducting 1/3rd from the notional income of the deceased, the annual dependency for the two claimants was worked out to a figure of Rs. 10,000/-. Applying the multiplier of 15, the total dependency was worked out to a figure of Rs. 1,50,000/-. To this was added under the conventional heads of compensation for loss of estate and funeral expenses a sum of Rs. 2500/- and Rs. 2000/- respectively. Nothing was awarded towards parental consortium. In the aforesaid manner, the Tribunal arrived at a figure of compensation equal to the sum of Rs. 1,54,500/-. This was directed to be paid with 6% simple interest from the date of institution of claim petition.

36. Now, in this case, this Court finds that the Tribunal has erred in determining the notional income of the deceased at a figure of Rs. 15,000/- per annum in accordance with the Second Schedule framed under Section 163-A of the MV Act. This is so because the consistent view of the Supreme Court is that the notional income is to be enhanced so long as the Second Schedule is not amended. It must be noticed here that as the MV Act stands, the Second Schedule has been omitted vide Act No. 32 of 2019 with effect from 01.09.2019. In this regard, reference may be made to the decision of the Supreme Court in *Kurvan Ansari alias Kurvan Ali and another v. Shyam Kishore Murmu and another*, (2022) 1 SCC 317, where it has been held:

"11. As the claim was made under Section 163-A of the Motor Vehicles Act, 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs. 15,000 per annum by applying multiplier of 15, awarded compensation of Rs. 2,25,000 towards loss of dependency with interest @ 6% p.a. from the date of judgment. When the appeals are preferred by the insurance company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the insurance company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs. 2,25,000, has awarded a further sum of Rs. 15,000 towards funeral expenses and accordingly granted a total compensation of Rs. 2,40,000 with interest @ 6 p.a. payable by Respondent no. 2 insurance company and by permitting it to recover the same from Respondent 1 owner of the motorcycle.

12. In the judgment in *Puttamma*, this Court has observed that the Central Government was bestowed with the duties to amend Schedule II in view of Section 163-A (3) of the Motor Vehicles Act, 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs. 1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs. 1,50,000 (Rupees one lakh fifty thousand only) for the non-earning persons of more than 5 (five) years old.

13. In *R.K. Malik* also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs. 15,000 per annum should be enhanced and increased as the same continued to exist without any amendment since 11-1994. In *Kishan Gopal* where the deceased was a ten-year-old, this Court has fixed his notional income at Rs. 30,000 per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule II is not yet amended. Therefore, fixing notional income at Rs. 15,000/- per annum for non-earning members is not just and reasonable.

15. In view of the judgments in Puttamma, R.K. Malik and Kishan Gopal, we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living in. In view of the same, the judgment in Rajendra Singh relied on by the learned counsel for respondent 2 insurance company would not render any assistance to the case of the insurance company.

16. In view of the above, we deem it appropriate to take notional income of the deceased at Rs. 25,000/- (Rupees twenty-five thousand only) per annum....."

37. The aforesaid decision in **Kurvan Ansari (supra)** was followed by a Division Bench of this Court in **Roop Lal and another vs. Suresh Kumar Yadav and others, 2022 SCC OnLine All 25.**

38. It is further remarked that the Tribunal erred in deducting 1/3rd from the notional income of the deceased, inasmuch as the deceased was a young boy and a bachelor. The multiplier of 15, going by the Second Schedule to the MV Act, also appears to be contrary to the principle in **Sarla Verma**, which has been approved by the Constitution Bench of their Lordships of the Supreme Court in **Pranay Sethi** and followed in **Satinder Kaur alias Satwinder Kaur**. According to the paragraph no. 42 of the judgment in **Sarla Verma**, for the age group of 15-20 years, the multiplier of 18 is applicable; not 15.

39. The principle in **Sarla Verma** would require a deduction of 50% towards the personal and living expenses of the deceased. Rule 220-A (2)(i) of the Rules of 1998 also requires a deduction of 50% towards personal expenses of an unmarried deceased. However, 1/3rd deduction is permissible, where the family of the bachelor is large and dependent on the deceased's income. This is not the case here. The deceased has left behind two dependents or who can legitimately be called dependents. Thus, whether the principle in **Sarla Verma** is applied or Rule 220-A(2)(i) of the Rules of 1998, a deduction of 50% towards personal and living expenses of the deceased has to be made; not 1/3rd. Again, the deceased was a young boy of 15 years and the Tribunal erred in not granting any compensation for loss of future prospects. Going by his age, the claimants would be entitled to add 50% of the income towards future prospects. Likewise, the Tribunal ought to have awarded in compensation, for the loss of filial consortium to both parents, a sum of Rs. 40,000/- each, and for loss of estate and funeral expenses, a sum of Rs. 15,000/- respectively.

40. In this view of the matter, the compensation payable in this appeal is worked out as follows:-

- (i) Annual Income (of the deceased) = = 25,000/-
- (ii) Total Annual Income = Annual Income + Future Prospects (Annual Income x 50%) = 25,000+12,500 = 37,500/-
- (iii) Annual Dependency = Annual Income - 50% deduction towards personal expenses of the deceased = 37,500 - 18,750 = 18,750/-
- (iv) Total Dependency = Annual Dependency x Applied Multiplier = 18,750 x 18 = 3,37,500/-
- (v) Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium = 15,000 + 15,000 + 40,000x2 = 1,10,000/-

The total compensation would therefore, work out to a figure of Rs. 3,37,500/- + Rs.1,10,000/- = 4,47,500/-

41. The aforesaid sum of money would carry simple interest at the rate of 7% per annum in accordance with Rule 220-A(6) of the Rules of 1998 from the date of institution of claim petition until realization. However, the sum of money already deposited (paid or invested in terms of the impugned award or interim order of this Court) shall be adjusted.

In re. : FAFO No. 868 of 2015

42. The only question that arises for consideration in this appeal is about the quantum of compensation, inasmuch as the factum of accident, death of the deceased in that accident and liability of the Insurance Company are not in issue.

43. The deceased here is Chhota. He was standing near the parked tractor trolley when the accident happened. The deceased is survived by his widow and six children. At the time of the accident, he was aged 54 years. According to the claimants, the deceased had a monthly income of Rs. 4500/-. He was earning his living by toiling on his fields. The deceased's wife Sumeria has testified as PW-1 and admitted the fact in her cross-examination that the deceased was working as a labourer. The Tribunal has, therefore, proceeded on the basis that the deceased was working as a labourer. The Tribunal assessed the deceased's income, going by the prevalent rate of wages for casual labourers, at a figure of Rs. 100/- a day or Rs. 3000/- per month. On that basis, the deceased's annual income was determined at a figure of Rs. 36,000/-. On the said figure, a deduction of 1/3rd was made towards personal expenses.

44. The Tribunal applied the multiplier of 11 to an annual dependency of Rs. 24,000/- in order to arrive at the substantive dependency of Rs. 2,64,000/-. The multiplier of 11 was applied following the Second Schedule to the MV Act framed under Section 163-A. That multiplier was arrived at by placing the deceased in the age bracket of 51 to 55 years. Compensation under the conventional heads was awarded in the manner that for the loss of consortium, loss of estate and funeral expenses, a sum of Rs. 5000/-, Rs. 2500/- and Rs. 2000/- in that order were determined. Adding up the total entitlement, a compensation of Rs. 2,73,500/- was determined for the claimants by the Tribunal, carrying a simple interest of 6% per annum from the date of institution of the claim petition. It is further directed that in the event, compensation was not made good within 30 days, simple interest at the rate of 9% per annum would be levied.

45. In view of the legal position that has been discussed above, this Court finds that the Tribunal has erred in omitting from the compensation awarded the requisite sum towards future prospects. It must be remarked that there is no dispute about the monthly wages of the deceased. Considering that the deceased was aged more than 50 years, going by Rule 220-A (3) of the Rules of 1998, the dependents would be entitled to add 20% to his income towards future prospects.

46. Also the Tribunal has erred in deducting 1/3rd towards personal expenses, whereas going by the number of members in the deceased's family who are his dependents, a deduction of 1/5th ought to have been made. The multiplier of "11" is of course unexceptionable, going by the deceased's age.

47. The Tribunal has also awarded far below the sum payable under the conventional heads to each of the three dependents. The widow would be entitled to compensation for the loss of spousal consortium, and the two minor children, that is to say, claimant nos. 6 and 7, Ram Lal and Km. Mithilesh, for the loss of parental consortium. The adult children would not be entitled to compensation vis-a-vis parental consortium as held by me in **Jiuti Devi and others v. Manoj Kumar Rai and others, 2022 SCC OnLine All 46.**

48. In view of the aforesaid conclusions, the compensation payable to the claimants in this appeal would have to be revised in the following manner:-

- (i) Monthly Income (of the deceased) = 3000/-
- (ii) Monthly Income+Future Prospects (monthly income x 20%) = 3000+600 = 3600/-
- (iii) Annual Income (of the deceased) = 3600 x 12 = 43,200/-
- (iv) Annual Dependency = Annual Income - one-fifth deduction towards personal expenses of the deceased = 43,200 - 8640 = 34,560/-
- (v) Total Dependency = Annual Dependency x Applied Multiplier = 34,560 x 11 = 3,80,160/-
- (vi) Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium = 15,000 + 15,000 + 40,000x3 = 1,50,000/-

The total compensation would therefore, work out to a figure of Rs.3,80,160 + Rs.1,50,000=5,30,160/-

49. The aforesaid sum of money would carry simple interest at the rate of 7% per annum in accordance with Rule 220-A(6) of the Rules of 1998 from the date of institution of claim petition until realization. However, the sum of money already deposited (paid or invested in terms of the impugned award or interim orders of this Court) shall be adjusted.

In re. : FAFO No. 869 of 2011

50. All other issues are not being agitated by the parties. The limited question for consideration in this appeal is about the compensation payable to the claimants, that is to say, the dependents of the deceased Shiv Sewak Singh. The deceased Shiv Sewak Singh was sitting in the parked tractor trolley when he became a victim of the accident. He is survived by five dependents, who claimed, to wit, his widow Smt. Dhanman Devi, his son Vijay Shankar Singh, Km. Kusum Singh and Km. Nisha Singh, both daughters of the deceased Shiv Sewak Singh and the deceased's father, Shiv Badan Singh.

51. There is no evidence to show that the deceased's son Vijay Shankar Singh, who was 25 years old at the time of accident, was, in any way, dependent upon the deceased. However, so far as the widow (aged 44 years at the time of accident) and the deceased's father (claimed to be 83 years at that time) are concerned, they are clearly his dependents. So far as the two unmarried daughters, aged at the relevant time 20 and 18 years, are concerned, they too were the deceased's dependents. The deceased was asserted in the claim petition to be earning a sum of Rs. 6000/- per month from his employment with the Government fair price shop and agriculture. The Tribunal, on an evaluation of the evidence on record, has held the deceased's income to be Rs. 3000/- per month. For the purpose, the Tribunal has looked into the cross-examination of PW-1, Vijay Shankar Singh, the deceased's son, who has said that the deceased was employed as a labourer. There is no evidence led about the deceased's income from his employment with the Government fair price shop or agriculture. The Tribunal has, therefore, rightly concluded that the deceased was a labourer, who had a daily income of Rs. 100/- per day or Rs. 3000/- a month. Thus, the deceased's annual income has been reckoned as Rs. 36,000/-.

52. The deceased had four dependent members in his family and, therefore, a deduction of 1/4th ought to be made towards personal expenses. In the opinion of this Court the Tribunal was not right in directing a deduction of 1/3rd towards personal expenses. The deceased's age was 54 years at the time of accident and the parties are not at issue about this determination of his age done by the Tribunal. This Court finds the said determination is one made on the basis of cogent evidence, which includes the postmortem report. Going by the table for determination of the appropriate multiplier applicable, as set out in paragraph no. 42 of the judgment in **Sarla Verma**, the appropriate multiplier would be 11. The Tribunal has applied the said multiplier. The parties before this Court are not at issue whether '11' is the appropriate multiplier, the deceased being aged 54 years.

53. The Tribunal has not awarded anything towards future prospects, which ought to have been done according to Rule 220-A (3) of the Rules of 1998. The deceased was a casual labourer, whose income has been determined by the Tribunal at a figure of Rs. 100/- per day or Rs. 3000/- per month. The said income going by the provisions of Rule 220-A(3) (iii), given the age of the deceased, would entitle the claimants towards future prospects to add 20% to his wages.

54. The deceased has left behind his widow, who is entitled to compensation for the loss of spousal consortium and the father for the loss of filial consortium. However, as far as the children are concerned, they are all adults and bearing in mind what I have held in Jiuti Devi, they would not be entitled to compensation on account of the loss of parental consortium.

55. In view of the aforesaid conclusions, the compensation payable to the claimants in this appeal would have to be revised in the following manner:-

- (i) Monthly Income (of the deceased) = 3000/-
- (ii) Monthly Income+Future Prospects (monthly income x 20%) = 3000+600 = 3600/-
- (iii) Annual Income (of the deceased) = 3600 x 12 = 43,200/-

(iv) Annual Dependency = Annual Income - one-fourth deduction towards personal expenses of the deceased = 43,200- 10,800 = 32,400/-

(v) Total Dependency = Annual Dependency x Applied Multiplier = 32,400 x 11 = 3,56,400/-

(vi) Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium = 15,000 + 15,000 + 40,000x2= 1,10,000/-

The total compensation would therefore, work out to a figure of Rs.3,56,400 + Rs.1,10,000 = 4,66,400/-

56. The aforesaid sum of money would carry simple interest at the rate of 7% per annum in accordance with Rule 220-A(6) of the Rules of 1998 from the date of institution of claim petition until realization. However, the sum of money already deposited (paid or invested in terms of the impugned award or interim orders of this Court) shall be adjusted.

In re. : FAFO No. 870 of 2011

57. The only issue involved in this appeal is about compensation payable to the claimants. No other issue arises for consideration, which stand concluded in terms of the judgment of the Tribunal and the parties are not at issue about other matters before this Court.

58. The claimants are the dependents of the deceased Dehla alias Ram Dayal. The deceased, Dehla alias Ram Dayal was sitting in the ill-fated parked tractor trolley at the time of the accident. He is survived by five dependents, to wit, his widow Smt. Asha, aged 28 years at the time the cause of action arose, besides a son, Deepak aged 8 years, a daughter Leelawati aged 6 years and another son Vikas, aged 3 years. Besides the aforesaid members in his nuclear family, the deceased has also left behind his dependent mother, Jiriya aged about 55 years. The age of the deceased at the time of accident is claimed to be 34 years. In the postmortem report, he was found to be 30 years. The Tribunal has determined him in the age bracket of 31-35 years for the purpose of working out the dependency. There is no quarrel between parties about the deceased's age.

59. The claimants have asserted that the deceased was engaged in agriculture to earn his livelihood and had an income of Rs. 5000/- per month. The impugned award shows that PW-1 Sushil Kumar, who has testified in support of the deceased's income, amongst other matters, has supported the claim. This finding of the Tribunal appears to be an apparent error, inasmuch as a perusal of the record shows that the deceased' wife Smt. Asha Devi filed her affidavit testifying as PW-1 and asserted that the deceased would earn a sum of Rs. 4000/- per month from agriculture and working as a labourer. In her cross examination, she has maintained her stand that her husband would do agriculture and would go over whenever called by someone to work as a labourer. She has further said that her husband left home at 7 O'clock in the morning to work as a labourer and come back at 4 O'clock in the evening. In the circumstances, the finding of the Tribunal that the deceased would earn a sum of Rs. 3000/- per month, working as a labourer, cannot be accepted.

60. The Tribunal has looked into the evidence of some other person named Sushil Kumar, who is not a witness in the present case. The testimony of PW-1 Asha Devi is clear where she has stood firm during cross-examination that her husband was a labourer and earned Rs. 4000/- per month. He also earned some money out of agriculture. There is no basis to disbelieve the latter part of her assertion also. It is, therefore, held in modification of the Tribunal's finding that the deceased had an income of Rs. 4000/- per month from his twin occupation- doing agriculture and working as a casual labourer.

61. The deceased was a young man aged between 31-35 years. The Tribunal has not awarded anything towards future prospects. Going by the provisions of Rule 220-A(3) (ii) of the Rules of 1998, the deceased, being aged below 40 years, would be entitled to an addition to his monthly income by way of future prospects to the extent of 50%. The deceased being aged between 31-35 years, the multiplier of 16 would be applicable.

62. The deceased has left behind five dependents. Therefore, deduction towards personal expenses under the Rule in Sarla Verma would be 1/4th, the dependent family members being 4 to 6 in number. The Tribunal has deducted 1/3rd of the deceased's income towards personal expenses, which is contrary to the aforesaid Rule. The said finding is, therefore, not sustainable. It deserves to be modified.

63. Over and above the substantive compensation payable, the claimants are also entitled to compensation under the conventional heads determined in accordance with the principles laid down in Pranay Sethi.

64. In view of the aforesaid conclusions, the compensation payable to the claimants in this appeal would have to be revised in the following manner:-

- (i) Monthly Income (of the deceased) = 4000/-
- (ii) Monthly Income+Future Prospects (monthly income x 50%) = 4000+2000 = 6000/-
- (iii) Annual Income (of the deceased) = 6000 x 12 = 72,000/-
- (iv) Annual Dependency = Annual Income - one-fourth deduction towards personal expenses of the deceased = 72,000- 18,000 = 54,000/-
- (v) Total Dependency = Annual Dependency x Applied Multiplier = 54,000x 16 =8,64,000/-
- (vi) Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium = 15,000 + 15,000 + 40,000x5 =2,30,000/-

The total compensation would therefore, work out to a figure of Rs.8,64,000 + Rs.2,30,00 = 10,94,000/-

65. The aforesaid sum of money would carry simple interest at the rate of 7% per annum in accordance with Rule 220-A(6) of the Rules of 1998 from the date of institution of claim petition until realization. However, the sum of money already deposited (paid or invested in terms of the impugned award or interim orders of this Court) shall be adjusted.

In re. : FAFO No. 871 of 2011

66. The issue in this appeal is confined to the compensation payable to the claimants, of which they have sought enhancement. About the other issues, there is no cavil before this Court and the determination of the Tribunal is acceptable to the parties.

67. The deceased here is Shiv Pratap Singh. He was standing near the parked tractor trolley when the offending vehicle dashed against it. The deceased is survived by three dependents, to wit, his widow Gayatri Devi, besides a son and an unmarried daughter, both adults. Sushil Kumar is the deceased's son aged 20 years, whereas Km. Neha Singh is the deceased's daughter aged about 18 years at the time of the accident. In support of the deceased's income and loss of dependency, the relevant evidence is that of PW-1 Sushil Kumar, who is the deceased's son. He has proved by his evidence that the deceased was engaged in agriculture and supply of milk. The Tribunal, going by the then prevalent rates payable to the casual labourers, has estimated the income of the deceased at a figure of Rs. 3000/- per month. The claimants asserted that the deceased had an income of Rs. 5000/- per month from agriculture and supply of milk and would contribute Rs. 4000/- to his family. In his cross-examination, he has stated that his father had 15 bighas kachcha land and 6-7 cattle heads. However, he has admitted in his cross-examination that no document regarding ownership of the agricultural holdings has been brought on record. This witness has not been shaken about his stand that his father would earn Rs. 5000/- a month. There is not a word in the evidence of PW-1 to infer that the deceased was employed as a casual labourer. The Tribunal, in the impugned award, has held the income of the deceased to be Rs. 3000/- per month holding him to be a casual labourer. This finding is based on an error apparent in reading the testimony of PW-1. It has been remarked by the Tribunal in the impugned judgment to the following effect:

"पी.डब्ल्यू.1 सुशील कुमार मृतक का पुत्र है, उसने अपनी प्रतिपरीक्षा में बताया कि मृतक मजदूरी करता था। अतः पी.डब्ल्यू.1 की स्वीकृति से यह सिद्ध होता है कि मृतक का पेशा मजदूरी था। वर्तमान समय में प्रचलित मजदूरी को देखते हुए तथा माननीय उच्चतम न्यायालय द्वारा विभिन्न निर्णय विधियों में प्रकट किए गए अभिमत के अनुसार मृतक की मासिक आय 3000 रूपए अर्थात 36000 रु. वार्षिक आय निर्धारित किया जाना समीचीन होगा।"

68. This Court has looked into the records and across the length and breadth of the cross-examination of PW-1, there is not a word said in acknowledgement by PW-1 of the fact that the deceased would work as a labourer or a casual labourer. To the contrary, the stand maintained by PW-1 in his examination-in-chief and the cross-examination is that the deceased had an income of Rs. 5000/- per month from agriculture and dairy business. There is no doubt that no document relating to the land owned by the deceased has been filed. But, going by the unchallenged testimony of PW-1 Sushil Kumar, there is no reason to disbelieve his assertion. It is nowhere said that the deceased was a labourer or worked as a casual labourer. The inference of the Tribunal about the deceased's income is found on a non-existent basis. It cannot be accepted. In consequence, it is held that the deceased had an income of Rs. 5000/- per month.

69. The deceased was aged 55 years at the time of accident. Going by the provisions of Rule 220-A(3)(iii) of the Rules of 1998, the deceased is entitled to an accretion of his income by 20% towards future prospects.

70. The deceased has left behind two dependents. Going by Rule 220-A (2)(ii), the deduction towards personal expenses would be 1/3rd of the deceased's income. The Tribunal is right in deducting 1/3rd towards personal expenses of the deceased. The deceased was aged 55 years and the appropriate multiplier would, therefore, be 11, according to the schedule set out in paragraph no. 42 of the judgment in **Sarla Verma**. The Tribunal has erred in applying the multiplier of 8 acting in terms of the Second Schedule framed under Section 163-A of the MV Act. Under the conventional heads, the claimants would be entitled to loss of estate and funeral expenses in terms of the law laid down in **Pranay Sethi**. However, so far as the loss of consortium is concerned, this Court is of considered opinion that the widow alone is entitled to spousal consortium. Both children are adults and they are not entitled to parental consortium, bearing in mind the view that I have taken in **Jiuti Devi**.

71. In view of the aforesaid conclusions, the compensation payable to the claimants in this appeal would have to be revised in the following manner:-

- (i) Monthly Income (of the deceased) = 5000/-
- (ii) Monthly Income+Future Prospects (monthly income x 20%) = 5000+1000 = 6000/-
- (iii) Annual Income (of the deceased) = 6000 x 12 = 72,000/-
- (iv) Annual Dependency = Annual Income - one-third deduction towards personal expenses of the deceased = 72,000- 24,000 = 48,000/-
- (v) Total Dependency = Annual Dependency x Applied Multiplier = 48,000x11 = 5,28,000/-
- (vi) Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium = 15,000 + 15,000 + 40,000 = 70,000/-

The total compensation would therefore, work out to a figure of Rs.5,28,000 + Rs.70,000 = 5,98,000/-

72. The aforesaid sum of money would carry simple interest at the rate of 7% per annum in accordance with Rule 220-A(6) of the Rules of 1998 from the date of institution of claim petition until realization. However, the sum of money already deposited (paid or invested in terms of the impugned award or interim orders of this Court) shall be adjusted.

Conclusion :

All these appeals **succeed** and are hereby **allowed**. The impugned awards passed in each of the appeals are modified and compensation enhanced, including interest, as directed hereinabove. The claimants in each of the appeals shall be entitled to payment of the enhanced compensation with interest share thereof in the same terms, as directed by the Tribunal. The claimants shall also be entitled to their costs in the respective appeals.
