28. The Hon'ble Supreme Court, in the case of **Kapil Kumar versus Raj Kumar; (2022) 10 SCC 281**, has held that unless the concurrent findings recorded by the courts below were found to be perverse, the same were not required to be interfered with by the High Court in exercise of powers under Section 100 CPC.

29. In view of above and considering the overall facts and circumstances of the case this court is of the view that the impugned judgment and decrees have been passed in accordance with law by reasoned and speaking order, which does suffer from any illegality, error or perversity. Thus the substantial question of law formulated by this court does not arise in this case because the suit for cancellation of sale deed can be filed by a person, who has a prima facie title of the land in dispute and the predecessor-in-interest of the plaintiff/respondent no.1 had the title except for the sale deed in question, which was challenged, which was an out come of fraud, cheating and impersonation as discussed above. The Second Appeal has been filed on misconceived and baseless grounds, which lacks merit and is liable to be dismissed.

30. The Second Appeal is, accordingly, **dismissed**. No order as to costs.

(2025) 4 ILRA 965
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 151 of 2013

Smt. Sarba Maurya & Ors. ...Appellants
Versus
The Oriental Insurance Co. Ltd. & Ors. ...Respondents

Counsel for the Appellants:
Y.K. Pandey Rakesh Pratap Singh

Counsel for the Respondent:
Mukund Tewari, Satyajit Banerji, Surendra Pal Singh

A. Motor Accident Act, 1988 – Compensation – Enhancement in loss of consortium, loss of eSt., funeral expenses claimed – Entitlement – *Pranay Sethi's case* and *Babita's case* relied upon – Held, the amount towards loss of eSt., loss of consortium and funeral expenses as awarded by the learned Tribunal stand enhanced to Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. Each of the claimants would be entitled to loss of consortium of Rs.40,000/-. Rate of interest on the amount as has been awarded by the learned Tribunal is also enhanced to 9% per annum. (Para 21, 23 and 24)

B. Motor Accident Act, 1988 – Compensation – Future prospects – Determination – *Savita's case* relied upon – Held, the notional income is increased by 30% being the future prospect. Said amount would be added to the notional income of the deceased, upon which deduction as done by the learned Tribunal on actual income would be done. (Para 22 and 24)
Appeal allowed. (E-1)

<u>List of Cases cited</u>:-

1. National Insurance Comp. Ltd. Vs Pranay Sethi & ors.; (2017) 16 SCC 680

2. Savita Vs Bindar Singh & ors.; (2014) 4 SCC 505

3. Civil Appeal No. 2222 of 2024; Babita & ors. Vs Karnataka Road Lines Pvt Ltd. & ors.

(Delivered by Hon'ble Abdul Moin, J)

1. Heard learned counsel for the appellants, Shri Dhawalbir Prasad holding brief of Shri Mukund Tewari, learned counsel for the respondent No.1 and Shri Satyajit Banerji, learned counsel for the respondent No.3.

2. As per the order of this Court dated 23.09.2019, notice has been issued to respondent No.2. Respondent No.2 is also respondent No.7 in the connected First Appeal from Order No.1211 of 2011, and has been served sufficiently but no objections have been filed on his behalf nor anybody appears on his behalf. Accordingly, the Court proceeds to hear the appeal and decide it on merit.

3. Bereft of unnecessary details facts of the case are that an accident is said to have occurred on 13.09.2002 involving a tempo of the deceased Munni Lal, husband of appellant No.1 and the father of appellants No.2 to 5 and a D.C.M. which resulted in the death of Shri Munni Lal.

4. The claimants filed Claim Application No.601 of 2002 In Re Smt Sarba Maurya & Ors vs National Insurance Company & Ors.

5. Learned Tribunal vide judgment and order dated 27.09.2011, a copy of which is part of the appeal, has awarded an amount of Rs.2,29,500/- along with interest @ 6% per annum to the claimants.

6. The Oriental Insurance Company had filed First Appeal from Order No.1211 of 2011 being aggrieved by the aforesaid award, which has been withdrawn vide the order dated 11.12.2021.

7. The appellants by means of the instant appeal have prayed for enhancement of the amount towards (a) loss of consortium; (b) loss of estate (c) cremation/funeral expenses; (d) future prospect; (e) consortium to each claimants; and (f) enhancement of rate of interest as has been awarded by the learned Tribunal.

8. Admittedly, the vehicle being driven by Shri Munni Lal was not having a valid insurance at the time of the accident.

9. Learned Tribunal by means of the award dated 27.09.2011 after ascertaining the monthly income of the deceased @ Rs.5,000/- and by considering the contributory negligence has assessed the monthly income thereafter @ Rs.2,500/- per month, the annual income of Rs.30,000/- and after deduction of 1/3rd of the amount has applied a multiplier of 11 in order to arrive at the compensation of Rs.2.20 Lakh for the claimants.

10. Learned Tribunal has also awarded an amount of Rs.5,000/- towards the loss of consortium, Rs.2500/- towards loss of estate and Rs.2,000/- towards the funeral expenses.

11. Placing reliance on the constitution bench judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs Pranay Sethi & Ors : (2017) 16 SCC 680***, the argument of the learned counsel for the appellants is that the Hon'ble Supreme Court has held that reasonable figures on conventional heads, namely, loss of estate, loss of

consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and the said amounts should be enhanced at the rate of 10% in every three years.

12. Further contention is that the learned Tribunal has also erred in law in not awarding any amount towards future prospects, which as per the law laid down by the Hon'ble Supreme Court in the case of Savita vs Bindar Singh & Ors : (2014) 4 SCC 505 should be increased by at least 30% of the notional income, therefore, the claimants are entitled to get the benefit of Rs.750/- being the future prospects and the said amount should be added to the notional income of the victim. The total deduction on personal expenses should have been one third of Rs.2500+Rs.750=Rs.3250 per month amounting to Rs.1083.33/-. Therefore, the salary after deduction would come to Rs.2166.67/- and after applying the multiplier of 11 the amount of compensation to be paid would be□2166.67x11x12 =2,86,000/-.

13. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Babita & Ors vs Karnataka Road Lines Pvt Ltd. & Ors : Civil Appeal No.2222 of 2024***, it has been argued that the consortium of Rs.40,000/- as directed to be paid by the Hon'ble Supreme Court in the case of Pranay Sethi (supra) would be payable to all the claimants.

14. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Babita (supra)***, it is also contended that the rate of interest which has been awarded @ 6% per annum merits to be enhanced considering that the incident pertains to the year 2002 wherein a higher rate of interest was prevailing in the country. Thus, it is prayed that as per the rate of interest awarded in the case of ***Babita (supra)*** the rate of interest may be enhanced to 9% per annum.

15. On the other hand, Shri Dhawalbir Prasad, learned counsel appearing for respondent No.1 and Shri Satyajit Banerji, learned cousnel for the respondent No.3 have argued that the learned Tribunal has correctly awarded the compensation amount in favour of the claimants, which does not require any enhancement.

16. Incidentally, Shri Satyajit Banerji, learned counsel for the respondent No.3 has argued that once the very factum of the incident is in dispute consequently the appeal itself merits to be dismissed.

17. At the outset the argument of the Shri Satyajit Banerji, learned counsel is found to be patently fallacious considering the fact that respondent No.3 has himself not raised any challenge to the award passed by the Tribunal and thus for all practical purposes, the said award has attained finality. Even the appeal which has been filed by the respondent No.1 i.e. Oriental Insurance Company has been dismissed as withdrawn consequently it does not lie in the mouth of the learned counsel appearing for respondent No.3 to raise such an argument. Thus, the said argument is rejected.

18. Having heard learned counsel for the parties and perused the record, it emerges that the accident took place on 13.09.2002 involving a vehicle which was being driven by Shri Munni Lal namely a tempo. On account of said accident, Shri Munni Lal died on the spot. The claimants

filed a claim petition before the learned Tribunal. Learned Tribunal vide the award dated 27.09.2011 has awarded an amount of Rs.2,29,500/- in favour of the claimants along with interest @ 6%.

19. The claimants, praying for enhancement of the amount, have preferred the instant appeal.

20. Enhancement has been prayed under the following heads:-

(a) loss of consortium;
(b) loss of estate;
(c) cremation/funeral expenses;
(d) future prospect;
(e) consortium to each claimants; and
(f) enhancement of rate of interest as has been awarded by the learned Tribunal.

21. So far as the heads (a), (b) & (c) i.e. loss of consortium, loss of estate and cremation/funeral expenses are concerned, the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)*** has held as under:-

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

22. So far as head (d) i.e. future prospect is concerned, the Hon'ble Supreme Court in the case of ***Savita (supra)*** has held as under:-

*"8. We have failed to understand why the Tribunal as well as the High Court lost its sight to hold that the victim could have had future prospects with regard to the amounts the victim used to earn during his lifetime? Therefore, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of Rs 900 being the future prospects; the said amount should be added to the notional income of the victim. Therefore, it appears that the total salary along with future prospects of the victim should have been calculated at Rs 3000 plus Rs 900 amounting to Rs 3900 per month. The total deduction on personal expenses, in our opinion, should have been one-third of Rs 3900 amounting to Rs 1300. Therefore, the salary after deduction would come to Rs 2600 and the multiplier should be applied at 17, as has been done correctly by the Tribunal after taking into account the age of the victim. In this process, the total amount of compensation to be paid would be Rs 2600 * 17 * 12 amounting to Rs 5,30,400."*

23. So far as heads (e) and (f) i.e. consortium to each claimants and enhancement of rate of interest as has been awarded by the learned Tribunal are concerned, the Hon'ble Supreme Court in the case of ***Babita (supra)*** has held as under:-

"12. We are of the opinion that besides a sum of ?70,000/- (Rupees Seventy thousand only) which could be treated under the head of conventional expenses, each of the claimants are entitled to loss of consortium @ ?40,000/- (Rupees Forty thousand only) (i.e. 40,000 x 4 = ?1,60,000/- (Rupees One lakh sixty thousand only). Lastly, in our opinion, simple interest awarded on the total estimated amount by the Tribunal as also the High Court ought to be enhanced from 6% per annum to 9% per annum which

would be closer to the then prevalent rate of interest i.e. in the year 2015."

24. Keeping in view the aforesaid discussion, the appeal is ***allowed***. The amount towards loss of estate, loss of consortium and funeral expenses as awarded by the learned Tribunal stand enhanced to Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. Each of the claimants would be entitled to loss of consortium of Rs.40,000/-. Rate of interest on the amount as has been awarded by the learned Tribunal is also enhanced to 9% per annum. As regards the future prospects, the notional income is increased by 30% being the future prospect. Said amount would be added to the notional income of the deceased, upon which deduction as done by the learned Tribunal on actual income would be done. The Insurance Company is directed to calculate the enhanced amounts as observed by this Court in preceding paragraphs keeping in view the judgments of the Hon'ble Supreme Court in the cases of ***Pranay Sethi (supra), Savita (supra)*** and ***Babita (supra)*** within a period of two weeks from the date a certified copy of this order is produced before it and deposit the same before the learned Tribunal within a period of four weeks thereafter. The learned trial court shall ensure that the payment of the aforesaid amount be made to the appellants within next four weeks of the amount being deposited before it, in accordance with law.

25. Let trial court record be returned.

(2025) 4 ILRA 969
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 198 of 2024

National Insurance Co. Ltd. Lko **... Appellant**

Versus

Manorama & Ors. **...Respondents**

Counsel for the Appellant:
Mrs. Pooja Arora

Counsel for the Respondent:
Ravindra Kumar Dwivedi

A. Motor Accident Act, 1988 – Sections 165 & 166 – Claim proceeding – Negligent driving – Effect of failure in not proving – Ground was taken by the Insurance company to the effect that the claimants failed to prove that the vehicle having been driven negligently and rashly – Acceptability – Held, a perusal of the claim application and the written St.ment would duly indicate that there was clear negligence on the part of the driver. Consequently keeping in view the specific findings of fact as given by learned Tribunal, the said ground is rejected. (Para 21 and 25)

B. Motor Accident Act, 1988 – Claim proceeding – Occurrence of accident – Filing of charge-sheet against a particular person – Relevance – Strict proof, how far required – *Bimla Devi's case* and *Mangla Ram's* case relied upon – Held, the chargesheet indicates that on account of negligence of the driver Shri Shitla Prasad, who was the driver of the concerned vehicle, the said accident had taken place. It is also indicated that the truck concerned has been released on the orders passed by the learned court – Learned tribunal has not committed any error in arriving at a finding of the deceased having died on account of an accident involving the truck. (Para 27, 28 and 33)

Appeal dismissed. (E-1)