

**(2018) 07 J&K CK 0094**

**In the Jammu And Kashmir High Court**

**Case No :** Miscellaneous Appeal No.135, 202, 321, 128, 139, 127, 317, 320, 149 Of 2017, 19 Of 2018, Conc No.239, 240 Of 2017

**Bajaj Allianz Gen. Ins. Co. @APPELLANT@Hash Satpal Badyal And Ors.**

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**Date of Decision :** 26-07-2018

**Acts Referred:**

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 279, 304A, 337, 338  
Motor Vehicles Act, 1988 — Section 149(2), 170

**Citation :** (2018) 07 J&K CK 0094

**Hon'ble Judges :** Sanjeev Kumar, J

**Bench :** Single Bench

**Final Decision :** Disposed Off

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## **Judgement**

On the fateful day of May 04, 2009 a motor vehicle type Matador bearing registration No.JK06-1075 owned by one Alam Geer (owner) and insured

with Bajaj Allianz General Insurance company Ltd.( Insurance Company) met with an accident at Bhadarkoot at 7.30 a.m. while it was going from

Kishtwar to Palmar. The offending vehicle was carrying 36 passengers at the time of accident. As a result of the accident, the offending vehicle rolled

about 400-500 feet down the road. Some of the passengers died on spot and some suffered critical injuries. The injured were shifted to Government

Hospital, Kishtwar and subsequently to Govt. Medical College Hospital, Jammu for further treatment. An FIR regarding the accident was also

registered as FIR No.62/2009 for the offences under Section 279/337/338 and 304-A RPC at Police Station, Kishtwar.Â

The legal representatives/heirs of the victims of the accidents who died on spot or later succumbed to the injuries filed their claims. It is stated that 27

claim petitions were filed before the Motor Accident Claims Tribunal, Kishtwar whereas 05 claim petitions were filed before the Motor Accident

Claims Tribunal, Jammu. The aforesaid claim petitions also included one claim petition filed by the injured.Â

Â The 27 claim petitions which were filed before the Motor Accident Claims Tribunal, Kishtwar (hereinafter referred to as â??the Tribunalâ?) were

clubbed together and decided by a common award passed on 31.08.2016. It is this award of the Tribunal which is challenged by the appellant-

Insurance Company by filing 27 different appeals. Since all the 27 appeals have arisen out of the single motor vehicular accident and have also been

decided by a common award, as such, all the 27 appeals, which were earlier clubbed together by this Court vide order dated 27.05.2017, were takenÂ

up for consideration together.

Â Learned counsel appearing for the parties were heard at length.

Â During the course of arguments Sh. Vishnu Gupta, learned counsel appearing for the appellant-Insurance Company, highlighted and stressed the

following grounds to assail the impugned award:-

a) The Tribunal has not correctly decided the issue No.3 and has erroneously held that the driver of the offending vehicle was not a necessary party.

b) The findings returned by the Tribunal on issue No.4 that the driver Zakir Hussain was holding a valid driving license on the date of accident are erroneous and contrary to the evidence on record.

c) The offending vehicle was overloaded and against the seating capacity of fifteen it was carrying thirty six passengers. This aspect has not been correctly appreciated by the Tribunal.

d) The amount of compensation paid to the claimants as also the interest is exorbitant.

The aforesaid grounds of challenge are the common grounds of challenge in all these appeals and, therefore, are being considered before proceeding

to decide each appeal on its own facts.

A: Driver: Whether a necessary party to the claim petitions?Â The Tribunal had framed a specific issue with regard to mis-joinder and non-joinder of

necessary parties. For facility of reference, issue No.3 framed by the Tribunal is reproduced as under:-

â??Whether the claim petition is not maintainable because of misjoinder and non-joinder of necessary parties, if so, what is its effect on the claim

petition? OPR-1â??

As is evident, the onus to prove the issue was on the appellant Insurance Company.

Mr. Vishnu Gupta, learned counsel for the appellant, vehemently submitted that the driver-Zakir Hussain was the actual tortfeasor who also died in the

same accident and in the absence of his legal representatives being impleaded as party respondents, the claim petitions could not proceed. He further

contended that the owner and the Insurance Company have only the vicarious liability and the same can be fastened only after the strict liability against

the driver is established. It is, thus, urged that rash and negligent driving by the driver could not have been established without impleading the legal

representatives of the deceased-driver as party respondents and providing them an opportunity to defend.

On the other hand, the argument of learned counsel for the appellant was refuted by the learned counsel appearing for the claimants by submitting that

though, it is correct that the driver is an actual tortfeasor, yet in view of the fact that he too had died in the accident, his legal representatives were not

impleaded as party respondents. It is further submitted on behalf of the claimants that since the owner and the Insurance Company were parties to the

claim petitions and they took all possible defences including the one that the deceased driver was not rash and negligent in driving the vehicle,

therefore, it does not lie in the mouth of the appellant-Insurance Company to say that the claim petitions would not be maintainable in the absence of

legal representatives of the deceased driver being party respondents.

I have considered the rival submissions made on the issue and am of the considered opinion that the absence of the driver or his legal representatives

from the array of respondents would not render the claim petitions not maintainable.

Admittedly, the driver of the offending vehicle too had died in the accident in question. It is because of this reason perhaps the claimants did not array

him as party respondent. They rightly did not array the legal representatives of the deceased-driver also as party respondents as it was only driver

who could have defended himself against the allegation of rash and negligent driving and not the legal representatives who were not privy to the act of

the driver nor they were witness to the occurrence. Otherwise also, the appellant-

Insurance Company has not been prejudiced in any manner on this score. Both owner and the Insurance Company contested the claim petitions on all possible grounds including the one that the accident had not taken place due to rash and negligent driving of the deceased- driver. In that view of the matter, the Tribunal was correct in deciding the issue No.3 against the appellant-Insurance Company. No case law on the subject has been brought to my notice by the learned counsel for the appellant-Insurance Company to the contrary. This ground of the appellant which is common in almost all the appeals is, therefore, found to be devoid of any merit and is rejected.Â

B) Driving License: Whether driver of the offending vehicle was holding valid, proper and effective driving license or the license held by the driver was fake?

Â On the basis of the pleadings of the parties, the Tribunal had framed a specific issue in this regard as issue No.4 which for facility of reference is reproduced as under:-

â??Whether the offending vehicle was being plied by its driver without holding a valid, proper and effective driving license, if so, what is its effect on the claim petition? OPR-1

As is evident, the onus of proof of this was on the appellant-Insurance Company. The appellant-Insurance Company has led some evidence which has been discussed by the Tribunal threadbare in paragraph Nos. 32 to 34 of the award.

The learned counsel appearing for the appellant-Company vehemently submitted that the deceased driver who was driving the offending vehicle was not holding a valid, proper and effective driving license issued by the competent authority. The learned counsel strongly relied upon the verification certificate issued by the ARTO, Poonch to show that the driving license possessed by the driver was not valid. A bare look of verification certificate relied upon by the appellant-Insurance Company shows that the same was provided in response to an application moved by the Insurance Company under Right to Information Act before the Assistant Regional Transport Officer, Poonch regarding driving license No.1110/MVD/ ARTO/P. The ARTO while supplying the aforesaid information intimated the Insurance

Company that the record of the driving license mentioned in the application did not exist in his office record. However, the Insurance Company failed to produce the application moved by it before the ARTO, Poonch seeking requisite information to show that the information was actually sought in respect of the driving license possessed by the deceased- driver of the offending vehicle. From the evidence brought on record by the appellant-Insurance Company, it could not be proved substantially that the deceased-driver was not possessing a valid driving license on the date of occurrence nor there is any evidence on record to substantiate the plea of the Insurance Company that the driving license possessed by the deceased driver was fake. As rightly held by the Tribunal, the Insurance Company had failed to discharge its burden to prove that the driving license possessed by the driver of the offending vehicle was fake or in any manner invalid. There is, however, contrary evidence in the shape of statement of the owner of the offending vehicle, namely, Alam Geer Ahmed who had substantially proved that he had engaged the services of the driver after verifying driving license of the deceased-driver. The Tribunal after appreciating the evidence on the issue in the light of the law laid down by the Supreme court in the case of National Insurance Company Ltd. V. Swarn Singh; AIR 2004 SC 1531 held issue No.4 proved against the appellant-Insurance Company.Â Â

I have gone through the evidence led on the issue and am satisfied that the appellant-Insurance Company did not lead any cogent evidence to establish that the driver of the offending vehicle was not holding a valid and effective driving license on the date of accident. Therefore, I am inclined to uphold the finding of fact returned by the Tribunal on the issue after due appreciation of evidence. The ground of challenge taken in the appeals with regard to validity of the driving license is also found to be devoid of any merit hence rejected.

C) Overloading: Whether absolves the Insurance Company of its liability to indemnify the owner to pay compensation?

On the basis of the pleadings of the parties, the Tribunal had framed a specific issue which for facility of reference is reproduced hereunder:-

â??Whether the offending vehicle was being plied by its driver in violation of the terms and conditions of the Insurance Policy and Route Permit as

the said vehicle was overloaded at the time of accident? OPRâ??

As is evident, the burden of proof of this issue was on the appellant Insurance Company and in order to discharge its burden, the appellant Insurance

Company led both oral and documentary evidence. The Tribunal after appreciating the evidence led by the appellant Insurance Company and relying

upon the judgment of the Supreme Court in the case of National Insurance Company Ltd. V. Nicolletta Rohtagi; 2002 ACJ 1950 (SC) held the issue

proved against the appellant Insurance Company. Before this Court also learned counsel appearing for the appellant Insurance Company vehemently

argued that the Insurance Company should be absolved of its liability to pay compensation for breach of policy conditions on the ground of overloading

of the vehicle. It is contended by the learned counsel for the appellant that as per the permit, the seating capacity of the offending vehicle was 15 plus

driver but the same was carrying in as many as 36 passengers in breach of the route permit and the policy conditions.

Per contra, learned counsel appearing for the claimants urged that the issue with regard to the liability of the Insurance Company in case of

overloading is no longer res integra and the law is finally settled by the Supreme Court in the case of United India Insurance Company Ltd. v.

K.M.Poonam; 2011 ACJ 917 SC which has been reiterated by the Supreme Court and followed by our High Court in several judgments thereafter.

I have considered the rival contentions and I tend to agree with the submissions made on behalf of the claimants that the issue raked up by the

appellant Insurance Company on account of overloading is no longer res integra as per the settled legal position explained in the case of K.M. Poonam

(supra) and the Insurance Company has to first pay compensation to all the claimants and then recover the same from the owner. In the case of

Nicolletta Rohtagi (supra) the Supreme Court while explaining the scope of Section 149 (2) of the Motor Vehicle Act categorically held that the

Insurance Company can avoid its liability only under statutory defences expressly provided in Sub Section 2 of Section 149 of the Motor Vehicle Act,

1988 and cannot avoid its liability on any other ground except those mentioned in Sub Section 2 of Section 149 of the Motor Vehicle Act.

In the light of the law laid down by the Supreme Court in aforesaid cases, the Insurance Company cannot contend that the overloading is a

fundamental breach of the policy in terms of Sub Section 2 of Section 149 of the Motor Vehicles Act and therefore, can avoid its liability. In light of

the law laid down in K.M.Poonam (supra), the liability of the insurance company to pay compensation is not limited and the Insurance Company is

supposed to deposit total amount of compensation awarded to the claimants and the amount so deposited is to be reimbursed to the claimants in

respect of their claims with liberty to the Insurance Company to recover the amount paid by it over and above the compensation amount payable in

respect of the persons covered under the Insurance Policy from the owner of the vehicle, as was directed by the Supreme Court in the case of

National Insurance Co. Ltd. Vs. Baljit Kaur; [(2004) 2 SCC 1. This issue has been elaborately discussed by the Tribunal and the appellant-Insurance

Company has been held liable to pay compensation awarded by it to the claimants in the manner provided by the Supreme Court in the case of K.M.

Poonam's case (supra).

In view of the settled legal position, I do not find any reason to differ with the view taken by the Tribunal. The plea of the appellant-Insurance

Company with regard to the overloading is found to be devoid of any merit, hence rejected.

D) Quantum:Â Â Whether the compensation as also the interest awarded is exorbitant.Â

Â The issue with regard to quantum of compensation payable in each case would depend upon the evidence led in each case and therefore, same is

required to be taken up for consideration separately.Â

MA No.135/2017 (71/claims)

Â With regard to the quantum of compensation held payable to the claimants, challenge to the award by the appellant-Insurance Company on quantum

has been resisted by the learned counsel for the claimants on the

ground that the Insurance Company cannot challenge the award on quantum in the absence of permission granted by the Tribunal under Section 170

of the Motor Vehicles Act, 1988. It is submitted that for seeking permission to contest the claim petition on quantum in terms of Section 170 of the

Motor Vehicles Act, the Insurance Company has to satisfy the Tribunal that owner and the driver are in collusion with the claimants or that the owner

is not contesting the claim or has been set ex-parte. It is, thus, urged that in the

absence of such permission, the Insurance Company can only take defences that are available to it under Sub Section 2 of Section 149 of the Motor Vehicles Act. Reliance in this regard has been placed by learned counsel for the claimants on the following judgments:-

- i) 2002 ACJ 1950 SC; National Insurance Co. Ltd. v. Nicolletta Rohtagi
  - ii) 2000 ACJ 801 SC; Rita Devi v. New India Assurance company Ltd.
  - iii) 2005 ACJ 777 SC; Chinnama George v. N.K.Raju
  - iv) 2013 ACJ 2418 SC; Josphine James v. United India Insurance Co. Ltd. and anr.
- Per contra, learned counsel appearing for the Insurance Company

submits that the issue joined by the claimants is no longer res integra in view of the decision of the Supreme Court in the case of United India

Insurance Company Ltd. v. Shila Datta; 2011 ACJ 2729 (SC). In the aforesaid judgment the Supreme court in paragraph No.11 held thus:-

“(11) Therefore, where the insurer is a party respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or

being impleaded as a party Respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds

without being restricted to the grounds available Under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver

without impleading the insurer as a party. When a statutory notice is issued Under Section 149(2) by the Tribunal, it is clear that such notice is issued

not to implead the insurer as a party Respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it

will have to bear the liability as and when award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded

as a party Respondent. But it can, however, be made a party Respondent either by the claimants voluntarily in the claim petition or by the direction of

the Tribunal under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party Respondent,

it can raise all contentions that are available to resist the claim.”

I have considered the submissions made by the learned counsel for the parties and am of the view that in light of the decision of the Supreme Court in

the case of Shila Datta (supra), the issue, of course, is no longer res integra. That being so, contention of the learned counsel for the claimants that the



Insurance Company cannot assail the award on quantum, unless permission under Section 170 of the M.V. Act has been specifically granted by the Tribunal, is not tenable.

In the aforesaid claim petition one Pushpa Devi died in the accident in question. She was 48 years old and her average earning was claimed to be

Rs.7000/- per month. It was claimed that she was selling vegetables and milk apart from doing other household works. The claimants who are

husband and child of the deceased claimed a compensation of Rs.30,00,000/- under different heads. Since the claim petition was contested by the

appellant Insurance Company, accordingly, specific issue in this regard was framed as issue No.2 and the burden of proof was placed on the

claimants. In order to prove the aforesaid issue claimants led their evidence.Â

Upon appreciation of the evidence led by the claimants to which there was no evidence in rebuttal by the Insurance Company, the Tribunal assessed

the monthly income of the deceased as Rs.6,000/- per month. Since the age of the deceased was proved to be 48 years which was recorded by the

experts in the post-mortem report, therefore, the compensation in light of the law laid down in Sarla Verma's case was calculated. The

appellant Insurance company has not seriously disputed the income of the deceased as Rs.6,000/- per month as assessed by the Tribunal but has

disputed the deduction on account of personal and living expenses @ 1/3rd instead of 2/3rd. Applicability of multiplier of 13 has also not been disputed.

Â Deducting 1/3rd on account of personal and living expenses, adopting the multiplier of 13, the amount payable under the head loss of dependency

has been computed by the Tribunal as Rs.4,000/- x 12 x 13 = Rs.6,24,000/-. The claimants have further been held entitled to Rs.1,00,000/- on account

of loss of consortium and for funeral expenses Rs.25,000/-.

Â Learned counsel for the appellant-Insurance Company submits that in the given facts and circumstances, deduction on account of personal

expenses should have been 2/3rd and not 1/3rd as was done by the Tribunal.Â Â Per contra, learned counsel for the claimants submits that as per the

law laid down in Sarla Verma and others v. Delhi Transport Corporation and anr.; 2009 SCJ 1298 and reiterated in the case of National Insurance Co.

Ltd. v. Pranay Sethi, 2017 ACJ 2700, since the deceased had only two dependent family members, as such, the personal and living expenses of the

deceased to be taken into consideration were rightly taken by the Tribunal as 1/3rd. On behalf of the claimants, it is submitted that the claimants are entitled to receive enhanced compensation on account of loss of dependency because the Tribunal has not added any amount to the income of the deceased on account of loss of future prospects.Â

Â I have considered the submissions made by learned counsel for the parties and I am inclined to agree with the submission made by the learned counsel for the claimants. After the judgments of Sarla Verma and Pranay Sethi (supra), if the deceased is survived by two dependent family members, deduction on account of personal and living expenses of the deceased should be 1/3rd. The Tribunal, thus, committed no illegality in making deduction on account of personal and living expenses @ 1/3rd and then calculating the amount payable. The Tribunal has granted the interest @ 7.5% per annum which, by no means, can be said to be exorbitant. It is, thus, found that the interest granted by the Tribunal is fully justified.

Â The plea of the appellant-Insurance company that one of the claimants being a major and married son was not dependent on the earning of the deceased also cannot be accepted for the reason that there is no evidence on record to show that he was earning and not dependent upon the earning of the deceased. The dependency of the claimants is well established by the evidence led by the claimants and in the absence of any evidence in rebuttal, the plea of the appellant-Insurance Company that the son being major is not entitled to compensation cannot be accepted. However, the amount awarded on account of loss of consortium, funeral expenses needs to be modified in light of the law laid down by the Supreme Court in the case of Pranay Sethi (supra).Â

Contention of the learned counsel for the claimants for enhancement of compensation by making addition to the income of the deceased on account of loss of future prospects cannot be accepted for the reason that the claimants feeling satisfied with the award of the Tribunal have not preferred any appeal or cross objection seeking enhancement of compensation. The Supreme Court in the case of Ranjana Prakash and others v. Divisional Manager and another; 2011(14)SCC 639 held that High Court cannot enhance the compensation in an appeal filed by owner/insurer for reducing the compensation. What was held by the Supreme Court in paragraph No. 8 of the

aforesaid judgment reads thus:-

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High

Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher

than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the

owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court

will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously

increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the

claimants seeking enhancement of compensation.

Admittedly, age of the deceased at the time of accident was 48 years. Established income of the deceased is Rs.6,000/- per month. Deducting 1/3rd

on account of personal and living expenses of the deceased, the net monthly income required to be taken for computation of compensation would be

Rs. 4,000/-.

Accordingly, the claimants shall be held entitled to the following compensation.

Loss of dependencyÂ Â Â Rs.6,24,000/-

(4000 x 12 x 13)

Loss of consortiumÂ Â Â Rs. 40,000/-

Loss of estate/love and affectionÂ Rs.15,000/-

Funeral expensesÂ Â Â Rs. 15,000/-

TotalÂ Â Â Â Rs.6,94,000/-

For the aforesaid discussion, the claimants are held entitled to aforesaid said compensation along with interest as has been awarded by the Tribunal.

MA No.202/2017 (file No.20/claim)

In the instant case the Tribunal awarded the compensation to the claimants who are wife and minor children of the deceased Ashok Kumar in the

following manner:-

Loss of dependencyÂ Â Â Rs.18,44,304/-

Loss of consortium to wife Rs.1,00,000/-

Loss of love, affection and Rs.1,00,000/-

Guidance to minor children Funeral expenses Rs.25,000/-

Total Rs.20,69,304/-

The Tribunal rounded off the amount to Rs.20,69,300/-

The amount awarded by the Tribunal on account of loss of dependency is in accordance with the law laid down by the Supreme Court. However, I

find that the amount awarded under other heads is not in consonance with the law laid down by the Supreme Court in the case of Pranay Sethi

(supra). Accordingly, the amount awarded to the claimants is recast as under:-

Loss of dependency Rs.18,44,304/-

Loss of consortium to wife Rs.40,000/-

Loss of love, affection and Rs.15,000/-

Guidance to minor children

Funeral expenses Rs.15,000/-

Total Rs.19,14,304/-

Accordingly, the award of the Tribunal is modified to the aforesaid extent. The claimants are held entitled to the aforesaid amount along with interest

as has been awarded by the Tribunal. The appeal shall stand disposed of accordingly.

MA No.321/2017 (File No.120/Claim)

Claimant in this case who was serving as Principle, Government Higher Secondary School, Palmar suffered 20% permanent disability in the accident

in question. Since the claimant was a government employee, as such, no loss of future income occurred on account of the injury suffered. Taking into

consideration totality of the circumstances, the Tribunal has awarded compensation in the following manner:-

Pain and suffering Rs.85,000/-

Loss of amenities of life Rs.1,00,000/-

Medical and other incidental Rs.25,000/-

Expenses

Total Rs.2,10,000/-

The aforesaid amount, by no stretch of reasoning, can be said to be exorbitant and not in consonance with law laid down by the Supreme Court. It is

because of this reason learned counsel for the appellant-Insurance Company has not seriously disputed it. Accordingly, the appeal is dismissed and the

award of the Tribunal is upheld.

Condl. No.239/2017

There is delay of 342 days in filing the appeal. For the reasons stated in the application and in view of the fact that the award impugned in the appeal

has already been assailed in several other appeals. Therefore, the delay in filing the appeal is condoned. The application shall stand disposed of.

Registry to diarize the appeal.

MA No.128/2018 (File No.82/claim)

In the instant case the deceased was an unmarried and the only claimant is the mother of the deceased. The Tribunal has deducted 50% from the

income of the deceased on account of personal and living expenses and pegged the monthly loss of dependency @ Rs.8,565/-. The deceased was

serving as Government teacher and was 28 years of age at the time of accident. The age of the mother of the deceased was 51 years at the time

of death. Adopting the multiplier of 11, as laid down by the Supreme court in the case of Sarla Verma (supra), the Tribunal assessed the loss of

dependency as Rs.11,30,580/- (8565 x 12 x 11). The claimant has also been held entitled to funeral expenses @ Rs.25,000/-.

The amount awarded by the tribunal on account of loss of dependency is just and fair and does not call for any variance or modification. However, the

amount awarded on account of funeral expenses is on higher side and is not in tune with the guidelines issued by the Supreme Court in the case of

Pranay Sethi (supra), as such, same would be reduced to Rs.15,000/-. Accordingly, the claimant is held entitled to compensation along with interest as

has been awarded by the Tribunal in the following manner:-

Loss of dependency Rs.11,30,580/-

Funeral expenses Rs.15,000/-

Total Rs.11,45,580/-

The award of the Tribunal is, accordingly, modified to the aforesaid extent. The appeal stands disposed of accordingly.

MA No.139/2017 (File No.72/Claim)

The claimants in this case are husband and minor son of deceased Rukhsana Kousar. She was a government teacher and her age at the time of

accident was 32 years. She was getting a salary of Rs.11,722/- per month. In this context the claimants claimed compensation of Rs.37,00,000/- along

with interest under different heads from the owner as well as appellant Insurer of the offending vehicle.

On appreciation of evidence, the Tribunal found that the income of the deceased at the time of accident was Rs.11,722/- which was rounded off to

Rs.11,800/-. Taking the age of the deceased as 34 years, as indicated in the service book, applying the guidelines as laid down in the case of Sarla

Verma (supra), the Tribunal added 50% to the income of the deceased towards future prospects and accordingly, computed the loss of dependency to

the tune of Rs.22,65,600/-. The Tribunal awarded the following compensation to the claimants:-

Loss of dependencyÂ Â Â Rs.22,65,600/-

Loss of consortium to husbandÂ Â Rs.1,00,000/-

Loss of love, affection andÂ Â Â Rs.1,00,000/-

Guidance to minor son Funeral expensesÂ Â Â Â Rs.25,000/-Â Â

TotalÂ Â Â Â Â Rs.24,90,600/-

In view of the guidelines laid down by the Supreme Court in the case of Sarla Verma (supra) and reiterated in Pranay Sethi's case (supra), the

amounts paid under the heads of loss of consortium, loss of love and affection and funeral expenses are required to be varied so as to bring them in

tune with the settled law on the subject.

The award of the Tribunal is, therefore, modified in the following manner:-

Loss of dependencyÂ Â Â Â Rs.22,65,600/-

Loss of consortium to husbandÂ Â Â Rs. 40,000/-Â

Loss of love, affection and guidanceÂ Â Â Rs. 15,000/-Â Â to minor son.

Funeral expensesÂ Â Â Â Â Rs. 15,000/-Â Â TotalÂ Â Â Â Â Rs.23,35,600/-

The claimants are held entitled to the aforesaid amount of compensation along with interest as has been awarded by the Tribunal. The appeal is

partially allowed.

Cond. No.240/2017

There is delay of 342 days in filing the appeal. For the reasons stated in the application and in view of the fact that the award impugned in the appeal

has already been assailed in several other appeals. Therefore, the delay in filing the appeal is condoned. The application shall stand disposed of.

Registry to diarize the appeal.

MA No. 127/2018 (File No.70/Claim)Â

The claimants in the instant case are the legal representatives i.e. wife and daughter of the deceased- Jia Lal Chowhan, who at the time of accident

was the stated to be 47 years of age and was serving as Physical Education Teacher in Education Department. It was claimed that he was getting

Rs.18,342/- per month as salary. In the context of aforesaid facts, the claimants claimed a compensation of Rs.41,50,000/- along with interest under

different heads. An issue in this regard was framed by the Tribunal and the parties were asked to lead their evidence. The claimants led their

evidence. However, the appellant-Insurance Company has not led any evidence in rebuttal.

On the basis of the evidence brought on record, the Tribunal found that the deceased at the time of accident was 47 years old, as is recorded in the

matriculation certificate and was receiving a gross salary of Rs.18,342/- per month, as is evident from the salary certificate. The deceased was not

paying any income tax. Going by the age of the deceased, the Tribunal added 30% to the income of the deceased towards loss of future prospects.

The Tribunal deducting 1/4th on account of personal and living expenses of the deceased, assessed the loss of dependency as Rs.27,89,748/-(17882 x

12 x 13). Besides loss of dependency, compensation on account of loss of consortium to the tune of Rs.1,00,000/- and Rs.25,000/- as funeral expenses

was also awarded.Â

By no stretch of reasoning, amount awarded under the head loss of dependency can be said to be exorbitant rather the same is in consonance with the

law laid down by the Supreme Court in the case of Sarla Verma and Pranay Sethi (supra). However, the amount awarded under the head loss of

consortium and funeral expenses needs to be slashed down so as to bring them in tune with the law laid down by the Supreme Court in the case of

Pranay Sethi (supra). As such, the claimants are held entitled to the following

compensation:-

Loss of dependencyÂ Â Â Rs.27,89,748/-

Loss of consortiumÂ Â Â Rs. 40,000/-

Loss of estate/love and affectionÂ Rs.15,000/-

Funeral expensesÂ Â Â Rs. 15,000/-Â

TotalÂ Â Â Â Â Rs.28,59,748/-

With the aforesaid modification, award of the Tribunal is upheld. The appeal is accordingly, disposed of. The claimants shall be entitled to the

aforesaid amount of compensation along with interest as has been awarded by the Tribunal.

MA No.320/2017 (File No.8-A/Claim)

In the instant case the claimants are the legal representatives of deceased Kulita Devi. Respondent No.1 is husband whereas others are the children

of the deceased. The deceased was a house wife and it was claimed that besides taking care of her household works, she was also doing tailoring

work and was earning Rs.9,000/- per month. It was also claimed that she was 37 years old when she died in the accident in question. On the basis of

the evidence led and in light of the guidelines issued by the Supreme Court in the case of Sarla Verma (supra), the Tribunal taking the income of the

deceased as Rs.6,000/- per month, since the deceased was survived by four dependent family members, deduction on account of personal and living

expenses was made @ 1/4th. Going by the age of the deceased i.e. 37 years, multiplier of 15 was adopted. However, no amount was added on

account of future prospects. In nutshell the following award was passed by the

Tribunal:-

Loss of dependencyÂ Â Â Â Rs.8,10,000/-

Loss of consortium to husbandÂ Â Â Rs.1,00,000/-

Loss of love, affection andÂ Â guidance to childrenÂ Â Rs.1,00,000/-

Funeral expensesÂ Â Â Â Â Rs.25,000/-

TotalÂ Â Â Â Â Â Â Rs.10,35,000/-

I have carefully examined the award of the Tribunal and the manner in which the compensation has been assessed in this case and found that the

same is in consonance with the law laid down in Sarla Vermâ??s case (supra).



The Tribunal rightly took the income of the deceased as Rs.6,000/- per month as has been amply proved by the oral evidence led by the claimants. Since the deceased left the four dependent family members, the Tribunal rightly deducted 1/4th from the established income of the deceased. Multiplier of 15 was rightly adopted by the Tribunal keeping in view the age of the deceased. Therefore, the Tribunal has committed no illegality in computing the compensation on account of loss of dependency. However, the amount granted by the Tribunal on account of loss of consortium, loss of love and affection and funeral expenses is on the higher side and is not in consonance with the guidelines issued by the Supreme Court in the case Pranay Sethi (supra), as such, same is required to be slashed down to bring the same in tune with the guidelines of the Supreme Court.Â

The contention of the learned counsel for the claimants that the claimants are entitled to receive enhanced compensation on account of loss of dependency because the Tribunal has erred in not making any addition to the established income of the deceased on account of loss of future prospects cannot be accepted in view of the settled proposition of law by the Supreme Court in the case of Ranjana Prakash (supra).

In view of the above, the claimants are held entitled to the following compensation along with interest as has been awarded by the Tribunal:-

Loss of dependencyÂ Â Â Â Rs.8,10,000/-

Loss of consortium to husbandÂ Â Â Rs.40,000/-Â Â

Loss of love, affection and guidanceÂ Â Rs.15,000/-Â Â to childrenÂ

Funeral expensesÂ Â Â Â Â Rs.15,000/-

TotalÂ Â Â Â Â Rs.8,80,000/-

The appeal of the Insurance Company is partially allowed.

MA No.19/2017 (File No.86/Claim)

The claimants in this case before the Tribunal were husband, sons and daughter of the deceased Satya Devi. It was claimed that she was 48 years of age at the time of accident and was running a tailoring shop besides doing her household work and was earning Rs.10,000/- per month. In the context of aforesaid factual background, the claimants claimed compensation to the tune of Rs.21,50,000/- along with interest under different heads. An issue in this regard was also framed. The claimants led their evidence.

On appreciation of the evidence, the Tribunal found that the income of the deceased is established as Rs.6,000/- per month and accordingly, worked out the compensation in view of the guidelines issued by Supreme Court in the case of Sarla Verma (supra). Since the deceased was survived by five dependent family members, accordingly, deduction @ 1/4th on account of personal and living expenses was made. Following the prescription laid down in the Sarla Verma's case, multiplier of 13 was adopted. Accordingly, the Tribunal assessed the loss of dependency as Rs.7,02,000/- (4500 x 12 x 13).

Learned counsel for the appellant-Insurance Company has disputed the income of the deceased taken by the Tribunal @ Rs.6000/- per month. It is stated that in a case of household lady, income is required to be taken at Rs.3,000/-. I am not impressed by the submission made by the learned counsel for the appellant for the simple reason that the claimants by way of evidence clearly established that the deceased was not only a housewife but was also running a tailoring shop and had kept 2-3 cows for selling the milk etc. In that view of the matter, the Tribunal was correct in pegging the income of the deceased as Rs.6000/- per month since no contrary evidence was led by the appellant-Insurance Company in rebuttal. However, the amounts granted on account of loss of consortium and funeral expenses are on the higher side and not in consonance with the law laid down by the Supreme Court in the case of Pranay Sethi (supra).

Accordingly, the claimants are held entitled to the following amount of compensation along with interest as has been awarded by the Tribunal:-

Loss of dependencyÂ Â Rs.7,02,000/-

Loss of consortiumÂ Â Rs.40,000/-

Funeral expensesÂ Â Â Rs.15,000/-

TotalÂ Â Â Rs.7,57,000/-

I have carefully examined the award passed by the Tribunal in the instant case and found that the same is not in consonance with the law laid down by the Supreme Court in the case of Pranay Sethi. The deceased was a self employed lady, as such, an addition of 25% should be made to the established income of the deceased. However, since the claimants are satisfied with the amount awarded by the Tribunal and has not preferred to

seek enhancement of the amount awarded in their favour, this Court cannot increase the compensation in the absence of any appeal or cross-objection

seeking enhancement of compensation.

Accordingly, the award of the Tribunal is modified to the aforesaid extent and the appeal is disposed of accordingly.

MA No.149/2017Â (File No.67/Claim)c/wCross Appeal No.9/2017

In the instant case the claimants before the Tribunal were wife and children of one Sh. Kuldeep Singh who died in the accident in question. It is

claimed that he was working as Lecturer in the Education Department and was 36 years of age at the time of accident. It was also claimed that the

deceased was receiving a salary of Rs.20,010/- per month and was not paying any income tax. In the aforesaid factual background the claimants

prayed for compensation to the tune of Rs.35,00,000/- along with interest under different heads.

Issue with regard to the quantum of compensation payable to the claimants was framed and the claimants led their evidence. There is, however, no

evidence led by the appellant-Insurance Company in rebuttal.Â

On the basis of the evidence led before the Tribunal, the Tribunal found that the deceased was drawing a gross salaryÂ of Rs.20,100/-, which was

rounded off to Rs.20,000/- per month, which was evident from the salary certificate issued by the Principal, Government Higher Secondary School,

Palmar. The deceased was 36 years of age at the time of accident which too was evident from the matriculation certificate issued by the J&K State

Board of School Education indicating date of birth of the deceased as 22.3.1973. Following the guidelines provided by the Supreme Court in the case

of Sarla Verma, an addition @ 50% was made on account of loss of future prospects. Since the deceased was survived by four dependent family

members, deduction for personal and living expenses of the deceased was made @ 1/4th. Accordingly, total income for the purposes of computation

of compensation was worked out to be Rs.22,500/- and adopting the multiplier of 15 award in the following manner was passed:-

Loss of dependencyÂ Â Â Rs.40,50,000/-

Loss of consortium to wifeÂ Â Rs.1,00,000/-

Loss of love, affection andÂ

Guidance to minor childrenÂ Â Rs.1,00,000/-

Funeral expensesÂ Â Â Rs. 25,000/-

TotalÂ Â Â Â Rs.42,75,000/-

I have carefully gone through the award of the Tribunal and do not find any error committed by the Tribunal in computing the amount on account of

loss of dependency of the claimants. However, the amounts awarded on account of loss of consortium, love and affection and funeral expenses are

not in tune with the law laid down by the Supreme Court in the case of Pranay Sethi (supra). Accordingly, the claimants are held entitled to the

following amount of compensation:-

Loss of dependencyÂ Â Rs.40,50,000/-

Loss of consortium to wifeÂ Â Rs. 40,000/-

Loss of love, affection and

Guidance to minor childrenÂ Â Rs.15,000/-

Funeral expensesÂ Â Â Rs.15,000/-

TotalÂ Â Â Â Rs.41,20,000/-

The claimants have also filed cross appeal and have claimed enhancement of compensation on various heads. It is contended by the learned counsel

for the claimants that the deceased was a government employee and was entitled to receive enhanced salary as per the revised pay scales granted by

the Government of Jammu and Kashmir vide SRO 93 dated 15.04.2009. It is stated that the aforesaid SRO was made effective w.e.f. 01.01.2006.

The grounds of the claimants in the cross appeal for enhancement of the amount of compensation is that while passing the award, the Tribunal did not

take into consideration the revised pay scale which could have been easily ascertained by it from the ready reckoner attached with the aforesaid

SRO.Â

I have gone through the record particularly the claim petition in which the claimants have categorically claimed the monthly income of the deceased as

Rs.20010/- duly supported by the salary certificate issued by the competent authority. I have not found any whisper about retrospective revision of pay

scale nor have the claimants led any evidence to prove the fact of revision of pay scale. That apart, by increasing the monthly income of the deceased

at the rate of 50% towards future income the Tribunal has well taken care of the grievance projected by the claimants in this cross-appeal.Â Â

Therefore, I do not find any merit in the cross appeal/objections more so, when the plea taken is for the first time in appeal and was not the plea taken

before the Tribunal nor there was any evidence led in this behalf by the claimants. In the absence of such evidence, it is not possible for this Court to

come to any conclusion with regard to revised salary of the deceased, if any, which was payable to the deceased on account of retrospective revision

of pay scale. All these issues are issues of fact and are required to be pleaded and proved in accordance with law. The claimants cannot be permitted

to raise such issue of fact for the first time in appeal that too without there being any supporting evidence in this regard.Â

In view of the above the cross appeal/objections are without any merit, hence dismissed. The appeal of the appellant-Insurance Company shall stand

disposed of.

MA No.317/2017 (File No.110/Claim)

In the instant case the claimants before the Tribunal were the wife, mother and minor children of the deceased Anil Kumar. He was serving as

government teacher in Education Department and was 34 years of age at the time of accident. The claimants claimed Rs.51,75,000/- as compensation

along with interest under different heads from the owner and appellant Insurance Company. On the basis of the pleadings of the parties, an issue was

framed in this regard. The claimants led their evidence to substantiate their claim.Â

The Tribunal after appreciating the evidence on record and following the dictum of law laid down by the Supreme Court in the case of Sarla Verma

(supra) worked out the compensation. The Tribunal found that the salary of the deceased government employee at the time of accident was

Rs.14,111/- which was substantiated by the salary certificate issued by the competent authority. The deceased was claimed to be 34 years of age at

the time of accident and survived by wife, two minor children and parent.

The Tribunal has rounded off the gross monthly salary of the deceased to Rs.14,100/- per month. 50% of the gross salary has been added towards

loss of future prospects and 1/4th has been deducted on account of personal and living expenses. The Tribunal in light of the guidelines laid down by

the Supreme Court in the case of Sarla Verma (supra) worked out the net income of the deceased as Rs.15,863/- and multiplier of 16 as indicated in

para 21 of the Sarla Verma's case has been applied. Accordingly, the claimants were found entitled to following compensation in the following

manner:-

Loss of dependencyÂ (15863 x 12 x 16)Â Rs.30,45,969/-

Loss of consortium to wifeÂ Rs. 1,00,000/-

Loss of love, affection andÂ Guidance to minor childrenÂ Rs. 1,00,000/-

Funeral expensesÂ Rs.25,000/-

TotalÂ Rs.32,70,696/-

I have carefully gone through the evidence led in the case and the award passed by the Tribunal and do not find that the amount of compensation

awarded on account of loss of dependency is in any manner exorbitant or contrary to the norms laid down by the Supreme Court for computation of

the compensation. However, compensation awarded by the Tribunal for loss of consortium, loss of love, affection and guidance to minor children and

funeral expenses is on the higher side and not in consonance with the law laid down by the Supreme Court in the case of Pranay Sethi (supra).

Accordingly, the claimants are held entitled to the following compensation:-

Loss of dependencyÂ Rs.30,45,696/-

Loss of consortium to wifeÂ Loss of love, affection andÂ Rs.40,000/-

Guidance to minor childrenÂ Rs.15,000/-

Funeral expensesÂ Rs.15,000/-

TotalÂ Rs.31,15,696/-

The award of the Tribunal is, accordingly, modified and the appeal shall stand disposed of in the above terms.

MA No.282/2017 (File No.76/claim)

In the instant case the claimants before the Tribunal were the husband and two children of the deceased. It was claimed that the deceased Lalita Devi

Parihar was 48 years of age at the time of accident and was earning Rs.7,500/- per month. It was claimed that she was doing the job of tailoring and

selling cow milk apart from doing household works. In the context of aforesaid facts, the claimants prayed for a compensation of Rs.31,00,000/- under

different heads. An issue in this regard was framed by the Tribunal and the claimants led their evidence to substantiate their claim. There is, however, no evidence led in rebuttal by the appellant-Insurance Company on this issue.

On the basis of the evidence on record, the income of the deceased from all sources was assessed as Rs.6,000/- per month by the Tribunal. Since she was survived by three dependent family members, deduction on account of personal living expenses of the deceased was made @ 1/3rd. Multiplier of 13 as laid down in para 21 of the judgment in the case of Sarla Verma was applied to work out the compensation. In nutshell the Tribunal awarded the following compensation in favour of the claimants:-

Loss of dependencyÂ Â Â Rs.6,24,000/-Â Â Loss of consortium to husbandÂ Â Rs. 1,00,000/-

Funeral expensesÂ Â Â Â Rs.25,000/-Â Â TotalÂ Â Â Â Â Rs.7,49,000/-

Learned counsel appellant submits that the amounts granted on account of loss of consortium and funeral expenses are on higher side and are not in consonance with the laid down by the Supreme Court in the case of Pranay Sethi (supra).

On the other hand, learned counsel for the claimants submits that the claimants are entitled to receive enhanced compensation as the Tribunal has not made any addition in the established income of the deceased on account of loss of future prospects and even no amount has been awarded on account of loss of estate/love and affection.

Even though, while computing the compensation on account of loss of dependency the Tribunal has omitted to add to the established income of the deceased on account of loss of future prospects, however, since there is no appeal or cross objection by the claimants, this Court on its own cannot increase the compensation awarded by the Tribunal.Â Â

It is found that the amounts awarded by the Tribunal on account of loss of consortium to husband and funeral expenses was on the higher side and are not in consonance with the law laid down by the Supreme Court in Pranay Sethi (supra), as such, the same are required to be slashed down to bring the same in tune with the law laid down by the Supreme Court.Â Accordingly, the claimants are held entitled to the compensation in the following manner:-

Loss of dependencyÂ Â Â Rs.6,24,000/-

Loss of consortium to husbandÂ Â Rs.40,000/-

Funeral expensesÂ Â Â Â Rs.15,000/-

TotalÂ Â Â Â Â Rs.6,79,000/-Â

The award of the Tribunal is, therefore, modified to the aforesaid extent and the appeal of the Insurance Company is disposed of.

MA No.316/2017 (File No.73/claim)

In the instant case the claimants before the Tribunal were the husband and children of the deceased Amina Begum. It is claimed that she was 27

years of age and was earning Rs.7,500/- per month by doing the knitting work and selling cow milk apart from attending her household work. The

claimants claimed a compensation of Rs.32.50 lakh under different heads from the owner and appellant-Insurance Company. An issue in this regard

was framed and the claimants led their evidence. However, no evidence was led by the appellant-Insurance Company in rebuttal on the aforesaid

issue.Â Â On the basis of the evidence on record, the Tribunal took the income of the deceased as Rs.6,000/- for assessing justÂ and reasonable

compensation. Relying upon the post-mortem report, the Tribunal held that the deceased was 35 years of age at the time of accident. Following the

judgment of the Supreme Court in the case of Sarla Verma and going by the guidelines laid down therein, following compensation was worked out by

the Tribunal:-

Loss of dependencyÂ Â Â Â Â Rs.8,64,000/-

Loss of consortium to husbandÂ Â Â Rs.1,00,000/-Â

Â Loss of love and affection and guidanceÂ Rs.1,00,000/-Â Â to minor children.

Funeral expensesÂ Â Â Â Rs.25,000/-Â TotalÂ Â Â Â Â Rs.10,89,000/-

I have carefully gone through the award as also the evidence led by the claimants and find that the claimants have succeeded in proving the income of

the deceased as Rs.6,000/- per month. In the absence of any evidence to the contrary evidence, I am inclined to agree with the finding of fact

recorded by the Tribunal in this regard.Â

Learned counsel for the appellant-Insurance Company submits that the amounts granted to the claimants on account of loss of consortium, loss of love



and affection and funeral expenses are on higher side and are required to be reduced.Â Â

Admittedly, the amounts awarded by the Tribunal on account of loss of consortium, loss of love and affection and funeral expenses are not in

consonance with the guidelines laid down by the Supreme Court in the case of Pranay Sethi (supra), hence the same are required to be slashed down

to bring them in tune with the prescription laid down by the Supreme Court.Â Learned counsel for the claimants submits that since while calculating

the loss of dependency the Tribunal has not added anything towards the loss of future prospects, the award of the tribunal is required to be enhanced

by adding 40% to the established income of the deceased.

Since the claimants have not preferred any appeal or cross objection seeking enhancement of the amount of compensation, contention for

enhancement of the compensation cannot be considered.

Keeping in view the law laid down by the Supreme Court in Pranay Sethi (supra), the amounts awarded by the Tribunal under convention heads are

slashed down and the claimants are held entitled to the following compensation:-

Loss of dependencyÂ Â Â Â Rs.8,64,000/-

Loss of consortium to husbandÂ Â Â Rs.40,000/-Â

Â Loss of love, affection and guidanceÂ Â Rs.15,000/-Â Â to minor children

Funeral expensesÂ Â Â Â Â Rs.15,000/-

TotalÂ Â Â Â Â Â Â Rs.9,34,000/-

The award of the Tribunal is modified to the aforesaid extent and the appeal is disposed of accordingly.

MA No.140/2017 (File No.95/claim)

In the instant case the claimants before the Tribunal were the sons of the deceased Safiya Begum. It was claimed that she was running a small dairy

unit and was also cultivating vegetables and her earning was Rs.10,000/- per month. The claimants prayed for a compensation for Rs.17.50 lacs along

with interest under different heads. An issue in this regard was struck by the Tribunal. The claimants led their evidence to substantiate their claim.

However, the appellant-Insurance Company has not led any evidence in rebuttal on the issue.Â

Â On the basis of the evidence led by the claimants, the Tribunal found that the

claimants had succeeded in establishing the income of the deceased at Rs.4,500/- per month. The deceased was 52 years of age at the time of accident, therefore, multiplier of 11 was applied by the Tribunal. Deduction on account of personal and living expenses of the deceased has been made @ 1/3rd. Keeping in view the number of dependent family members of the deceased following compensation has been awarded by the Tribunal in favour of the claimants:-

Loss of dependency Rs.3,96,000/-

Funeral expenses Rs.25,000/-

Total Rs.4,21,000/-

Learned counsel for the appellant-Insurance Company submits that compensation awarded by the Tribunal is on the higher side. The amount granted for funeral expenses is not in tune with the law laid down by the Supreme Court in the case of Pranay Sethi (supra).

On the other hand, learned counsel for the claimants submits that the claimants are entitled to receive enhanced compensation by addition @ 10% to

the established income of the deceased is required to be made on account of loss of future prospects in light of the guidelines laid down by the

Supreme Court in the case of Pranay Sethi. Since the claimants are neither in appeal against the award of the Tribunal nor have filed any cross-

objections, therefore, it is not possible for this Court to enhance the compensation in absence of any appeal or cross-objection by the claimants.

It is found that the amount granted on account of funeral expenses is not in consonance with the law laid down by the Supreme Court in the case of

Pranay Sethi, as such, same is reduced to Rs.15,000/- so to bring it in tune with the law laid down by the Supreme Court.

Accordingly, the award of the Tribunal is modified to aforesaid extent and the claimants are held entitled to following compensation:-

Loss of dependency Rs.3,96,000/-

Funeral expenses Rs.15,000/-

Total Rs.4,11,000/-

The appeal is disposed of accordingly.

MA No.319/2017 (File No.21/Claim)

In the instant case the claimants before the Tribunal were the husband and

minor children of the deceased Nitu Devi. It was claimed that the deceased at the time of accident was 28 years old and was earning Rs.9,500/- per month. An issue in this regard was framed by the Tribunal and the claimants had led their evidence to support their claim. However, no evidence in rebuttal was led by the appellant-Insurance Company.

Â On the basis of the evidence on record, the Tribunal found that the claimants had succeeded in establishing the monthly income of the deceased as

Rs.6000/- per month. Deducting 1/4th from the income of the deceased and applying the multiplier of 17 as provided in the case of Sarla Verma,

following compensation has been awarded by the Tribunal:-

Â Loss of dependencyÂ Â Â Â Rs.9,18,000/-

Â Loss of consortium to husbandÂ Â Â Rs. 1,00,000/-

Â Loss of love, affection and guidanceÂ Â Rs.1,00,000/-Â Â to minor children.

Â Funeral expensesÂ Â Â Â Rs.25,000/-Â

TotalÂ Â Â Â Â Rs.11,43,000/- Â

Â Learned counsel for the appellant-Insurance Company submits that the compensation awarded by the Tribunal is on the higher side and is

exorbitant. It is stated that the compensation awarded under conventional heads is much more than the amount prescribed by the Supreme Court in

the case ofPranay Sethi.

Â On the other hand, learned counsel for the claimants submitted that the Tribunal has not made any addition to the income of the deceased on

account of the loss of future prospects. Therefore, the amount of compensation payable to the claimants is required to be enhanced.

Â I have carefully gone through the award of the Tribunal and found that the amount of compensation awarded under the conventional heads is not in

consonance with the law laid down by the Supreme Court in the case of Pranay Sethi and as such the same is required to be slashed down so as to

bring it in tune with the law laid down in Pranay Sethi's case.

Â Since the claimants are not in appeal against the award of the Tribunal and has not sought any enhancement of compensation, it is not possible to

increase the compensation in the appeal filed by the Insurance Company for reducing the compensation. Accordingly, the amount of compensation

awarded by the Tribunal on account of loss of dependency is upheld.

In view of the above, the claimants shall be entitled to the following compensation along with interest as has been awarded by the Tribunal:-

Â Loss of dependencyÂ Â Â Â Rs.9,18,000/-

Â Loss of consortium to husbandÂ Â Â Rs.Â 40,000/-

Â Loss of love, affection and guidanceÂ Rs. 15,000/-Â to minor children

Â Funeral expensesÂ Â Rs.15,000/-

Â TotalÂ Â 9,88,000/-Â

Â Modifying the award of the Tribunal, the appeal is disposed of.

MA No.200/2017 (File No.89/Claim)

In this case the claimants before the Tribunal were sons and daughters of the deceased Ghulam Mohd. Butt. It was claimed that the deceased at the

time of death was 45 years of age and was earning Rs.15,000/- per month by doing the business of selling qaleens and copper utensils etc. The

claimants, therefore, laid a claim of Rs.22,00,000/- for compensation. An issue in this regard was framed by the Tribunal and the parties were asked to

lead their evidence. The claimants led their evidence to support their claim, however, no evidence was led by the appellant-Insurance Company in

rebuttal on the aforesaid issue.

Â The Tribunal, on the basis of the evidence, found that the claimants had succeeded in establishing the income of the deceased as Rs.9000/- per

month. The deceased at the time of accident was 45 years old as recorded in the post mortem report. Accordingly, , deducting 1/4th on account of

personal and living expenses of the deceased and applying the multiplier 14, amount of compensation was worked out by the Tribunal in the following

manner:-

Â Loss of dependency (6750 x 12 x 14)Â Â Rs.11,34,000

Â Funeral expensesÂ Â Â Â Â Rs. 25,000/-

Â TotalÂ Â Â Â Â Â Â Rs.11,59,000/-

Â Learned counsel for the appellant has disputed the compensation awarded by the Tribunal by stating that the income of the deceased was not

Rs.9,000/- per month as has been assessed by the Tribunal. He further submits that the compensation on account of funeral expenses is also on the

higher side.

^ I have carefully gone through the award and the evidence on record and do not find any error committed by the Tribunal in appreciating the evidence available on record. As per the oral evidence that was led by the complainant before the Tribunal, the income of the deceased was ranging from Rs.15,000/- to Rs.16,000/-. However, taking into consideration the totality of the circumstances and the nature of job performed by the deceased, the Tribunal had assessed the income of the deceased as Rs.9,000/- per month. There is no evidence led by the appellant-Insurance Company to prove contrary.

In that view of the matter, I am inclined to agree with the finding of fact recorded by the Tribunal with regard to the monthly income of the deceased.

However, the amount awarded on account of funeral expenses is on higher side and to bring the same in tune with the law laid down by the Supreme Court in the case of Pranay Sethi (supra), same is required to be slashed down.

^ Since the claimants have not filed any appeal or cross objection against the award of the tribunal, as such, their contention for enhancement of compensation cannot be considered.

^ Accordingly, the claimants are held entitled to the following amount of compensation along with interest as has been awarded by the Tribunal:-

^ Loss of dependency^ ^ ^ ^ Rs.11,34,000/-

^ Funeral expenses^ ^ ^ ^ Rs.15,000/-

^ Total^ ^ ^ ^ ^ ^ Rs.11,49,000/-

^ The award of the Tribunal is modified to the aforesaid extent and the appeal shall stand disposed of accordingly.

MA No.318/2017 (File No.74/claim)

In the instant case the claimants before the Tribunal were the legal heirs of deceased Parveena Begum. It was claimed that she was 28 years old at the time of accident and was earning Rs.7,500/- per month by doing the knitting work besides household work. The claimants laid a claim for compensation to the tune of Rs.31,00,000/- along with interest under different heads from the owner as well as appellant-Insurance Company. An issue in this regard was framed and the claimants had led their evidence in support of their claim.

On the basis of the evidence on record, the Tribunal found that the claimants had

succeeded in establishing the income of the deceased as Rs.6,000/-

per month. Keeping in view the number of dependant family members, 1/4th was deducted from the income of the deceased and by applying the

multiplier of 17, the Tribunal awarded the following amount of compensation in favour of the claimants:-

Â Loss of dependencyÂ Â Â Rs.9,18,000/-

Â Loss of consortium to husbandÂ Â Rs.1,00,000/-

Â Loss of love, affection andÂ Â guidance to minor childrenÂ Rs.1,00,000/-

Â Funeral expensesÂ Â Â Â Rs.25,000/-

Â TotalÂ Â Â Â Â Rs.11,43,000/-

Â The appellant-Insurance Company is aggrieved of the amount of compensation awarded by the Tribunal. It is submitted that the compensation

awarded by the Tribunal is not in consonance with the parameters laid down by the Supreme Court in this regard in the cases of Sarla Verma and

Pranay Sethi.

Â I have carefully gone through the award and the evidence on record and find no contrary material on record to take a view different than the one

taken by the Tribunal with regard to the monthly income of the deceased. The deceased was also found to be 28 years of age at the time of accident,

therefore, in terms of para 21 of the judgment of the Supreme Court in the case of Sarla Verma, multiplier of 17 was applicable. Thus, the Tribunal

has committed no illegality in working out the compensation by applying the relevant multiplier. However, the amounts awarded by the Tribunal under

conventional heads are on the higher side and are not in consonance with the parameters laid down by the Supreme Court in the case of Pranay Sethi.

Â Learned counsel for the claimants submits that since the Tribunal has not made any addition in the income of the deceased on account of loss of

future prospects, the compensation needs to be enhanced. Since the claimants have not assailed the award of the Tribunal, their contention for

enhancement of award cannot be accepted.

Â In view of the above, the claimants shall be entitled to the following compensation along with interest as has been awarded by the Tribunal:-

Â Â Â Â Â Loss of dependencyÂ Â Â Â Rs.9,18,000/-

Â Â Â Â Â Loss of consortium to husbandÂ Â Rs.40,000/-

Â Â Â Â Â Loss of love and affection and guidance to minor children Â Â  
Rs.15,000/-

Â Funeral expensesÂ Â Â Rs.15,000/-

Â TotalÂ Â Â Â Â Rs.9,88,000/-Â Â Â

The award of the Tribunal is modified to the aforesaid extent. The appeal shall stand disposed of accordingly.

MA No.141/2017 (File No.19/Claim)

In this case the claimants are the husband, son and daughter of the deceased Kirna Devi. It is claimed that she was 40 years old at the time of

accident and was a house wife, agriculturist and also running a dairy unit. The average income of the deceased was claimed to be Rs.8000/- per

month. The claimants laid a claim of Rs.17.00 lakh from the Appellant-Insurance Company and owner of the offending vehicle. An issue in this regard

was framed and the claimants led their evidence to prove their claim.Â

Â On the basis of the evidence, the Tribunal found that the claimants had succeeded in establishing the income of the deceased as Rs.6,000/- per

month. Going by the number of dependent family members, the Tribunal found that 1/3rd is required to be deducted from the income of the deceased

on account of personal and living expenses. Applying the multiplier of 15 in terms of para 21 of the judgment of the Supreme Court in the case of

Sarla Verma, the Tribunal awarded ten following compensation in favour of the claimants:-

Â Loss of dependencyÂ Â Â Â Rs.7,20,000/-

Â Loss of consortium to the husbandÂ Â Rs. 1,00,000/-

Â Funeral expensesÂ Â Â Â Rs.25,000/-Â Â

TotalÂ Â Â Â Â Rs.8,45,000/-

Â The Appellant-Insurance company is aggrieved of the compensation awarded by the Tribunal. It is urged that the compensation awarded is

exorbitant and not in consonance with the law laid down in Sarla Verma and Pranay Sethi (Supra). It is submitted that the Tribunal wrongly took

Rs.6,000/- as monthly income of the deceased who was a household lady and her income should not have been more than Rs.3,000/- per month.

Â I have carefully perused the record and evidence on record. It may be true that in the case of a household lady lesser income is required to be

taken into consideration but in the instant case the claimants had led their evidence and have stated that the income of the deceased was about

Rs.8000/- to Rs.9000/- per month on account of selling cow milk. The Tribunal, however, took the income of the deceased as Rs.6,000/- per month

which, by no stretch of reasoning, can be said to be unrealistic or imaginary particularly when there is no material brought on record by the Insurance

Company to prove contrary.Â

Learned counsel for the claimants submits that the claimants are entitled to receive enhanced compensation on account of loss of dependency

because the Tribunal has not made any addition to the income of the deceased on account of loss of dependency. Since the claimants have not filed

any appeal or cross appeal seeking enhancement of compensation, as such, contention of the claimants cannot be accepted.

Â The compensation awarded by the Tribunal under conventional heads is found to be on higher side and not in consonance with the parameters laid

down by the Supreme Court in the case of Pranay Sethi (supra). Therefore, in order to bring it in tune with the parameters laid down in Pranay

Sethi's case (supra), the compensation awarded under the conventional heads is reduced and the claimants are held entitled to following

compensation:-

Â Loss of dependencyÂ Â Â Â Rs.7,20,000/-

Â Loss of consortium to the husbandÂ Â Rs. 40,000/-Â

Â Funeral expensesÂ Â Â Â Rs.15,000/-Â Â

TotalÂ Â Â Â Rs.7,75,000/-

The award of the Tribunal is modified and the appeal shall stand disposed of accordingly.

Â MA No.132/2017 (File No.84/Claim)

Â In this case the claimants before the Tribunal were the husband and minor daughter of the deceased Pinki Sharma. It was claimed that she was 31

years of age at the time of accident and was serving as Lecturer in Government Higher Secondary School, Palmar and was getting a salary of

Rs.20,010/-. It was stated that she was not paying any income tax. The claimants laid a claim for compensation of Rs.63,75,000/- against the owner

and appellant-Insurance Company under different heads.Â



Â An issue in this regard was framed by the Tribunal and the parties were asked to lead their evidence. The claimants led their evidence to

substantiate their claim. However, there was no evidence led by the appellant-Insurance Company on the issue.

Â On the basis of the evidence on record, the Tribunal found that the claimants had succeeded in establishing the income of the deceased as

Rs.20,010/- which was rounded off by the Tribunal to Rs.20,000/- per month which was substantiated by the salary certificate issued by the Principal,

Govt. Higher Secondary School, Palmar. The age of the deceased at the time of accident was found to be 31 years old. In terms of the guidelines laid

down by the Supreme Court in the case of Sarla Verma (supra), deduction on account of personal and living expenses @ 1/3rd was made and

applying the multiplier of 16, the Tribunal awarded the following compensation in favour of the claimants:-

Â Loss of dependencyÂ Â Â Â Rs.38,40,000/-

Â Loss of consortium to husbandÂ Â Rs. 1,00,000/-

Â Loss of love, affection and guidance Rs.1,00,000/-Â Â to minor child.

Â Funeral expensesÂ Â Â Rs.25,000/-

Â TotalÂ Â Â Â Â Rs.40,65,000/-

The appellant-Insurance Company is aggrieved of the amount awarded by the Tribunal. It is submitted that the Tribunal has not computed the

compensation payable to the claimants in accordance with the law laid down by the Supreme Court in the cases Sarla Verma and Pranay Sethi

(supra).Â I have carefully gone through the award passed by the Tribunal and also the evidence led by the parties and do not find any error

committed by the Tribunal in calculating the compensation payable to the claimants on account of loss of dependency. The multiplier of 16 has been

correctly applied keeping in view the age of the deceased at the time of accident. Addition of 50% to the established income of the deceased is also

correct in view of the age of the deceased and deduction of 1/3rd is also justified in view of the dependent family members of the deceased.

Â Viewed from any angle, amount of compensation awarded on account of loss of dependency cannot be said to be exorbitant or erroneous.

However, the amounts awarded under conventional heads are on higher side and not in consonance with the law laid down by the Supreme Court in

the case of Pranay Sethi (supra). Accordingly, the award of the Tribunal is modified and the claimants are held entitled to the following amount of compensation along with interest as has been awarded by the Tribunal:-

Â Loss of dependencyÂ Â Â Rs.38,40,000/-

Â Loss of consortium to husbandÂ Â Rs.40,000/-

Â Loss of love, affection and guidanceÂ Â to minor child.Â Rs.15,000/-

Â Funeral expensesÂ Â Â Rs.15,000/-

Â TotalÂ Â Â Â Rs.39,10,000/-

Â The appeal shall stand disposed of accordingly.

MA No.137/2017 (File No.Â 75/claim) Â

In the instant case the claimants before the Tribunal were wife and minor children of the deceased Azad Hussain. It was claimed that he was 38

years old at the time of accident and was earning Rs.12,000/- per month from the business of sale and purchase of sheep and goats. The claimants,

therefore, laid a claim of compensation for Rs.37.00 lakhs along with interest under different heads. On the basis of the pleadings of the parties, an

issue in this regard was framed and the parties were asked to lead their evidence. The claimants led their evidence to substantiate their claim.

Â On the basis of the evidence led, the Tribunal found that the claimants had been able to establish the monthly income of the deceased as Rs.6,000/-.

The deceased was found to be 42 years of age at the time of accident as per the post-mortem report and the same was taken into consideration by

the Tribunal for working out the compensation. The deceased was survived by four dependent family members, therefore, deduction on account of

personal and living expenses was made @ 1/4th. Applying the multiplier of 14, as laid down in paragraph 21 of the judgment in Sarla Vermaâ??s

case (supra), the following compensation was awarded by the Tribunal in favour of the claimants:-

Â Loss of dependencyÂ Â Â Rs.7,56,000/-

Â Loss of consortium to wifeÂ Â Rs.1,00,000/-

Â Loss of love, affection andÂ Â guidance to minor childrenÂ Â Â Rs.1,00,000/-

Â Funeral expensesÂ Â Â Rs.25,000/-

Â TotalÂ Â Â Â Rs.9,81,000/-Â

The appellant-Insurance Company is aggrieved of the amount awarded by the Tribunal. It is submitted that the Tribunal has not computed the

compensation payable to the claimants in accordance with the law laid down by the Supreme Court in the cases Sarla Verma and Pranay Sethi

(supra). I have carefully gone through the award passed by the Tribunal and also the evidence led by the parties and do not find any error

committed by the Tribunal in calculating the compensation payable to the claimants on account of loss of dependency. The multiplier of 14 has been

correctly applied keeping in view the age of the deceased at the time of accident. Deduction of 1/3rd is also justified in view of the dependent family

members of the deceased.

Learned counsel for the claimants submits that the claimants are entitled to receive enhanced compensation because the Tribunal has erred in not

making any addition to the income of the deceased on account of loss of future prospects. Since the claimants have not filed any appeal or

crossobjections seeking enhancement of the amount of compensation, as such, contention of the claimants cannot be accepted.

Viewed from any angle, amount of compensation awarded on account of loss of dependency cannot be said to be exorbitant or erroneous.

However, the amounts awarded under conventional heads are on higher side and not in consonance with the law laid down by the Supreme Court in

the case of Pranay Sethi (supra).

Accordingly, the award of the Tribunal is modified and the claimants are held entitled to the following amount of compensation along with interest as

has been awarded by the Tribunal:-

Loss of dependency Rs.7,56,000/-

Loss of consortium to wife Rs.40,000/-

Loss of love, affection and guidance to minor children Rs.15,000/-

Funeral expenses Rs.15,000/-

Total Rs.8,26,000/-

The appeal shall stand disposed of accordingly.

MA No.133/2017 (File No.97/Claim)

In the instant case the claimants before the Tribunal were sons of the deceased Aziz Mohd. Mattoo. It was claimed that the deceased was a retired

Headmaster and was getting a monthly pension of Rs.10,500/- and was also earning Rs.10,000/- per month on account of salary he was receiving from some private academy. It was claimed that the deceased at the time of accident was 60 years of age. Therefore, claimants laid a compensation of Rs.17,50,000/-.

An issue in this regard was framed and the parties were permitted to lead their evidence. The claimants have led their evidence to substantiate their claim. However, no evidence was led by the appellant-insurance Company in rebuttal.

On the basis of the evidence on record, the Tribunal found that the claimants had succeeded in establishing the income of the deceased as

Rs.15435/- which was rounded off by the Tribunal to Rs.15,400/- per month. The age of the deceased at the time of accident was found to be 63

years old as recoded in the pension papers. In terms of the guidelines laid down by the Supreme Court in the case of Sarla Verma (supra), deduction

on account of personal and living expenses @ 1/3rd was made and applying the multiplier of 7, the Tribunal awarded the following compensation in

favour of the claimants:-

Loss of dependency Rs.8,62,344/-

Funeral expenses Rs.25,000/-

Total Rs.8,87,344/-

The appellant-Insurance Company has challenged the award on the ground that the compensation awarded is exorbitant and is not in consonance with

the law laid down by the Supreme Court in the cases Sarla Verma and Pranay Sethi (supra).

Considered the submissions and perused the record and found that since the age of the deceased was 63 years old, therefore, multiplier of 7 was

correctly applied by the Tribunal. The deceased was a retired government employee and was receiving pension, his monthly income, therefore, has

been correctly taken as Rs.15,400/- . Keeping in view the number of dependent family members, deduction @ 1/3rd made on account of personal and

living expenses of the deceased is also correct.

Viewed from any angle, amount of compensation awarded on account of loss of dependency cannot be said to be exorbitant or erroneous.

However, the amounts awarded on account of funeral expenses is on higher side and not in consonance with the law laid down by the Supreme Court

in the case of Pranay Sethi (supra). Accordingly, the award of the Tribunal is modified and the claimants are held entitled to the following amount of

compensation along with interest as has been awarded by the Tribunal:-

Â Loss of dependencyÂ Â Â Â Rs.8,62,344/-

Â Funeral expensesÂ Â Â Â Rs.15,000/-

Â TotalÂ Â Â Â Â Rs.8,77,000/- Â

The appeal is disposed of accordingly.

MA No.201/2017 (File No.93/Claim)

In the instant case the claimants before the Tribunal were father, brother and sisters of the deceased Rais Ahmad. The deceased was 20 years old at

the time of accident and had passed 12th examination and by doing the tuition job he was earning Rs.8,000/- per month. Therefore, the claimants

claimed compensation of Rs.24,50,000/- along with interest under different heads. On the basis of the pleadings of the parties, an issue in this regard

was framed and the parties were asked to lead their evidence. The claimants led evidence to substantiate their claim. However, appellant-Insurance

Company had not led any evidence in rebuttal.

Â On the basis of the evidence led, the Tribunal found that the claimants succeeded to establish the monthly income of the deceased as Rs.6,000/-.

Accordingly, deducting 1/4th from the income of the deceased, the Tribunal worked out the compensation by applying the multiplier of 13 as provided

in para 21 of the judgment of the Sarla Verma (supra). The total amount of compensation awarded by the Tribunal is in the following manner:-

Â Loss of dependencyÂ Â Â Rs.7,02,000/-

Â Funeral expensesÂ Â Â Â Rs.25,000/-

Â TotalÂ Â Â Â Â Rs.7,27,000/-Â

The appellant-Insurance Company is aggrieved of the compensation awarded by the Tribunal on the ground that the deceased was 20 years old and

was a student. There is no evidence on record to show that he was earning Rs.6,000/- per month. It is also submitted on behalf of the

appellantInsurance Company that the income of the deceased could not have been taken more than Rs.3,000/- per month. The mother being the only

dependent, the dependency should have been taken at 50%. The appellants have also assailed the amount of Rs.25,000/- awarded on account of

funeral expenses which as per the appellant should have been Rs.15,000/- in terms of the parameters laid down by the Supreme Court in the case of

Pranay Sethi

(supra).

I have considered the submissions made and perused the record. It is true that the deceased at the time of accident was only 20 years old and had

passed the 12th examination. Though, it has come in the evidence that he was doing tuition job and was earning Rs.8000/- per month but the evidence

led by the claimants is not very convincing nor any person who was taking tuition and was paying tuition fee to the deceased has been examined. The

evidence is of general nature and therefore, cannot be fully relied upon.

In that view of the matter, I am of the considered opinion that the income of the deceased should have been taken as Rs.4,000/- instead of Rs.6,000/-,

as has been taken by the Tribunal. Since the deceased was a self employed of the age of 20 years old, 40% is required to be added to the income of

the deceased on account of loss of future prospects. Therefore, the income of the deceased to be taken into consideration comes to Rs. 5,600/-. Since

the deceased was a bachelor and the dependents are the father, brother and sisters and, therefore, deduction on account of personal and living

expenses of the deceased should be 50% as provided in paragraph No.14 and 15 of the judgment in the case of Sarla Verma. The total amount, thus,

required to be taken into consideration for computation would come to Rs.2,800/-.

Accordingly, award of the Tribunal is modified and the claimants are held entitled to the following amount of compensation along with interest as has

been awarded by the Tribunal:-

Loss of dependency  $(2800 \times 12 \times 13) = \text{Rs.}4,36,800/-$

Funeral expenses Rs.15,000/- Total Rs.4,51,800/-

The appeal shall stand disposed of accordingly.

MA No.136/2017 (File No.10/claim)

In the instant case the claimants before the Tribunal were wife, daughter and parents of the deceased Mohd. Ramzan Sheikh. It is claimed that he

was 31 years old at the time of accident and was serving as Lecturer in School Education Department. It was claimed that he was receiving a salary of Rs.20,010/-. Accordingly, the claimants laid a claim of Rs.32,50,000/- along with interest under different heads from the owner and appellant-

Insurance Company. An issue in this regard was framed and the parties were asked to lead their evidence. The claimants led their evidence to substantiate their claim. However, no evidence was led by the appellant-Insurance Company in rebuttal.

On the basis of the evidence led, the Tribunal found that the claimants had substantially established the monthly income of the deceased as

Rs.20,010/- which has been rounded off to Rs.20,000/-. The deceased was found to be 31 years old at the time of accident. The income and the age

of the deceased at the time of accident was substantiated by the documentary evidence which was brought on record in the shape of salary

certificate and date of birth certificate as also the service book. The Tribunal applied the addition of 50% to the income of the deceased as per the

guidelines issued by the Supreme Court in the case of Sarla Verma (supra). Deducting 1/3rd on account of personal and living expenses of the

deceased keeping in view the number of dependent family members and applying the multiplier of 16, the Tribunal awarded the following amount of

compensation:-

Loss of dependency Rs.38,40,000/-

Loss of consortium to wife Rs.1,00,000/-

Loss of love, affection and guidance to minor children Rs.1,00,000/-

Funeral expenses Rs.25,000/-

Total Rs.40,65,000/-

The appellant-Insurance Company has assailed the award on the ground that the same is exorbitant and contrary to the guidelines issued by the

Supreme Court in the cases of Sarla Verma and Pranay Sethi (supra).

Considered the submissions made and perused the record minutely. I find no error committed by the Tribunal in working out the compensation

under the head loss of dependency. However, the sums awarded under conventional heads like loss of consortium, loss of love and affection and

funeral expenses are on the higher side and not in consonance with the law laid

down by the Supreme Court in the case of Pranay Sethi (supra).

Accordingly, award of the Tribunal is modified and the claimants are held entitled to the following compensation:-

Â Loss of dependencyÂ Â Â Rs.38,40,000/-

Â Loss of consortium to wifeÂ Â Rs.40,000/-

Â Loss of love, affection andÂ Â guidance to minor childrenÂ Â Â Rs.15,000/-

Â Funeral expensesÂ Â Â Â Rs.15,000/-

Â TotalÂ Â Â Â Â Rs.39,10,000/-Â

Â The appeal shall stand disposed of accordingly.

MA No.130/2017 (File No.88/claim)

Â In this case the claimants before the Tribunal were mother and minor children of the deceased Mst. Shaista Parveen. It is claimed that she was

working as Government Teacher and was getting a salary of Rs.20,288/- per month. She was 35 years of age at the time of accident. The claimants,

thus, claimed a sum of Rs.25,50,000/- along with interest under different heads from the appellant-Insurance Company and owner of the offending

vehicle.Â On the basis of the pleadings of the parties, an issue in this regard was framed and the parties were asked to lead their evidence. The

claimants led their evidence to substantiate their claim. However, no evidence was led by the appellant-Insurance Company in rebuttal.Â Â

Â Â On the basis of the evidence led, the Tribunal found that the claimants had succeeded in proving the income of the deceased as Rs.20,288/- per

month which was rounded off by the Tribunal to Rs.20,200/- , which was substantiated by the salary certificate issued by the Zonal Education Officer,

Nagsemi. It was also proved that she was not paying any income tax and was 35 years old at the time of accident. Going by the age of the deceased,

50% addition was made to the income of the deceased and in terms of the prescription laid down in para 21 of the judgment in Sarla Verma's

case (supra), multiplier of 16 was held applicable. Keeping in view the dependent family members 1/3rd deduction was made on account of personal

and living expenses of the deceased.

Â Accordingly, the Tribunal computed the compensation in the following manner:-

Â Loss of dependencyÂ Â Â Rs.38,78,000/-



Â Loss of love, affection andÂ Â guidance to minor childrenÂ Â Â Rs.1,00,000/-

Â Funeral expensesÂ Â Rs.25,000/-

Â TotalÂ Â Â Â Â Rs.40,03,000/-Â

The appellant-Insurance Company has assailed the award on the ground that the same is exorbitant and contrary to the guidelines issued by the

Supreme Court in the cases of Sarla Verma and Pranay Sethi (supra).Â Â I have carefully examined the award passed by the Tribunal and the

evidence that has come on record. I find that the Tribunal has not committed any error in computing the compensation under the head loss of

dependency. However, the sums awarded under conventional heads like loss of love and affection and funeral expenses are on the higher side and not

in consonance with the law laid down by the Supreme Court in the case of Pranay Sethi (supra). Accordingly, award of the Tribunal is modified and

the claimants are held entitled to the following compensation:-

Â Loss of dependencyÂ Â Â Rs.38,78,000/-

Â Loss of love, affection andÂ Â guidance to minor childrenÂ Â Â Rs.15,000/-

Â Funeral expensesÂ Â Â Rs.15,000/-

Â TotalÂ Â Â Â Â Rs.39,08,000/-Â

Â The appeal shall stand disposed of accordingly.

Cond(C) No.1238/2017

Â There is delay of 342 days in filing the appeal. For the reasons stated in the application and in view of the fact that the award impugned in the

appeal has already been assailed in several other appeals. Therefore, the delay in filing the appeal is condoned. The application shall stand disposed of.

Registry to diarize the appeal.

MA No.129/2018 (File No.126/Claim)

In this case the claimants before the Tribunal were wife and children of the deceased Sunil Kumar. It was claimed that the deceased at the time of

death was 45 years and was a businessman and used to sell cloths in the villages. His income was claimed to be Rs.10,000/- per month. The

claimants, therefore, laid a claim of Rs.28,50,000/- for compensation. On the basis of the pleadings of the parties, an issue in this regard was framed

by the Tribunal and the parties were asked to lead their evidence. The claimants

led their evidence to support their claim, however, no evidence was led by the appellant-Insurance Company in rebuttal on the aforesaid issue.

Â The Tribunal, on the basis of the evidence, came to the conclusion that the claimants had been able to establish the income of the deceased as

Rs.4,500/- per month. Keeping in view the dependent family members, deduction @ 1/4th was made. Applying the multiplier of 14, the Tribunal

awarded the following amount of compensation in favour of the claimants:-

Â Loss of dependencyÂ Â Â Â Rs.5,67,000/-

Â Loss of consortium to wifeÂ Â Â Rs.1,00,000/-

Â Loss of love and affection andÂ Â Â and guidance to minor son.Â Â Rs.1,00,000/-

Â Funeral expensesÂ Â Â Â Rs. 25,000/-

Â Expenses for transporting theÂ

Dead body to GurdaspurÂ Â Rs.5000/-

Â TotalÂ Â Â Â Â Rs.7,97,000/-

Â The appellant-Insurance Company has disputed the compensation awarded by the Tribunal on the ground that same is not in consonance with the

settled legal position in law. It is submitted that the amounts awarded under the conventional heads like loss of consortium, loss of love and affection

and funeral expenses are on the higher side and not in tune with the guidelines prescribed by the Supreme Court in the case of Pranay Sethi (supra). It

is stated that in the absence of any proof, the income of the deceased should not have been taken by the Tribunal as Rs.4,500/- per month. Deduction

@ 1/4th keeping in view the dependent family members was also correct. In terms of para 21 of the Sarla Verma (supra), multiplier of 14 as has been

adopted by the Tribunal is applicable in the instant case. However, the amounts awarded on account of loss of consortium, loss of love and affection

and funeral expenses are on the higher side and are not in consonance with the guidelines issued by the Supreme Court in the case of Pranay Sethi

(supra).

Â Learned counsel for the claimants submits that the claimants are entitled to enhanced compensation because the Tribunal has not made any addition

to the income of the deceased on account of loss of future income.Â Since the claimants have not filed any appeal or cross appeal against the award

of the tribunal, as such, their contention for enhancement of compensation cannot be accepted.

Accordingly, the claimants are held entitled to the following amount of compensation along with interest as has been awarded by the Tribunal:-

Loss of dependency Rs.5,67,000/-

Loss of consortium to wife Rs. 40,000/-

Loss of love and affection and guidance to minor son. Rs.15,000/-

Funeral expenses Rs. 15,000/-

Expenses for transporting the

Dead body to Gurdaspur Rs.5000/-

Total Rs.6,42,000/-

The award of the Tribunal is modified to the aforesaid extent and the appeal shall stand disposed of accordingly.

MA No.134/2017 (File NO.108/Claim)

In the instant case the claimants before the Tribunal were the adopted son and brother of the deceased Vidya Devi. It is claimed that she was 47

years old and was serving as Rehbar-e-Taleem in School Education Department. It is claimed that she was receiving Rs.3,000/- per month. In the

context of aforesaid facts, the claimants claimed a sum of Rs. 18.50 lakhs under different heads from the owner and appellant-Insurance Company.

The claim of the claimants was contested by the appellant-Insurance Company and on the basis of pleadings of the parties, amongst other an issue in

this regard was framed by the Tribunal and the parties were asked to lead their evidence. The claimants led their evidence to substantiate their claim.

However, no evidence was led by the appellant-Insurance Company in rebuttal.

On the basis of the evidence led, the Tribunal found that the claimants had succeeded in proving that at the time of accident the deceased was

43 years old , as has been substantiated by the Matriculation Diploma and was drawing Rs.3,000/- per month as salary. Going by the age of the

deceased, an addition of 30% has been made to the income of the deceased on account of loss of future prospects. Since there was only one

dependent family member, as such, deduction on account of personal and living expenses was made at the rate of 50%. Accordingly, the following

compensation was computed by adopting the multiplier of 14.

Â Loss of dependencyÂ Â Â Rs.3,27,600/-

Â Funeral expensesÂ Â Â Â Rs.25,000/-

Â TotalÂ Â Â Â Â Rs.3,52,000/-Â

The appellant-Insurance Company has assailed the award on the ground that the same is exorbitant and contrary to the guidelines issued by the

Supreme Court in the cases of Sarla Verma and Pranay Sethi (supra).Â Â I have carefully examined the award passed by the Tribunal and the

evidence that has come on record and find that there is no error committed by the Tribunal in computing the loss of dependency. However, the sum

payable on account of funeral expenses should be Rs.15,000/- and not Rs.25,000/- as has been provided by the Supreme Court in the case ofÂ

Pranay Sethi (supra). Accordingly, award of the Tribunal is modified and the claimant(s) are held entitled to the following compensation:-

Â Loss of dependencyÂ Â Â Rs.3,27,600/-

Â Funeral expensesÂ Â Â Â Rs.15,000/-

Â TotalÂ Â Â Â Â Rs.3,42,600/-Â

Â The appeal shall stand disposed of accordingly.

MA No.322/2017(File No.125/Claim)

Â In the instant case the claimants before the Tribunal were mother, brother and sister of the deceased Rajesh Kumar. It was claimed that the

deceased was doing business of selling cloths in the houses of the customers in village Palmar and was earning an amount of Rs.12,000/- per month. It

is claimed that at the time of accident the deceased was 19 years old. The claimants, therefore, laid a claim of Rs.32.50 lakhs. On the basis of the

pleadings of the parties, an issue in this regard was framed by the Tribunal and the parties were asked to lead their evidence. The claimants led their

evidence to support their claim, however, no evidence was led by the appellant-Insurance Company in rebuttal on the aforesaid issue.

Â The Tribunal, on the basis of the evidence, came to the conclusion that the claimants had succeeded in proving that the income of the deceased at

the time of accident was Rs.6,000/- per month i.e. Rs.200/- per day. Since the deceased was un-married and mother is the only dependent, therefore,

deduction to the extent of 50% was applied on account of personal and living

expenses. In terms of para 21 of the judgment of the Supreme Court in the case of Sarla Verma (supra), multiplier of 15 was adopted. The Tribunal, thus, awarded the following amount of compensation in favour of the claimant:-

Loss of dependency Rs.5,40,000/-

Funeral expenses Rs. 25,000/-

Expenses for transporting the

Dead body to Gurdaspur Rs.5000/-

Total Rs.5,70,000/-

The appellant-Insurance Company has disputed the compensation awarded by the Tribunal on the ground that same is not in consonance with the

settled legal position in law. It is submitted that the amount awarded on account of funeral expenses is on higher side.

I have carefully gone through the award and the evidence that has come on record. I am in agreement with the finding of the Tribunal that the income

of the deceased could not have been more than Rs.6,000/- per month. In view of the age of the deceased as also the age of the dependent mother, the

Tribunal was right in deducting 50% from the income of the deceased on account of personal and living expenses of the deceased and applying the

multiplier of 15. However, the amount awarded on account of funeral expenses is on the higher side and is not in consonance with the guidelines

issued by the Supreme Court in the case of Pranay Sethi (supra).

Learned counsel for the claimants submits that the claimants are entitled to the enhanced compensation because the Tribunal has not made any

addition to the income of the deceased on account of loss of future prospects. Since the claimants have not filed any appeal or cross appeal against

the award of the tribunal, as such, their contention for enhancement of compensation cannot be accepted.

Accordingly, the claimant/respondent No.1 is held entitled to the following amount of compensation along with interest as has been awarded by the

Tribunal:-

Loss of dependency Rs.5,40,000/-

Funeral expenses Rs. 15,000/-

Expenses for transporting the

Dead body to GurdaspurÂ Â Â Rs.5000/-

Â TotalÂ Â Â Â Â Â Â Rs.5,60,000/-

The award of the Tribunal is modified to the aforesaid extent and the appeal shall stand disposed of accordingly.

Â The award of the Tribunal shall stand modified in the above terms and the claimants in all the cases shall be entitled to receive the amount of

compensation in terms of the modified award along with interest as has been awarded by the Tribunal. Registry to release the amount of

compensation in favour of the claimants in terms of the modified award after proper identification and the excess amount, if any, be refunded to the

appellantInsurance Company through account payee cheque. Â