
(2022) 02 GAU CK 0013
In the Gauhati High Court
Case No : MACApp. No. 202 Of 2012

Future Generali India Insurance Co Ltd	APPELLANT
Vs	
Boby Bora And Ors	RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 141, 142
Code Of Civil Procedure, 1908 — Order 41 Rule 22, Order 41 Rule 22(1), Order 41 Rule 27, Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 168, 173
Indian Penal Code, 1860 — Section 279, 304A
Land Acquisition Act, 1894 — Section 23(1A)

Citation : (2022) 02 GAU CK 0013

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : A.J. Saikia, U. Dutta, D. Mondal, S. Dutta

Final Decision : Allowed

Judgement

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1. Heard Mr. A.J. Saikia, learned counsel for the appellant. I have Also heard Mr. D. Mondal, learned counsel appearing on behalf of the respondent",

nos.1 and 2 and Mr. S. Dutta, learned Senior Counsel assisted by Mr. S. Dutta, learned counsel appears on behalf of the Respondent No.3 insurance",

company. None appears for the Respondent Nos.4 & 5.,

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short Act of 1988) is directed against the judgment and award dated",

21.05.2012 passed by the Member, Motor Accident Claims Tribunal, Morigaon in MAC Case No.6/2010. The grievance of the appellant in the instant",

appeal primarily is at the direction of the learned Tribunal below whereby the

appellant insurance company was directed to pay 50% of the awarded, compensation of Rs.23,62,456/- along with interest @6% from the date of filing of the claim petition. The appellant have also assailed the quantum of", the compensation on the various grounds enumerated in the Memo of Appeal.,

3. The brief facts of the instant case is that one Rakesh Bora (since deceased) on 25.11.2009 was moving on the motor cycle as a pillion rider to go to,

his place of posting at Amritsar by train on getting urgent telegram from his department and the said motor cycle was driven by one Raju Borah, the",

deceased brother. The offending vehicle i.e. the Tata Indica No. AS-01-H-2451 was coming from the same direction and knocked the motor cycle on,

the PWD road and as a result of that the said Rakesh Bora fell on the pucca road and sustained serious head injury and multiple fractures. He was,

immediately taken to Morigaon Civil Hospital for treatment. Thereafter though he was referred to the GMCH but he was taken for treatment to the,

Dispur Poly Clinic Nursing Home. However, unfortunately at 10:30 p.m. the said Rakesh Bora expired. The Post Mortem was conducted on",

26.11.2009. At this stage also it is relevant herein to mention that a case was registered in Morigaon Police Station being Morigaon P.S Case,

No.213/2009 (GR Case No.1281/2009) under Section 279/304-A of the Indian Penal Code. The offending vehicle i.e. Tata Indica car was insured,

with the respondent no.3 insurance company. It is also relevant to take note of that the motor cycle wherein the deceased was travelling i.e. Motor,

Cycle No.AS-01-AE-6913 was insured with the appellant company.,

4. The respondent nos.1 and 2 herein as claimants filed a claim petition before the Member, Motor Accident Claims Tribunal, Morigaon which was",

registered and numbered as MAC Case No.6/2010. In the same claim petition it was mentioned that the monthly income of the deceased was,

Rs.16,206/- and that the deceased was working in the Indian Armed Forces. It was also mentioned that the medical expenditure of an amount of",

Rs.41,568.24 paisa was incurred on the treatment of the deceased after the accident. The claimants on the basis of the claim petition claimed an",

amount of Rs.27,65,232.24 paisa.",

5. The Respondent No.3 who was the opposite party no.1 in the claim proceedings filed their written statement claiming that the respondent insurance, company is not liable to make any payment on ground of violation of the

insurance policy and further denied all the averments made in the claim, application. It is interesting to note that a perusal of the written statement do not in any manner disclose a defence of contributory negligence. In other, words, there is no pleading to that effect that the motor cycle wherein the deceased was travelling was equally responsible for the accident. The", appellant who was the Opposite Party No.3 in the claim proceedings had categorically taken a stand in paragraph 15 of the written statement that the, accident had occurred due to rash and negligent driving of the driver of the vehicle No. AS-01-H-2541 (Tata Indica). Similarly in paragraph 20 it was, pleaded that as the accident took place on account of the rash and negligent driving by the driver of the Tata Indica car, the appellant/opposite party", no.3 was not liable to pay any compensation to the claimants. The owner of the motor cycle who was the opposite party no.4 in the claim proceedings, filed a written statement stating inter alia that the said owner was riding the bike along with the deceased sitting on the backside. It was specifically, pleaded that the offending vehicle Tata Indica car came from the same direction in a rash and negligent manner with a very high speed knocked the, motor bike from the backside on the PWD road at Na-Bheti Tiniali. Accordingly the deceased who was the brother of the opposite party no.4, sustained serious head injuries and later he succumbed to his injuries on 25.11.2009. On the basis of the pleadings, the Tribunal below framed as many", as 3 (three) Issues which are extracted hereinbelow :,

1. Whether the accident took place due to rash and negligent driving by the driver of offending Vehicle, in question,"

(1) AS-01-H-2541 Tata Indica,"

(2) AS-01-AE-6913 Bajaj Platina,

2. Whether the claimant/claimants is/are entitled to get any compensation? If so, what should be the quantum of the said compensation?"

3. Who should be liable to pay the compensation?,

6. The record further discloses that from the claimantsâ?? side as many as 3 witnesses adduced evidence who were the wife, Smti Boby Bora (PW-",

1), the brother Sri Raju Borah (PW-2) and one Sri Naba Kamal Bora (P.W-3). In the cross examination of PW-1 it has been categorically stated that",

the accident took place due to fault of the Tata Indica. The PW-2 who was riding the bike along with the deceased in his evidence-in-chief stated that,

the accident took place due to the fault of the Tata Indica car which had come from the same direction driven in a rash and negligent manner and, knocked his bike from the backside. During his cross-examination he duly stood to his stand as taken in his evidence on affidavit by categorically, stating at the time of his cross-examination that the Tata Indica knocked down his bike from the backside and the accident took place due to the fault, of the Tata India car. The PW-3 who was an independent eye witness also stated that the Tata Indica car was coming from the same direction driven, in a rash and negligent manner and knocked the bike of the PW-2 from the backside. He saw the said incident from a distance from 15 to 20 feet and, noticed that the deceased had fallen down on the PWD pucca road and the P.W-3 rushed to the spot and found the deceased in serious condition, sustaining grievous injuries on his head and whole body. He stood to his stand taken in his evidence-on-affidavit during his cross-examination. The, defence witness no.1 was an Investigator engaged by the Respondent No.3 company, one Sri Gagan Chandra Talukdar. He in his evidence-on-", affidavit had stated that he was engaged by the Respondent No.3 herein to collect evidence regarding the MAC Case No.6/2010 and during, investigation process Sri Bhaben Bordoloi, Gaonburah of Buragaon, Mouza-Morigaon had issued a Certificate dated 12.12.2010 (Exhibit-A) informing", the details of Late Rakesh Bora and about the motor vehicle accident in which he was involved. However, from his cross-examination it is apparent", that he had not submitted any report of investigation before the Tribunal. He also during his examination stated that he did not know whether the, certificate issued by the Gaonburah is true or false. The Investigating Officer of the Morigaon P.S Case No.213/2009, one Sarat Saikia was the", defence witness no.2. In his evidence on chief he stated that when he went to the site wherein the accident took place and he found that the injured, person was being taken by the local public to the Morigaon Civil Hospital in a Maruti car and thereupon he interrogated the witnesses. He could find, that the offending Tata Indica car had hit the injured and left the place of occurrence. He further stated that upon his investigation, it was found that", the deceased was going by the motor cycle at the time of the accident and the Tata Indica car dashed the motor cycle from the backside and both the, vehicles were moving on the same direction at the time of the accident. In his cross-examination he stated that he saw the injured man who was taken,

to the hospital by a Maruti car but he heard about the incident of the Tata Indica car hitting the motor cycle and then ran away. At this stage, it may",

also be relevant herein to mention that the medical prescriptions, advice slips and the payments made towards the expenditures incurred for treatment",

of the deceased were exhibited before the Tribunal below.,

7. The Tribunal below vide the judgment dated 21.05.2012 took up all the three issues together. In respect to the issue no.1 as to whether the accident,

took place due to rash and negligent driving by the driver of offending vehicle in question i.e. Tata Indica car or the Bajaj Platina motor cycle, the",

Tribunal below arrived at a finding that the accident is a fact and both the vehicles are responsible for causing the death of the deceased and,

accordingly was of the opinion that both the insurance companies i.e. the appellant as well as the respondent no.3 herein equally liable to pay the,

compensation inasmuch as, there was negligence on the part of the motor cycle which contributed to the accident. Now coming to the quantum by",

applying the multiplier 18 upon arriving at the conclusion that the income of the deceased was Rs.10,891/- per month had arrived at a finding that the",

total compensation of Rs.23,52,456/-. Additionally an amount of Rs.10,000/-also was given for medical expenses, for funeral expenses, for loss of",

consortium, loss of estate. Thereby the total compensation awarded was Rs.23,62,456/- to be paid jointly by the opposite party nos.1 and 3 in the claim",

proceedings along with interest @ 6% p.a. from the date of filing of the claim petition. It may be relevant at this stage to note that the Tribunal below,

did not take into consideration, the future prospects and without any reasoning or basis granted Rs.10.000/- on the conventional heads relating to loss",

of consortium, loss of estate, funeral expenses as well as the medical expenditures.",

8. The opposite party no.3 in the claim proceedings as appellant preferred the instant appeal. It is relevant to take note of that the claimants as well as,

the respondent United India Insurance Company Limited did not file any appeal or a cross-objection. At this stage it may also be relevant herein to,

mention when the instant appeal was admitted this Court vide an order dated 23.11.2015 directed the stay of the impugned judgment and award during,

the pendency of the appeal subject to the condition that the appellant shall deposit Rs.6,00,000/-with the Registry of this Court within a period of 6 (six)",

weeks and accordingly the appellant apart from depositing the mandatory statutory deposit of Rs.25,000/- deposited the said amount of Rs.6,00,000/-",

as has been submitted by the learned counsel for the appellant.,

9. The learned counsel for the appellant Mr. A.J. Saikia submitted that from the pleadings as well as the evidence on record it would be apparent that,

there was no evidence which would suggest a contributory negligence of the driver of the motor cycle which resulted in the accident. The evidence on,

record is absolutely clear that the Tata Indica car was coming in a rash and negligent manner from the same direction and hit the motor cycle from,

behind wherein the deceased was riding as a pillion rider. He further submitted that a perusal of the impugned award would also go to show that there,

are no reasons assigned as to why the appellant company has been imposed to pay 50% of the awarded sum. He submits that this has been done at,

the whims of the learned Tribunal below.,

10. Mr. D. Mondal, learned counsel appearing on behalf of the respondent nos.1 and 2, who are the claimants contended that the evidence on record",

would clearly show that it is the Tata Indica car which was the offending vehicle driven in a rash and negligent manner which resulted in the accident.,

There is no evidence on record to show or suggest that there was any contributory negligence on the part of the motor cycle which led to the,

accident. Though no appeal or cross objection was preferred against the quantum awarded to the claimants, he contended that by virtue of Section",

168 of the Act of 1988 it is the statutory duty of the Courts/Tribunals to pass awards determining the amount of compensation as to be just and,

reasonable and accepted by legal standards. He submitted that applying the judgment of the Constitution Bench of the Supreme Court rendered in,

National Insurance Company Limited vs. Pranay Sethi reported in (2017) 16 SCC 680, Magma General Insurance Company Co. Ltd. vs. Nanu Ram",

Alias Chuhru Ram and Others, reported in (2018) 18 SCC 130; United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur &",

Others, reported in (2021) 11 SCC 780 and New India Assurance Company Limited vs. Somwati and Others reported in (2020) 9 SCC 644, the",

claimants are entitled to enhanced compensation in terms with the enunciation of law by the Supreme Court under Section 168 of the Act of 1988. He,

further submits that non filing of an appeal or a cross objection by the claimants

would not prove fatal for enhancement of the amount to which the, claimants otherwise are entitled under law and in that regard he referred to the following judgments :,

1. Nagappa vs. Gurudayal Singh, reported in (2003) 2 SCC 274",
2. Jitendra Khimshankar Trivedi vs. Kasam Daud Kumbha r& Others reported in (2015) 4 SCC 237,
3. National Insurance Co. Ltd. vs. Suwala Dutta Saikia and Others reported in MANU/GH/0759/2016.,

11. On the other hand, Mr. S. Dutta, learned Senior Counsel appearing on behalf of the respondent no.3 submits that the respondent no.3 had filed an",

application under Order XLI Rule 27 for the purpose of adducing additional evidence before this Court. He submits that when the instant appeal was,

listed for hearing before this Court, the counsel for the Respondent No.3 came to learn from the records that GDE No.690 dated 25.11.2009 revealed",

that there was no involvement of the vehicle i.e. Tata Indica car in the said accident and also as per the Certificate dated 05.12.2009 issued by the,

Traffic Branch. It was only on 02.12.2009 as per the FIR, the involvement of the vehicle AS-01-H-2541 was shown for the first time. Further to that,",

the Certificate issued by Gaonburah, the motor cycle bearing no. AS-01-AE-6913 dashed against the rickshaw due to which the accident occurred",

and from the said evidence, Mr. Dutta, submits that if taken into consideration it would clearly show that there was no involvement of the Tata Indica",

car and it was only a later date that the involvement of the Tata Indica car was shown and under such circumstances he submitted that the said,

evidence which came into light subsequently to the counsel of the respondent no.3 company ought to be taken on record for proper adjudication of the,

appeal. It is also relevant herein to mention that to the said application an objection was duly filed by the Respondent Nos.1 and 2 on the ground of,

maintainability as well as also denying the contents of the said application.,

12. As regards the enhancement of the compensation, Mr. Dutta submits that in absence of a cross appeal or a cross objection claiming enhancement",

of amount the claimants would not be entitled to any enhancement and this aspect of the matter has already been settled by a judgment of the,

Supreme Court rendered in the case of Ranjana Prakash and Others vs. The Divisional Manager and Another, reported in (2011) 14 SCC 639. He",

submits that the Supreme Court specifically decided the issue as regards the entitlement for enhancement sans a cross appeal or a cross objection, seeking enhancement. He submits that the judgments referred to in Nagappa (supra) and Jitendra Khimshankar Trivedi (supra) are all judgments, wherein the Supreme Court had exercised the powers under Article 142 of the Constitution and this Court in exercise of the powers under Order XLI, Rule 33 of the CPC cannot grant a relief on any new ground in absence of a cross appeal or a cross objection. He also relied upon the judgment of, this Court rendered in the case of Oriental Insurance Company Limited vs. Dipali Sarma dated 20.07.2017 passed in MAC Appeal No.72/2017, wherein the judgment of this Court in Suwala Dutta Saikia (supra) was taken into consideration.,

13. I have heard the learned counsel for the parties at length and the points of determination which arises in the instant appeal are twofold â?",

1. Whether the Tribunal was justified in directing the appellant to pay 50% of the awarded sum along with interest?,
2. Whether the claimants are entitled to an enhanced compensation in absence of a cross appeal or a cross objection filed?,

14. For the purpose of deciding, the first point of determination as framed hereinabove as to whether the learned Tribunal was justified in imposing",

50% of the awarded sum upon the appellant company, it would be relevant to take into consideration the pleading as well as the evidence on record.",

In the claim petition, it was specifically alleged that the deceased Late Rakesh Bora was going from Morigaon towards Jagiroad with his elder brother",

Raju Borah in a motor bike bearing registration no. AS-01-AE-6913 when the offending vehicle Tata Indica bearing registration no. AS-01-H-2541,

came from the same direction in a rash and negligent manner with a very high speed knocked the motor bike from the backside in the PWD road at,

Na-bheti Tiniali, as a result of which the deceased Rakesh Bora fell down on the PWD road and sustained serious head injuries and subsequently",

succumbed to his injuries on 25.11.2009. The United India Insurance Company Limited which is the Respondent No.3 in the instant proceeding filed,

its written statement did not claim the plea of contributory negligence and the plea so taken is that the Respondent No.3 did not admit the place, date",

and time of the accident and the claimants were put to the strictest proof. The Opposite Party No.2 (owner of the Tata Indica Car) had filed the,

written statement wherein it was duly admitted that the accident took place but stating inter alia that the offending vehicle was insured with the, Respondent No.3 insurance company and as such the Respondent No.3 insurance company would be liable to indemnify the Opposite Party No.2 in, the event of any award is passed. The written statement of the appellant who was the Opposite Party No.3 had taken categorical stand that the, offending vehicle Tata Indica car knocked down the motor bike from the backside wherein the deceased Rakesh Bora fell down on the road and, sustained grievous head injuries and as a result of which he succumbed to his injuries later on and as such the Opposite Party No.3/appellant is not, liable to pay any compensation to the claimants. The Opposite Party No.4 who was the owner of the motor bike AS-01-AE-6913 had categorically, taken a stand that the offending vehicle Tata Indica car which was driven in a rash and negligent manner from the same direction with a high speed, knocked the motor bike from the backside and as a result of which his brother Late Rakesh Bora fell down on the road and sustained head injuries, and later on expired on 25.11.2009.,

15. The evidence which is relevant for the purpose of deciding the instant point of determination is the evidences of PW-2 Sri Raju Borah as well as, PW-3 Sri Naba Kamal Bora whereby both the said witnesses categorically stated that the offending Tata Indica vehicle came from the same direction, in a rash and negligent manner and hit the motorcycle from the backside and as a result of which Late Rakesh Borah sustained injuries and, subsequently succumbed to injuries on the same day. During the cross-examination, the said witnesses corroborated the statements made in their", evidence-on-affidavit. The evidence of one Sarat Saikia who was the Investigating Officer also goes to show that from enquiries and investigations, made by him it was found that the offending Tata Indica vehicle dashed the motorcycle from the backside which led to the accident and the, subsequent death of Late Rakesh Bora. On behalf of Respondent No.3, one insurance investigator had adduced evidence. In his examination-in-chief", he stated that during investigation process Sri Bhaben Bordoloi, Gaonburah of Buragaon, Mouza-Morigaon issued a Certificate dated 12.12.2010", informing the details of accident of Late Rakesh Bora and the said Certificate was annexed as Exhibit-A. During his cross-examination he duly,

admitted that he had not submitted any report before the Motor Accident Claims Tribunal. As regards the Certificate marked as Exhibit-A he during,

his cross-examination stated that he did not know whether the Certificate issued by the Gaonburah is true or false. The records shows that the,

Respondent No.3 herein had filed a Petition No.213/2011 praying for issuing summons to the Gaonburah and the learned Tribunal allowed the said,

prayer on 24.01.2011. However, the order dated 09.02.2011 shows that the Respondent No.3 did not take steps to call the Gaonburah. Thereafter the",

records further reveals that steps were taken on 2nd of March 2011 for summoning the said Gaonburah and the Jarikarak submitted a report on,

31.03.2011 to the effect that when he went to the house of the Gaonburah on 29.03.2011, the wife of the Gaonburah informed that the Gaonburah had",

expired three months before. However on 08.05.2012 after more than a year elapsed a petition was filed stating that the Gaonburah Bhaben Bordoloi,

expired and prayed to issue summons to the wife of the Gaonburah which was also allowed by the learned Tribunal and thereby fixing 19.05.2012 for,

defendant witness/argument. On 09.05.2012 another petition was filed by the Opposite Party No.1/Respondent No.3 herein for fixing another date for,

DWs which was however rejected thereby fixing 21.05.2012 for arguments and judgment and thereupon the judgment was delivered on 21.05.2012.,

16. It would also be relevant to take note of the charge-sheet bearing Charge-Sheet No.16/2010 submitted by the Investigating Officer in respect to,

Morigaon PS Case No.213/2009 wherein it was inter alia stated that the offending Tata Indica car bearing no. AS-01-H-2451 which was being driven,

in a rash and negligent manner had hit the motorcycle from behind which led to the accident and the subsequent death of Late Rakesh Bora. In this,

backdrop the application under Order XLI Rule 27 filed by the Respondent No.3 registered as IA(C) No.3864/2018 is required to be looked into,

whereby the respondent No.3 seeks to adduce additional evidence in the appellate stage. The law as regards adducing of additional evidence at the,

appellate stage has to be looked into within the perspective of Order XLI Rule 27 of the Code of Civil Procedure. The said provision is quoted,

hereinbelow:,

â??Order XLI Rule27 : Production of additional evidence in Appellate Court -,

(1) The parties to an appeal shall not be entitled to produce additional evidence,

whether oral or documentary, in the Appellate Court. But",
ifâ?",

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or",

1[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was",

not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against",

was passed, or]",

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any",

other substantial cause,"

the Appellate Court may allow such evidence or document to be produced, or witness to be examined."

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.â??",

17. From the above quoted provision, it would be clear that the general principle is that the Appellate Court should not travel outside the record of the",

Lower Court and cannot take any evidence in appeal. However as an exception, Order XLI Rule 27 of the Code of Civil Procedure enables the",

Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the,

conditions laid down in the said Rule are found to exist. The parties are not entitled as of right to admission of such evidence. It would also be relevant,

to take note of that the said provision does not apply, when on the basis of the evidence on record the Appellate Court can pronounce a satisfactory",

judgment. The permission to adduce additional evidence is a sole discretion of the Appellate Court and is to be used sparingly. The Supreme Court in,

the case of Union of India vs. Ibrahim Uddin and Another reported in (2012) 8 SCC 148 had the occasion of dealing with the said provision and,

observed at paragraph nos. 37 to 42 as hereinunder:

â??37. The Appellate Court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in,

appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh",

opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional",

evidence to enable it to pronounce judgment. (Vide Haji Mohammed Ishaq v Mohamed Iqbal and Mohamed Ali and Co.),

38. Under Order XLI , Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined.",

But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to,

pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without,

such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of,

pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is",

empowered to admit additional evidence. (Vide Lala Pancham),

39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in",

the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in",

appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this,

rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so,"

cannot have it admitted in appeal. (Vide State of U.P. v. Manbodhan Lal Srivastava and S. Rajagopal v. C.M. Armugam),

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence,

of a pleader or that the party did not realise the importance of a document does not constitute a ""substantial cause"" within the meaning of",

this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.",

41. The words ""for any other substantial cause"" must be read with the word ""requires"" in the beginning of sentence, so that it is only where",

for any other substantial cause, the Appellate Court requires additional evidence, that this Rule will apply e.g. when evidence has been",

taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment.,

42. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. [sub-rule (2)]. It is a salutary,

provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may,

inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the",

record of reasons will be useful and necessary for the Court of further appeal to see, if the discretion under this Rule has been properly",

exercised by the Court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only",

directory and not mandatory, if the reception of such evidence can be justified under the rule.â??",

18. In the backdrop of the above enunciation of law by the Supreme Court, let this Court take into consideration the application filed by the",

Respondent No.3 under Order XLI Rule 27, whereby the appellant sought the leave to bring on record an extract of the G.D. Entry No.690 dated",

25.11.2009/690, the Certificate dated 05.12.2009 issued by the In-charge, Traffic Branch as well as the Certificate issued by the Gaonburah on",

12.12.2010. For the purpose of seeking leave to adduce the evidence pertaining to the G.D. Entry No.690 dated 25.11.2009 as well as the Certificate,

dated 05.12.2009, it is the opinion of this Court that the leave so sought for in respect to those Certificates do not come within the exceptions as",

contained in Order XLI Rule 27. The evidence of DW-1 reveals that the said Certificate dated 12.12.2010 was exhibited as Exhibit-A but the said,

Certificate could not be proved as the defence witness himself stated that he did not know whether the Certificate issued by the Gaonburah is true or,

false, thereby the witness of the Respondent No.3 himself questioned as regards the veracity of the said Certificate. At this stage it may also be",

relevant to take note of that the findings of the Tribunal below as regards the Issue No.1 is clear and categorical to the effect that the accident,

happened on 25.11.2009 which led to the death of Late Rakesh Bora. The said findings has not been put to challenge by the Respondent No.3 by filing,

an appeal or even a cross-appeal and on the other hand it reveals from the records that the said Respondent No.3 had also accepted the award by,

making payment of the awarded sum. Under such circumstances, the question of allowing the application under Order XLI Rule 27 does not arise in",

the facts of the instant case.,

19. The pleadings as well as the evidence on records would clearly go to show that there was an accident on 25.11.2009, whereby the offending Tata",

Indica car had hit the motorcycle from the backside which led to grievous injuries of the Late Rakesh Bora who subsequently succumbed to his,

injuries on the same date. It was nobody's case as could be seen from the pleadings as well as the evidence that there was a contributory,

negligence on the part of the offending Tata Indica car along with the motorcycle which led to the accidents. All the evidences including the testimony,

of the eye witnesses, the evidence of the Investigating Officer as well as the Charge-sheet points to only one direction to show that the accident",

happened due to the rash and negligent driving of the Tata Indica car. A perusal of the impugned judgment would show that without assigning any,

reasons the learned Tribunal perversely held that both the insurance companies are equally liable to pay the awarded sum. This findings of the learned,

Tribunal being perverse and as is completely contrary to the records is therefore interfered with thereby holding that the Tata Indica car was solely,

responsible for the incident and consequently the Respondent No.3 is solely liable to pay the awarded sum.,

20. The next point of determination as framed is to whether the claimants who are the Respondent Nos.1 and 2 are entitled to a larger compensation,

than what has been awarded by the Tribunal below without a cross-appeal or a cross-objection. The Supreme Court in the case of Ranjana Prakash,

and Others vs. Divisional Manager and Another reported in (2011) 14 SCC 639 took into consideration the said issue and observed at paragraph nos.,

7 and 8 as hereunder:,

â??7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order,

which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent",

had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the,

parties. Order 41 Rule 33 of the Code can however be pressed into service to

make the award more effective or maintain the award on,
other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher",
relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the",
award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and",
severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief",
against the insurer. Be that as it may.,

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 compensationâ??.,

21. A reading of the above quoted paragraphs of *Ranjana Prakash (supra)*, it would be seen that the High Court cannot increase the compensation in",
an appeal by the owner/insurer for reducing the compensation nor can at it reduce the compensation in an appeal by the claimant seeking,
enhancement of compensation. In discussing the provisions of Order XLI Rule 33 of CPC, the Supreme Court had held that while the said provisions",
can be pressed into service inter alia to make the award more effective or to make the other parties to share the benefits and liabilities but cannot be,
invoked to get a larger or a higher relief. It may however be relevant herein to note that in the said judgment, the Supreme Court did not take into",
consideration the consistent stand of the Supreme Court that in terms of Section

168 of the Act of 1988, it is the statutory duty of the Tribunal and the",
Appellate Court to award just and reasonable compensation.,

22. It may also be relevant to take into consideration the scope and the power under Order XLI Rule 33 of the Code of Civil Procedure. The Supreme,
Court in the case of Banarsi and Others vs. Ram Phal reported in (2003) 9 SCC 606 had the occasions to deal with both the scope of Order XLI Rule,
22 as well as Order XLI Rule 33. The effect of not filing of a cross- appeal or a cross-objection and observed at paragraph nos. 10 and 11 as,
hereinunder :,

10. The CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the,
amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any,
cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross- objection against a finding. The",
difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which,
decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by",
1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-,

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.,
(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.,
(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a,
finding in the judgment which goes against the respondent.,

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which,
is against him, if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking",
any cross-objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit,
the respondent to take any cross objection as he was not the person aggrieved

by the decree. Under the amended CPC, read in the light of",
the explanation, though it is still not necessary for the respondent to take any
cross-objection laying challenge to any finding adverse to",
him as the decree is entirely in his favour and he may support the decree without
cross-objection; the amendment made in the text of sub-,
rule (1), read with the explanation newly inserted, gives him a right to take cross
objection to a finding recorded against him either while",
answering an issue or while dealing with an issue. The advantage of preferring
such cross-objection is spelled out by sub-rule (4). In spite,
of the original appeal having been withdrawn or dismissed for default the cross-
objection taken to any finding by the respondent shall still,
be available to be adjudicated upon on merits which remedy was not available to
the respondent under the unamended CPC. In pre-,
amendment era, the withdrawal or dismissal for default of the original appeal
disabled the respondent to question the correctness or",
otherwise of any finding recorded against the respondent.â??,

23. A perusal of the above quoted paragraphs of the judgment would show that a
respondent may defend himself without filing any cross-objection to,
the extent to which decree in his favour however if he proposes to attack any
part of the decree, he must take cross-objections though the amendment",
inserted by the 1976 amendment is clarificatory and also enabling. In paragraph
13 of the said judgment which is quoted hereinunder, the Supreme",
Court held that in absence of a cross-appeal preferred or cross-objection taken
by the plaintiff/respondent in the said case, the First Appellate Court",
did not have the jurisdiction to modify the decree by granting an absolute out
and out decree for specific performance of the agreement to sell which is,
to the prejudice to the appellants.,

â??13. We are, therefore, of the opinion that in the absence of cross appeal
preferred or cross-objection taken by the plaintiff-respondent",
the First Appellate Court did not have jurisdiction to modify the decree in the
manner in which it has done. Within the scope of appeals,
preferred by the appellants the First Appellate Court could have either allowed
the appeals and dismissed the suit filed by the respondent in,
its entirety or could have deleted the latter part of the decree which granted the
decree for specific performance conditional upon failure of,

the defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals.,

What the First Appellate Court has done is not only to set aside the decree to the extent to which it was in favour of the appellants but also,

granted an absolute and out and out decree for specific performance of agreement to sell which is to the prejudice of the appellants and to,

the advantage of the respondent who has neither filed an appeal nor taken any cross-objectionâ??.,

24. In the said backdrop it would be relevant to take note of the statement of law in the said judgment as regards the nature and scope of Order XLI,

Rule 33. Paragraph 15 of the said judgment being relevant is quoted hereinbelow :,

â??15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting",

decrees coming into existence in the same suit. The above said provisions confer power of widest amplitude on the appellate court so as to,

do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject-matter of appeal, who",

has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While",

dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of",

such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the,

court below and which it would have done had it been conscious of the error committed by it and noticed by the Appellate Court. While,

allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further",

or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object",

sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to",

similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of,

justice. Wider the power, higher the need for caution and care in discretion while exercising the power. Usually the power under Rule 33 is",

exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the,

appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion,

being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: ,

firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up",

or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a",

party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are,

two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily,

depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate",

court exercising power under Rule 33 of Order 41â??.,

25. A perusal of the said judgment would show that the Appellate Courtâ??s power under Order XLI Rule 33 is subject to at least three limitations.,

Firstly, the said power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost",

cannot be revived and thirdly, such part of a decree which essentially ought to have been appealed against or objected to by a party and which that",

party has permitted to achieve a finality cannot be reversed to the advantage of such party.,

26. Another judgment of the Supreme Court which is also relevant to note though passed in a land acquisition case but the underlying principle being,

the same which is the judgment rendered in the case of Pralhad and Others vs. State of Maharashtra and Another reported in (2010) 10 SCC 458 and,

more particularly the paragraphs 17 to 22 which is quoted hereinbelow : ,

â??17. Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of",

the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of CPC.",

18. The provision of Order 41, Rule 33 of CPC is clearly an enabling provision,

whereby the Appellate Court is empowered to pass any",
decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case",
may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered",
to pass any Order which ought to have been made as the case may require. The expression "Order ought to have been made" would,
obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by,
saying "the court may pass such further or other order as the case may require." This expression "case" would mean the justice,
of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.",

19. In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla",

(CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10(4) of the Supreme Court of Judicature of England",

and Mulla further opined that the purpose of this Rule is to do complete justice between the parties.,

20. In Banarsi vs. Ramphal, this Court construing the provisions of Order 41 Rule 33 of CPC held that this provision confers powers of the",

widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is,

unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed",

allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such,

power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice.",

The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the",

prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been",

given up or lost; and thirdly, the power cannot be exercised when such part of the decree which the party has been permitted to become",

final by a party is reversed to the advantage of that party. (See SCC p.619, para 15 : AIR para 15 at p. 1997).",

It has also been held by this Court in *Samundra Devi vs. Narendra Kaur* that this power under Order 41, Rule 33 of CPC cannot be",

exercised ignoring a legal interdict.,

21. In the instant case, the right of the landowner to receive the benefit under section 23(1-A) of the Principal Act is legally permissible in",

view of the majority decision in *Paripoornan*. Therefore, the law declared by this Court in *Paripoornan* (supra) is binding on the High",

Court under Article 141 of the Constitution and High Court is bound to follow the same, especially when an application has been made by",

the landowner under Order 41 Rule 33 of CPC.,

22. In view of the aforesaid interpretation given to Order 41 Rule 33 of CPC by this Court, we are of the opinion that the High Court denied",

the relief to the appellants to which they are entitled in view of the Constitution Bench decision in *Paripoornan*, by taking a rather restricted",

and narrow view of the scope of Order 41 Rule 33 of CPC and also on a misconstruction of the ratio in *Paripoornan*â??.,

From the above quoted paragraphs, it would be seen that power under Order XLI Rule 33 of the CPC cannot be exercised ignoring a legal interdict.",

The limitations set to the exercise of power under Order XLI Rule 33 by the judgment of the Supreme Court in the case of *Banarsi* (Supra) also is,

required to be taken into account while the appellate court exercises the power under Order XLI Rule 33 of the CPC. However, the Supreme Court",

taking into consideration that the right of landowner to receive the benefit under Section 23(1-A) of the Land Acquisition Act, 1894 is legally",

permissible in view of the judgment of the Constitution Bench in *K.S. Paripoornan vs. State of Kerala* reported in (1994) 5 SCC 593 which was,

binding on the High Court under Article 141 of the Constitution of India, the High Court was bound to follow the same especially when an application",

was made under Order XLI Rule 33 of the CPC and the Supreme Court thereby enlarged the relief to the claimant/landowner.,

27. Now in the above backdrop of the discussions as regards the power under Order XLI Rule 33 of the CPC, it would also be necessary to look into",

the judgment of the Supreme Court in the case of *Nagappa* (supra) and *Jitendra*

Khimshankar Trivedi (supra) as well as also the judgment in the case, of Sanobanu Nazirbhai Mirza and Others vs. Ahmedabad Municipal Transport Service reported in (2013) 16 SCC 719. Both in Nagappa (supra) and, Jitendra Khimshankar Trivedi (supra) the Supreme Court delved on the scope and ambit of Section 168 of the Act of 1988 and held that Section 168, empowers the claims Tribunal to make an award determining the amount of compensation which appears to it to be just and the only requirement for, determining the compensation is it must be "just" and there is no limitation or restriction on its power for awarding just compensation. In Jitendra, Khimshankar Trivedi (supra), the Supreme Court held at paragraph 12 as hereinunder :",

"12. The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by", the Tribunal when the claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and", compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/the Tribunals are to pass awards", determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in, awarding reasonable compensation was emphasized by this Court in Nagappa vs. Gurudayal Singh, Oriental Insurance Company Ltd. vs.", Mohd. Nasir, and Ningamma vs. United India Insurance Company Ltd.. As against the award passed by the Tribunal even though the", claimants have not filed any appeal, as it is obligatory on the part of courts/the Tribunals to award just and reasonable compensation, it is", appropriate to increase the compensation",

Though in paragraph 14 of the above judgment the Supreme Court clearly stated that the Supreme Court had exercised powers under Article 142 of, the Constitution enhanced the compensation to do complete justice but the fact remains that principles of law laid down in paragraph no.12 as quoted, hereinabove is binding under Article 141 of the Constitution.,

28. Now let us take the judgment of the Supreme Court in the case of Sanobanu Nazirbhai Mirza (supra) and more particularly to paragraphs 20, which is quoted hereinbelow :,

"20. In view of the aforesaid decision of this Court, we are of the view that the

legal representatives of the deceased are entitled to the",

compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not,

preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the,

compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and",

reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena,

of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming",

compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the,

absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs.",

16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellantsâ??.",

From the above, it would be seen that the Supreme Court had awarded a higher compensation than claimed on the ground that it is a statutory duty",

imposed upon the Tribunals and the appellate courts just and reasonable compensation.,

29. Thus from the above, it would be seen that while Order XLI Rule 33 CPC empowers the Appellate Court to pass appropriate orders to do justice",

but subject to certain limitation as judicially formulated whereas Section 168 imposes a statutory obligation upon the Tribunal as well as the Appellate,

Court sans any appeal or cross-objection filed to award a compensation which is just and reasonable. Accordingly, this Court which is the Appellate",

Court is bound to maintain the balance while exercising the powers of Order XLI Rule 33 of the CPC within the limitations imposed and also keeping,

in mind the statutory duty imposed upon it by Section 168 of the Act of 1988.,

30. As would be seen from the judgment of Banarsi (supra), that such part of the decree which eventually ought to have been appealed against or",

objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party, the power under",

Order XLI Rule 33 of the CPC cannot be exercised. In the said backdrop let this

Court now consider the impugned award and the compensation so, awarded. The learned Tribunal vide the impugned award adjudged Rs.10,891/- as the monthly salary and applied the multiplier of 18 and arrived at",

Rs.23,52,456/- under the head of loss of dependency. Further to that an amount of Rs.10,000/- has been added without however any reasons on",

account of medical expenses, funeral expenses, loss of consortium, loss of estate and thus arrived at the total compensation of Rs.23,62,456/-. At this",

stage, it may be relevant to take into consideration the judgment of the Constitution Bench of the Supreme Court in the case of National Insurance",

Company Limited vs. Pranay Sethi and Others, reported in (2017) 16 SCC 680 wherein at paragraph 59 of the said judgment the Supreme Court",

recorded its conclusion and for the sake of convenience, the said paragraph 59 and its sub-paragraph are quoted hereinbelow :",

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

59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different,

view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength",

cannot take a contrary view than what has been held by another coordinate Bench.,

59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is",

not a binding precedent.,

59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the",

deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased",

was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should",

be read as actual salary less tax.,

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant",

where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10%,

where the deceased was between the age of 50 to 60 years should be regarded

as the necessary method of computation. The established,
income means the income minus the tax component.,

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by",

paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.,

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

59.7 The age of the deceased should be the basis for applying the multiplier.,

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.",

40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â??",

31. It is also relevant to take into consideration the judgment of the Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport,

Corporation and Another reported in (2009) 6 SCC 121 wherein at paragraph no.30, the Supreme Court observed that when the deceased is married,"

the deduction towards personal and living expenses of the deceased should be one third (1/3), where the member of dependent family members is 2 to",

3, one fourth (1/4) and so on. Further to that at paragraph 42 of the said judgment, the Supreme Court held that multiplier 17 should be applied if the",

deceased was of the age between 26 to 30. In the instant case, the deceased as per the statement of claim was of the age of 26 years 24 days as on",

the date of his death and consequently the multiplier to be applied ought to be 17 and not 18 as was done by the Tribunal below.,

32. Another judgment of the Supreme Court which also requires to be taken into consideration in view of the development of the concept of loss of,

consortium is the judgment rendered in the case of Magma General Insurance Company Limited (supra) wherein the Supreme Court enlarged the,

scope of loss of consortium to not only include spousal consortium but also parental consortium and paragraph 21 to 21 of the said judgment being,

relevant is quoted hereinbelow :,

â??21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a,

death case. One of these heads is loss of consortium. In legal parlance, ""consortium"" is a compendious term which encompasses `spousal",

consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort,"

guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with",

the deceased spouse.,

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the,

1. Loss of Dependency,"Rs. 10,891/- (monthly salary)

+ Rs. 5,446/- (future prospects)

Rs. 16,337/- X 12

Rs.1,96,044/- - Rs.65,348/- (1/3rd deduction on account of personal expenses)

Rs. 1,30,696/- X 17 (multiplier 17 applied as the deceased was 26 years 24 days on the date of his death)

Rs.22,21,832/-

2. Loss of spousal consortium,"Rs. 44,000/-

3. Loss of parental consortium,"Rs. 44,000/-

4. Funeral Expenses,"Rs. 16,500/-

5. Loss of estate,"Rs. 16,500/-

6. Medical expenses as as stood proved on the basis of the exhibits", "Rs. 41,568/-

, "Rs.23,84,400/-