

(2019) 02 CAL CK 0016

In the Calcutta High Court

Case No : C. Appeal From Order (Fma) No. 527 Of 2017 With Can No. 259 Of 2017, Adms.C. Appl Order (Fmat) No. 594 Of 2016

National Insurance Co.Ltd.

APPELLANT

Vs

Ila Poddar & Anr

RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149 2(a)(ii), 163A, 165, 166, 166(5), 168, 168(3)

Revenue Recovery Act, 1890 — Section 174 Code Of Civil Procedure, 1908 — Order 41 Rule 22

Citation : (2019) 02 CAL CK 0016

Hon'ble Judges : Harish Tandon, J;Subhasis Dasgupta, J

Bench : Division Bench

Advocate : Sucharita Pal, Amit Ranjan Roy

Final Decision : Disposed Off

Judgement

Harish Tandon, J

We would not have taken a painstakingly exercise in deciding the main appeal filed by the insurance company challenging the award dated 19th March, 2016 passed by Motor Accident Claim Tribunal, Asansol in MACC no. 11 of 2014 having launched solely on the ground that the driver of the offending vehicle did not have a valid driving license at the time of occurrence of unfortunate accident to have been settled by the Supreme Court in case of Ravi-Vs-Badrinarayan reported in 2011 (1) T.A.C 867, but we feel to be responsive when the claimants/respondents filed cross-objection under Order 41 Rule 22 of the Code of Civil Procedure challenging not only the adverse findings made in the impugned award but also application of wrong principles of law in determining the compensation on several heads. Had not the cross-objection become surfaced at the behest of the claimants/ respondents, the appeal could have been conveniently decided solely relying upon the judgment of the Supreme Court in case of Ravi (supra).

A succinct prelude to the genesis of the enunciation of law is required to be adumbrated in order to address the points urged before us by the respective counsels which have been either decided or undecided.

The facts, so unfurled are that the son of the claimant who was aged about 25 years met with an accident on 13th December, 2012 at 11:35 P.M while riding his motorcycle and returning from his friends house at Benachiti, Durgapur towards his residence through Asansol-Durgapur road (NH2) with the ambassador cab (offending vehicle), who dashed him from behind having driven the offending vehicle rashly and negligently. The victim sustained multiple grievous injuries and was admitted in SD Hospital, Durgapur and succumbed to such injury. The post mortem was performed on 14th December, 2012 and UD case no. 505/12 was registered on the said date. An FIR was formally lodged on 21st December, 2012 by the claimant/ respondent indicating the circumstances in delayed lodging of the FIR. Subsequently the claim petition was filed U/s 166 of the Motor Vehicles Act, 1988 claiming compensation for Rs.20,00,000/- as the victim at the time of his death was in permanent employment with Cognizant Technology Solutions India Pvt. Ltd as programmer analyst.

The insurance company contested the said claim case denying the statements made therein and even went to the extent that the said deceased was an unemployed person and the claimant is not the heirs and the legal representatives and being heptogenerian is not entitled to compensation. It is further stated by the insurance company that the offending vehicle was not involved in the accident, nor the driver thereof was driving the same in rash and negligent manner. It is stated in the written statement that the driver of the offending vehicle did not have the valid driving license at the time of the accident and such factum exonerates the insurance company of any liability towards payment of compensation under the insurance policy.

On the aforesaid factual matrix as succinctly narrated herein above, the claim petition went in trial and the claimant herself deposed before the Tribunal. She categorically stated that her son died of an accident caused by the offending vehicle and sustained multiple injuries and later on succumbed to the same. She categorically stated that her son was 25 years of age at the time of his death and was a permanent employee of the said company getting a salary of Rs.24,000/- per month. She further stated that the son had a bright future and his income would have been more in his service career .

The eye-witness was also examined as P.W.2 who narrated the incident happened on 13th December, 2012 and categorically stated that the offending vehicle which was coming in high speed dashed the motor cycle of the victim from his behind resulting into his death. The third witness of the claimant who was a senior executive of the company where the deceased was employed proved salary slips and the income of the deceased. The insurance company only cited one witness i.e., Upper Division Assistant of the Motor Vehicle Department on a validity of the driving license of the driver of the offending vehicle and no other

witness was cited by the insurance company.

The points which appear to have been taken before the Tribunal and decided while determining the just compensation U/s 168 of the said Act are jotted down herein below:-

- i) The plea of delayed FIR taken by the insurance company was negated as the claimant have sufficiently explained such delay.
- ii) The point relating to invalid driving license of the driver of the offending vehicle was also negated as such defense is not available to the insurance company.
- iii) The Tribunal applied the multiplier of 8 on the basis of the age of the claimant as such multiplier should not be applied on the basis of the age of the victim.
- iv) The Tribunal fixed the income of the victim at Rs.15,000/- per month and made a deduction of the 1/3rd of the annual income on account of personal and living expenses.
- v) The Tribunal further held that the claimant is entitled to a sum of Rs.5,000/- each for loss of estate and funeral expenses respectively.

As disclosed above the insurance company has challenged the impugned award on a solitary point that if the driver of the offending vehicle did not possess the valid license on the date of the accident, the insurance company cannot be made liable to pay the compensation to the claimant.

Before we consider the above issue it would be relevant to consider the evidence of the O.P.W. 1, an employee of the Motor Vehicle Department. It is categorically stated by him that both transport and non-transport vehicles are related to light motor vehicles and the driving license of the driver of the offending vehicle expired before the said incident of accident and it does not appear from the record that an application for renewal was filed by him.

It is not a case that the driver of the offending vehicle did not have the requisite license to ply the light motor vehicle. It is an undisputed fact that on the date of an accident the validity period of his license expired. The owner has not adduced any evidence before the Tribunal nor the insurance company adduced any evidence that there was any breach of the policy condition as the offending vehicle was allowed to be driven by a person who is either disqualified or did not possess any driving license. It is imperative on the insurance company to prove the aforesaid facts by cogent materials under sub-section 2 (a) (ii) of section 149 of the said Act. Once the onus is cast upon the insurance company to prove the factum of breach of the policy conditions, it is to be discharged first and the moment it is discharged it shifts the burden on the claimant to dispel the same. It is the initial onus on the insurance company and may switch over in the event of its initial discharge. The insurance company cannot be permitted to defeat the claim of compensation under the said Act having failed to discharge its onus nor

can be permitted to simply rely upon the defense taken in the written statement. There is a distinction between the pleading and proof. The pleading is the important foundation in any litigation but must be proved by cogent evidence unless the adversary admits the statements made in the pleading.

In case of National Insurance Co. Ltd- Vs - Swaran Singh reported in (2004) 3 SCC 297 the three Judge Bench of the Supreme Court emphasized on the statutory duty cast upon the insurance company U/s 149 of the Act and the consequences to follow on its failure in these words:-

"110.The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2) (a) (ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof whereof would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his disqualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found

to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply " the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts

and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

The exposition of law as indicated above leaves no ambiguity that the moment the insurance company has satisfactorily proved that the owner of the vehicle being conscious and aware of either invalid license or no license held by the driver yet allowed him to ply the vehicle and committed a breach of the policy conditions, then and only then, the insurance company may plead for exoneration of its liability under the said Act. The insurance company has not adduced any evidence and cited one witness i.e., the employee of the Motor Vehicle Department to demonstrate that the validity of the driving license expired before the date of accident. No attempt was made by the insurance company to cite the owner of the offending vehicle as witness nor it appears that the owner ever appeared in the case and contested the same.

The reliance is heavily placed upon a recent judgment of the Apex Court rendered in case of Ram Chandra Singh -Vs- Rajaram and ors.

reported in (2018) 8 SCC 799 for the proposition that once it is proved that the driver of the offending vehicle was possessing a fake driving license it absolved the insurance company from its liability to pay compensation under the said Act. In the said report the claim petition was filed against the insurance company as well as the owner and the driver of the offending vehicle. The Tribunal held that there was a breach of the condition of policy. In spite of such specific finding the insurance company was directed to pay the compensation amount and was permitted to recover the same from the owner and driver of the vehicle who were held responsible for such amount jointly and severally. The appeal filed before the Supreme Court was dismissed solely on the ground that the owner of the vehicle permitted the driver to ply the vehicle with the fake driving license. The owner challenged the order of the High Court by filing a special writ petition before the High Court which appeared to have been admitted and was assigned a regular civil appeal number. The Apex Court found that there was a sufficient material wherefrom it can be gathered that the owner being conscious and aware that the driver is having a fake driving license yet allowed him to ply the offending vehicle in these words:-

" Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the Appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer."

What can be noticed from the above observations that if it is established that the owner was aware that the driver was possessing a fake license yet permitted him to drive the vehicle, it would absolve the insurance company from its liability to

pay compensation otherwise mere possessing a fake driving license does not exonerate the insurance company from such statutory liability. The law enunciated in the aforesaid report does not say in unequivocal terms that the moment a driver of the offending vehicle possess invalid or fake license it automatically absolves the insurance company of its liability to pay compensation. The said judgment rather supports the view taken in case of Swaran Singh (supra) that in absence of any clinching evidence on the above aspect it does not exonerate and / or relieve the insurance company of its liability to pay compensation. Each case is to be judged on the basis of the facts involved therein. A little difference or an additional fact may invite diametrically opposite decisions and, therefore, the Court has to see the parity of the events while relying on the judgment cited at the bar.

In the instant case there is no evidence forthcoming from the end of the insurance company that the owner was aware that the validity of the driving license expired, yet he allowed the driver to ply the vehicle. We, therefore, do not find that the aforesaid plea has any substance and, therefore, is decided against the appellant.

The another plea taken by the appellant before us though more or less settled yet we feel to address having taken by the appellant before us. According to the appellant there is a considerable delay in lodging the FIR by the claimant and, therefore, a presumption should be raised that the offending vehicle was not involved in the accident. As stated in the opening paragraph of this judgment the aforesaid point, time and again, was a center of consideration before the various courts of the country as well as the Apex Court in case of Ravi (supra). The Apex Court held that mere delay in lodging the FIR cannot act as a deterrent to the claimant to pray for compensation under the Act provided there is a satisfactory explanation offered for delayed lodgment of FIR in these words:-

" 20. It is well -settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they given more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In case of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Courts finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground."

The Division Bench of this Court in case of National Insurance Company Ltd. -Vs- Smt Pratima Barick & Anr reported in 2017 (2) TAC 466 CAL noticed the

judgment of the Supreme Court rendered in Ravi (supra) and held that in the event the explanation is offered for delay in lodging the complaint giving rise to FIR, it cannot defeat the claim of the claimant in these words:-

" Having considered such explanation, we are of the view that a fortnight's delay in registration on the FIR per se cannot defeat the claim of the claimant and we are unable to hold that the case pleaded in the claim petition, because of the belated registration of the FIR, was doubtful and, therefore, unreliable."

Indubitably the son of the claimant died in accident on 13/12/2012 and the complaint / FIR was lodged on 23/12/2012 i.e., ten days from the date of the accident. It is categorically stated in the said FIR that the delay in lodging the same was because the claimant could not overcome from the sudden jerk which she received for the death of her son and the rituals which are required to be performed so that the soul may rest in peace. It is universally true that rituals are performed for the death of the kith and kin, which obviously take some time and, therefore, we do not find that the explanation offered by the claimant has no substance or semblance of truth in it. There is a satisfactory explanation offered by the claimant for delayed lodging of the FIR and in view of the law as declared in the above noted decisions it cannot be fatal. We therefore, do not find any merit in the said plea as well.

We could have proceeded to dismiss the instant appeal as the points taken by the insurance company do not warrant interference in the impugned award, but the claimant / respondent have filed the cross-objection not only challenging the multiplier applied by the Tribunal but also the quantum of compensation awarded under the conventional heads. Apart from the same the claimant / respondent have also challenged the monthly income determined by the Tribunal as according to her there is no plausible findings recorded by the Tribunal in arriving at the conclusion that the deceased was earning Rs.15,000/- per month.

The first witness being the claimant categorically stated that the said deceased was a permanent employee of Cognizant Technology Solutions India Pvt. Ltd and was getting monthly salary of Rs.24,000/-. In addition to the same it was further stated that he had a bright future prospect in the service career which was lost because of untimely death. There is no cross-examination on the monthly salary of the deceased as the insurance company was all along harping that the deceased was unemployed which was categorically denied by the first witness in the cross-examination. The employee of the said company was cited as the third witness by the claimant and proved the salary slips which were marked Exhibit 8 (with objection). The Learned Advocate appearing for the Insurance company did not argue that the said Exhibit 8 should not have been received in evidence having not proved in accordance with law. However, we have given our anxious consideration on the said Exbt 8 which are included in the paper book filed before us wherefrom it appears that the bunch of salary certificates were filed ranging from the month of December, 2011 to November, 2012. The gross monthly salary varies between Rs. 20,000 and or Rs.25,000/-, and the variance which we

noticed was because of the special allowance, which appears to be variable in nature. We have given to understand that the condition of service under the contract contains various components and further includes the annual incentives as well as the special allowance depending upon the performance of the employer. Though the Tribunal noticed that the monthly income of the deceased at the time of his death was Rs.24,000/-, but did not accept the same as acquaintance role or pay register was not produced in support of the pay slip. However, the Tribunal held that the monthly income of the deceased at the time of his death was Rs. 15,000/- per month and proceeded to determine the compensation taking the same as established income.

We made a meticulous scrutiny of the Exhibit 8 (pay slips) and we find that the basic salary was more or less static except in the month of November, 2002 when it was increased from Rs. 7,885/- to Rs.9,200/-The variable components like special allowances was never below Rs.8,000/- per month and after deducting the professional tax and the provident fund the net salary which was given to the said deceased was nearly Rs. 20,000/-.

We do not find any deduction of TDS in the salary slips and this was one of the concern before the Tribunal when it found that the annual income exceeds the taxable limit. There is no evidence forthcoming from the end of the claimant and if we have to proceed on the basis of the stand taken by her in the claim application as well as in the evidence, certainly the annual income is beyond the exempted limit and, therefore, we cannot disregard the quantum of income of the deceased as assessed by the Tribunal.

So far as the applicable multiplier is concerned we find that the Tribunal applied multiplier 8 taking into account the age of the dependants and not the age of the deceased/victim. The Supreme Court in case of Munna Lal Jain and another -Vs- Vipin Kumar Sharma and others reported in 2015 ACJ 1985 held that the multiplier required to be applied should be with reference to the age of the deceased and not the age of the victim in these words:-

" 12. The remaining question is only on multiplier. The High Court following Santosh Devi, 2012 ACJ 1428 (SC), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari, 2013 ACJ 1253 (SC). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

"(33) ... In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under section 166. It has been rightly stated in

Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, Claims Tribunal must consider (I) additions/ deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal and living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma (supra)."

In Sarla Verma and others -Vs- Delhi Transport Corporation and another reported in (2009) 6 SCC 121 the Apex Court after noticing the various judgments which were operating in the field held that the operating multiplier of 18 should be applied if the deceased is within the age group of 15 to 20 and 21 to 25 years.

The paragraph 42 of the Sarla Verma case is quoted as under :-

" 42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M- 15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

In view of the law as laid down in Sarla Verma and Munna Lal Jain the operative multiplier should not be determined on the age of the claimant but on the basis of the age of the deceased. In the present case the deceased / victim was undisputedly 25 years of age at the time of his death and, therefore, the multiplier 18 should be applied in terms of Sarla Verma case.

There is another aspect which we feel and in fact taken by the claimant in the cross-objection, required to be determined .

The claimants in the examination-in-chief categorically stated that the deceased had a bright future and, therefore, the future prospect should also be considered while determining the compensation. The compensation on future aspect was a center of debate before the Constitution Bench of the Supreme Court in case of National Insurance Company Limited -Vs- Pranay Sethi & Ors. reported in AIR 2017 SC 5157. In paragraph 61 (III) the Constitution Bench held that while determining the income an additional sum being 50 % of the actual salary of the established income should be awarded for future prospect provided the deceased was in a permanent job and was below the age of 40 years .

It is stated by the third witness of the claimant that the deceased was employed with the company and, therefore, it can be legitimately presumed that he was in permanent job in view of the law laid down in Pranay Sethi (supra), the claimant

is entitled to a further sum being 50 per cent of the established income on future aspect.

The third limb of challenge in the cross-objection is on the conventional heads i.e., loss of state, loss of consortium and funeral expenses. Those are non-pecuniary compensation and different courts awarded different amounts under those heads. Some of the Courts awarded the sum given in second schedule to section 163 A of the Act and some on the basis of the factum of inflation and price index.

In *Pranay Sethi*, the Constitution Bench noticed such discrepancies and ascertained the reasonable figure to be awarded to the claimant under such conventional heads in the following:-

" 54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh*. It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh* refers to *Santosh Devi*, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The Court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

The Learned Advocate appearing for the appellant further challenges the impugned award on deduction of 1/3rd of the established income as personal expenses. According to the Learned Advocate for the insurance company the deceased was a bachelor and since the mother has claimed the compensation as dependent, the Tribunal wrongly deducted 1/3rd of the established income towards living and personal expenses. In *Sarla Verma* (supra) the Apex Court held that normally the bachelors spend more than the married persons. It was

further held that in usual course of life a bachelor is expected to marry and the contribution to the parents and the sibling is likely to be cut drastically . The Apex Court thus held that 50 per cent of the established income should be deducted in case of a bachelor unless it is established by evidence that there were other persons dependent upon the said deceased . In Munna Lal Jain (supra) the Apex Court held that the 50 per cent of the established income should be deducted for personal and living expenses unless a clear case of exceptions as noted in Sarla verma are proved by cogent evidence.

"9. The deduction ordinarily in the case of a bachelor at 50 per cent was approved recently by a three - Judge bench decision in Reshma Kumari V. Madan mohan, 2013 ACJ 1253 (SC), holding that the standard fixed in Sarla Verma, 2009 ACJ 1298 (SC) on the aspect of deduction for personal and living expenses " must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out". Preceding para 38 reads as follows:

"(38) The above does provide guidance for the appropriate deduction towards personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal and living expenses of the deceased need not exactly correspond to the number of dependants."

10. In the case before us, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50 per cent towards the personal and living expenses is not to be disturbed."

In view of the decision of the Constitution Bench we cannot persuade ourselves to the quantum of compensation awarded to the claimant under the head i.e., loss of state and funeral expenses to be just and proper since the deceased was bachelor at the time of his death, naturally no compensation should be awarded under the loss of consortium but the claimant is certainly entitled the reasonable amount of compensation under the head of loss of estate and funeral expenses. In our view the cross-objection should be allowed which in fact has been allowed by us.

The impugned award is modified as under The income of the deceased is established at Rs.15,000/- per month and, therefore, the annual income is calculated at Rs.1,80,000/- per annum.

Since the deceased was a bachelor 50 percent of the established income should be deducted on living and personal expenses which comes to Rs.90,000/- and, therefore, the annual income for the purpose of calculating the compensation should be based upon the established annual income of Rs.90,000/- The multiplier which should be applied in this case is 18 and, therefore, sum comes

to Rs.90,000 x 18 + 30,000 = 16,50,000/- which inclusive of Rs.15,000/- each on two conventional heads of loss of estate and funeral expenses would be the just compensation to the claimant.

Apart from the same the claimant is also entitled to 50 per cent of the established Income i.e., Rs. 90,000 /- towards the future prospect.

The appeal and the cross-objection are thus disposed of.

In view of the disposal, all the connected applications, if any, are also disposed of.

It is informed to us that the quantum of award granted by the Tribunal has already been deposited before this Court in terms of the interlocutory order passed in the instant appeal. Liberty is granted to the

appellant to apply for release of the said amount before the Registrar General of this Court within two weeks from date.

It goes without saying that the claimant shall disclose the details of the bank account held individually in any bank and the Registrar General shall issue a cheque in their individual name indicating that the cheque can only be encashed in the said bank account.

The Insurance Company is directed to transfer the balance directly in the bank account of the said claim held by her in her individual name, provided the particulars thereof are disclosed by the claimant, within a month from date.

I agree.