
(2019) 10 GAU CK 0003

In the Gauhati High Court

Case No : Motor Accident Appeal No. 378 Of 2017

Oriental Insurance Co Ltd

APPELLANT

Vs

Champabati Ray And 5 Ors

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 302, 304(A), 337
Motor Vehicles Act, 1988 — Section 128, 128(1), 177

Citation : (2019) 10 GAU CK 0003

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : A.T. Sarkar, K.K. Bhatta, S.K. Goswami

Final Decision : Disposed Off

Judgement

1. Heard Mr. S.K Goswami, learned counsel for the appellant Insurance Company. Also heard Mr. A.T Sarkar, learned counsel for the respondent

Nos. 1 to 4/claimants as well as Mr. K.K Bhatta, learned counsel for the respondent No. 7, which is the Insurance Company which insured the motorcycle.

2. The appellant has challenged the impugned Judgment dated 30.08.2016, passed by the MACT No. 1, Kamrup, Guwahati in MAC Case No.

1446/2014, by which the appellant has been directed to pay the compensation amount of Rs. 37,76,300/- to the respondents/claimants with interest @

6% per annum from the date of filing the claim petition till final payment.

3. The brief facts of the case is that the deceased, who is the owner of the motorcycle bearing registration No. AS-19/F-8284 was driving his

motorcycle and carrying 2 adult pillion riders along National Highway â?" 31 on 01.05.2014. The motorcycle had a head-on collision with a Bolero

bearing registration No. AS-01/DC-8562, which was coming from the opposite direction. The driver of the motorcycle died in the accident and

accordingly, a claim petition was preferred by the respondent claimants. The learned Tribunal came to a finding that the accident had occurred due to

the rash and negligent driving of the driver of the Bolero and awarded the compensation amount of Rs. 37,76,300/-, along with interest @ 6% per

annum, from the date of filing the claim petition till final payment.

4. The learned counsel for the appellant submits that the accident involved a head-on collision between the motorcycle and the Bolero in the middle of

National Highway " 31. Further, the motorcycle carried 3 (three) adult persons. He accordingly submits that the above facts clearly show that there

was contributory negligence on the part of the driver of the motorcycle also, as the Motor Vehicle Act, 1988 (MV Act, 1988 in short) does not allow

three adult persons to ride a motorcycle. As such, the onus of paying the entire compensation amount could not have been fastened upon the appellant

alone, and the liability of the Insurer of the motorcycle, i.e., the respondent No. 7 cannot be wished away, as the motorcycle had been insured with the

respondent No. 7.

5. The learned counsel for the appellant also submits that the learned Tribunal committed an error in awarding interest on the future prospects, as the

same should not have been awarded, in view of the fact that no future income is given in normal circumstances. The third ground of challenge taken

by the appellant is that the learned Tribunal had awarded Rs. 25,000/- for funeral expenses, Rs. 50,000/- for loss of love and affection and Rs. 5,000/-

for loss of estate, which was not in consonance with the judgment of the Apex Court in the case of National Insurance Co. Ltd v. Pranay Sethi &

Others, reported in 2017 16 SCC 680.

6. The appellant's counsel also submits that out of the compensation of Rs. 37,76,300/- awarded by the learned Tribunal, Rs. 25 lakhs has already

been deposited by the appellant with the Registry of this Court and the same has been released to the respondents/claimants.

7. Mr. A.T Sarkar, learned counsel for the respondent Nos. 1 to 4/claimants submits that the evidence adduced by the witnesses clearly shows that

the Bolero was being driven at a fast speed and in a rash and negligent manner. He submits that there was no rash and negligent act on the part of the

driver of the motorcycle and as such, no liability can be fastened upon the driver of the motorcycle.

8. I have heard the learned counsels for the parties.

9. The Apex Court in the case of Bijoy Kumar Dugar vs. Bidya Dhar Dutta & Ors, reported in 2006 3 SCC 242 has held at para 12 as follows:-

12. Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have

noticed the reasoning and finding of the MACT recorded under Issue No.2. It is the evidence of Rajesh Kumar Gupta-P.W.2 who was

travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the

said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near

Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the

bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending

bus had a head-on collision. The MACT has not accepted the evidence of P.W. 2 to prove that the driver of the offending bus was driving

the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as P.W. 2 wanted to believe the

Court, it was, but natural, as a prudent man for the deceased to have taken due care and precaution to avoid head-on collision when he

had already seen the bus from a long distance coming from the opposite direction. It was head-on collision in which both the vehicles were

damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking

on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the

vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The

finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of

the MACT on this point. The MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of

filing of the claim application till the date of payment. It is a discretionary relief granted by the MACT and, in our view, the discretion

exercised by the MACT cannot be said to be inadequate and inappropriate.â??

The Judgment of the Apex Court, as quoted above, wherein it agrees with the finding of the Tribunal, is to the effect that when there is a head-on

collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident, unless there was a finding that one of

the vehicles had been knocked on its side, whereby negligence or rashness could have been wholly fastened or made attributable to the driver of one

of the vehicles.

In the case of United India Insurance Co. Ltd v. Lalzuia & Others, reported in 2009 2 GLR 10,9 this Court has held that when there is overwhelming

evidence on record to establish the fact of a head-on collision between 2 vehicles, it would be in the fitness of things to apportion the compensation

awarded @ 50% each.

10. In the case of Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak, reported in 2002 6 SCC 455, the Apex Court has held at para 8 & 9

as follows:-

Â â??8â?|.The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has

materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence

ordinarily means breach of a legal duty to care, but when used in the expression ""contributory negligence"" it does not mean breach of any

duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes

blameworthy in part as an ""author of his own wrong.

9. Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on

which the question of defendant's negligence is decided. The standard of reasonable man is as relevant in the case of plaintiff's

contributory negligence as in the case of defendant's negligence. But the degree of want of care which will constitute contributory

negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in

Astley Vs. Austrust Ltd. (1999) 73 ALJR 403 is worthy of quoting:

A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to

take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it

may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the

defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature

of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the

plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the

plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of

the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether

the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property.

In the case of Jiju Kuruvila & Ors. vs. Kunjamma Mohan & Ors., reported in 2013 9 SCC 166, the Apex Court has held at para 20.5 as follows:-

20.5. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and

negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and

its direction etc., depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle

hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of

any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence

of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

11. In the case of Syed Sadiq vs United India Insurance Co. Ltd, reported in 2014 2 SCC 73,5 the Apex Court has held that the finding of contributory

negligence has to be proved by producing evidence and in the absence of any evidence to prove contributory negligence, such liability cannot be fastened upon the other party.

12. This Court finds that the police were not examined before the learned Tribunal. Though a sketch map had been prepared in relation to the accident site, the sketch map was not produced in the Court. Also, the 2 pillion riders of the motorcycle were not called to give evidence by the learned Tribunal. However, the Police registered a Police case against the driver of the Bolero and chargesheet was also filed against the driver of the Bolero under Section 279/337/304(A) IPC. At the same time, the appellant also did not adduce any evidence before the learned Tribunal.

13. The police Report/Chargesheet is to the effect that the Bolero first hit the motorcycle, then hit a Handcart. While the motorcyclist died, the Handcart puller was injured and the Handcart was damaged. The evidence also shows that the front portion of the motorcycle was damaged. The evidence of the eyewitness (PW-2), in cross-examination is to the effect that â?? the vehicles were seized in the middle of N.H.â? The fact that the Bolero and the motorcycle had been seized by the police from the middle of the National Highway, gives rise to an inference that there was some contributory negligence on the part of the motorcyclist. Also, it would be expected of a prudent man that when a vehicle is approaching from the opposite direction, some manoeuvre should be done so as to avoid the on-coming vehicle. If it could be seen or known that the other vehicle was coming in a zig-zag manner or in a high speed in the middle of the road, the motorcyclist could have stopped or gone to the side of the road. However, the same being said, the learned Tribunal has found the Bolero driver to have driven the Bolero in a rash and negligent manner on the basis of the evidence of PW-2, who in his cross-examination by the counsel for the Insurer of the motorcycle, further stated the following:-

â??I saw the incident from 10/15 ft. Bolero knocked the motor cycle. The bike was in the left side. Bolero was on the wrong side and was in high speed.â??

14. The evidence of PW-2 in his cross examination, was that the Bolero was on the wrong side of the road and was in high speed. On considering this ground alone, this Court does not find any infirmity with the finding of the

learned Tribunal that the driver of the Bolero had driven the same in a rash and negligent manner. However, the statement of PW-2 in his evidence is with regard to the seizure of the accident vehicles by the Police from the middle of the road. In the case of Mangla Ram v. Oriental Insurance Co. Ltd & Ors, reported in 2018 5 SCC 65,6 the Apex Court has held that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. In the above case of Mangla Ram (supra), the motorcycle had been hit from behind by a speeding jeep. After the motorcyclist was hit, the jeep moved ahead and stopped on the road. It was in this context that the Apex Court has held that the spot where the motor vehicle was found lying after the accident, cannot be the basis to assume that it was driven in or around that spot at the relevant time. This observation of the Apex Court in para 32 is as follows:

â??32. We find substance in the criticism of the appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep.â??

However, in the present case, the accident involved a head-on collision. There is no evidence that the vehicles were pushed to the middle of the road, after the accident, though PW-2 in the cross-examination by the Insurer of the motorcycle has stated that the Bolero was running on the wrong side of the road. If the accident had occurred on one side of the road, it is highly unlikely that the two accident vehicles would have been moved from one side of the road to the middle of the road, prior to seizure of the vehicles by the Police. It is more plausible that vehicles are moved to one side of the road, when the accident occurs in the middle of the road. However, though there was a head-on collision, it is possible that the bike was pushed towards the middle of the road by the Bolero and it is also possible for the Bolero to have moved towards the middle of the road after the collision, as it might not have been able to come to a dead-stop when it collided with the motorcycle. Having stated the above, the fact remains that the Bolero had

hit the motorcycle and the Handcart. Further, though PW-2 has stated that the vehicles were seized in the middle of the road, his further evidence is to the effect that the bike was in the left side of the road and the Bolero was in the wrong side of the road and in high speed. This evidence has not been controverted. In fact, the Police report is to the effect that the chargesheet has been filed against the Driver of the Bolero under Section 279/337/304A IPC. Also, the appellant has not adduced any evidence to prove that there was contributory negligence on the part of the Driver of the motorcycle.

15. In the case of Syad Akbar v. State of Karnataka, reported in 1980 1 SCC 30, the Apex Court has held that as a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. However, the peculiar circumstances constituting the event or accident may show negligence of somebody as the cause of the event or accident. It is in such cases that the maxim *res ipsa loquitur* may apply, if the cause of the event or accident is unknown and no reasonable explanation as to the cause is forthcoming from the other party. Thus, for the application of the maxim *res ipsa loquitur*, no less important a requirement is that the *res* must not only bespeak negligence, but can be pinned on the other party. The Apex Court further held in para 21 & 22 of the above judgment as follows:

â??21. It is now to be seen, how does *res ipsa loquitur* fit in with the conceptual pattern of the Indian Evidence Act. Under the Act, the general rule is that the burden of proving negligence as cause of the accident, lies on the party who alleges it. But that party can take advantage of presumptions which may be available to him, to lighten that burden, Presumptions are of three types:-

- (i) Permissive presumptions or presumptions of fact.
- (ii) Compelling presumptions or presumptions of law (rebuttable).
- (iii) Irrebuttable presumption of law or conclusive proof.

Clauses (i), (ii) and (iii) are indicated in clauses (1), (2) and (3) respectively, of S. 4, Evidence Act. Presumption of facts are inferences of

certain fact patterns drawn from the experience and observation of the common course of nature, the constitution of the human mind, the

springs of human action, the usages and habits of society and ordinary course of

human affairs. S. 114 is a general Section dealing with presumptions of this kind. It is not obligatory for the Court to draw a presumption of facts. In respect of such presumptions, the Act allows the judge a discretion in each case to decide whether the fact which under S. 114 may be presumed has been proved by virtue of that presumption.

22. In case of a Presumption of Law no discretion has been left to the Court, and it is bound to presume the fact as proved until evidence is given by the party interested to rebut or disprove it. Instances of such presumptions are to be found in Ss. 79, 80, 81, 83, 85, 89 and 105, Evidence Act.â??

16. It is not disputed by the parties that there was a head-on collision between the motorcycle and the Bolero. However, the evidence of PW-2 clearly shows that the accident occurred due to the Bolero being driven in the wrong lane and at high speed. There is no evidence to show that just because the vehicles were seized in the middle of the road, the accident occurred in the middle of the road.

17. Section 128 (1) of the M.V Act, 1988 states as follows:-

â??128. Safety measures for drivers and pillion riders.â??"(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driverâ??s seat with appropriate safety measures.â??

As the deceased, who was driving the motorcycle had two pillion riders, the same clearly shows that he has violated the provision of the M.V Act. It

can also be presumed that the maneuverability of a motorcycle would have been affected by having two pillion riders vis-Ã -vis one pillion rider. In the

case of Sabita Sharma & Ors. Vs. Amrit Pal Singh & Ors.(FAO No. 354 of 2012), the Himachal Pradesh High Court has held that when the driver

of a two wheeler had carried two pillion riders, the driver of the two wheeler had acted in a rash and negligent manner and thus contributed towards

the cause of the accident. In the case of National Insurance Company Co. Ltd. vs. Balaji & Ors.[CMA (MD) Nos. 228, 229 and 230 of 2007]], the

Madras High Court has also held that the driver of the two wheeler, who was carrying two pillion riders, had contributed to the accident, as the

carrying of two pillion riders amounted to a rash and negligent act on the part of the driver of the two wheeler.

18. However, the Delhi High Court in the case of Darwan Singh Aswal v. United India Insurance Company Limited & Ors, MAC Appeal No.

97/2012, which was disposed of vide Judgment dated 01.11.2012, has held that it cannot be presumed that there would always be negligence on the

part of the 2 wheeler driver, if 3 persons are riding on 2 wheeler. The extract of para 6 of the above judgment dated 01.11.2012 is reproduced below:

“Triple riding on a two wheeler is in contravention of the provisions of the Motor Vehicles Act, 1988 (the Act). Appropriate punishment is

provided for triple riding on a two wheeler under Section 128 read with Section 177 of the Act. However, there is no presumption that there

would always be negligence on the part of two wheeler driver if three persons are riding on a two wheeler. The negligence has to be

established as a fact. In the instant case, as stated earlier, the manner of the accident has not been disputed in cross-examination of the two

eye witnesses produced by the Appellants. The Claims Tribunal without any material on record simply on the ground that three persons were

riding on the two wheeler concluded that there was contributory negligence. The conclusion of contributory negligence, therefore, cannot

be sustained.”

19. Though the Himachal Pradesh High Court and Madras High Court have held that when a 2 wheeler carries 2 pillion riders, the same amounted to

rash and negligent act on the part of the Driver of the 2 wheeler, the Delhi High Court has held otherwise by stating that negligence has to be

established as a fact and simply because 3 persons were riding on a 2 wheeler, it cannot be concluded that there was contributory negligence on the

part of the Driver of the two wheeler.

In the present case, the deceased motorcyclist carried 2 pillion riders. However, there has been no evidence adduced by any of the parties that there

was some act or omission on the part of the Driver of the motorcycle, which materially contributed to the accident, so that it could be described as

negligence. If the driver of the two wheeler has violated Section 128 of the MV Act, 1988, the driver should be penalized for the same under the

specific provisions of the law. This Court is of the view that just because the

Driver of the motorcycle violated provisions of the MV Act, 1988, the same does not automatically lead to a conclusion that the motorcycle was being driven in a rash and negligent manner. In that view of the matter, this Court is in respectful agreement with the decision of the Delhi High Court in the case of Darwan Singh Aswal (Supra), wherein, it has held that appropriate punishment is provided for triple ridding on a two wheeler under Section 128 read with Section 177 of the MV Act, 1988. However, there can be no presumption that there is always negligence on the part of the driver of the two wheeler, if 3 persons are riding on a two wheeler. Thus, though there was a head-on collision between 2 vehicles, keeping in view the judgments of the Apex Court in Pramodkumar Rasikbhai Jhaveri (supra), Syed Sadiq (supra) and the fact that PW-2 has stated in his evidence that the Bolero was on the wrong side of the road, the stand of the appellant that the Driver of the motorcycle was also guilty of contributory negligence cannot be accepted.

20. In the present case, there is no direct evidence showing any rash and negligent act on the part of the motorcyclist. As there was a head-on collision, there can be a presumption that the motorcyclist was also guilty of contributory negligence, keeping in view the judgments of the Apex Court in Bijoy Kumar Dugar vs. Bidya Dhar Dutta & Ors (supra) and the decision of this Court in United India Insurance Co. Ltd v. Lalzuia (supra). However, there is no evidence adduced, as stated earlier, to show the contributory negligence of the motorcyclist, except to the extent that there were 2 pillion riders on the motorcycle and a presumption that the accident occurred in the middle of the road. However, presumption cannot take the place of proof, especially when there is evidence to the contrary. Further, it is settled law that a decision is only an authority for what it decides and not what logically follows from it. A little difference in facts affects the precedential value of a decision.

21. Another ground of challenge to the impugned judgment is that the learned Tribunal had awarded interest on future prospects, which could not be done. In the case of Khusboo Chirania @ Kanta Chirania v. Kamal Kumar Sovasaria, reported in 2018 0 Supreme(Gau) 966 and in the case of Nasima Begum v. Keramat Ali, reported in 2019 0 Supreme(Gau) 507, this Court has stated no interest on future prospects should be given. Though

no reasons have been enunciated in the above judgments, the reason for the same seems to be due to the fact that future prospects is relatable to an income to be received in the future and as such, there could not be any loss to the claimants for the payment of future prospects, at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future prospects is due to the fact that though the loss of dependency starts from the date of the accident and the compensation amount is computed on the date of the Award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects is with regard to the probable income to be received in the future and as such there is no requirement to compensate the claimant by way of future interest, for the loss that is to occur in the future, as the future is yet to happen. Further, future prospects is given for the entire future and as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event/s. Thus, with regard to future prospects, this Court is also of the view that there cannot be any interest on future prospects, as the same relates to an income to be given in the future.

22. In the case of *Pranay Sethi & Others (Supra)*, the Apex Court has awarded compensation only for specific conventional heads and held that the amount to be paid for funeral expense and loss of estate will be Rs. 15,000/- each. It has also held that Rs. 40,000/- should be paid for loss of consortium. No other compensation amount has been reflected in respect of other conventional heads in *Pranay Sethi & Others (Supra)*. In that view of the matter, this Court is of the view that the compensation on conventional heads will have to be limited and given in terms of the judgment of the Apex Court in *Pranay Sethi & Others (Supra)*. Accordingly, funeral expenses and loss of estate will be paid to the claimant @ Rs. 15,000/- each.

With regard to whether the respondent Nos. 1 & 2, who are the parents of the deceased would be entitled to payment of compensation under the head "loss of love and affection", the Apex Court in the case of *Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors*, Civil Appeal No. 9581 of 2018 has held that the Constitution Bench of the Apex Court in *Pranay Sethi & Others (supra)* has dealt with the various heads

under which compensation can be awarded in a death case, which includes loss of consortium. In the above case of Magma General Insurance Co.

Ltd v. Nanu Ram Alias Chuhru Ram & Ors (supra), the Apex Court has further held the word "consortium" encompasses the following:- (1)

Spousal consortium (2) Parental consortium and (3) Filial consortium.

(1) Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving

spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

(2) Parental consortium is granted to the child upon the premature death of parent, for loss of "parental aid, protection, affection, society, discipline,

guidance and training."

(3) Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child

causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime.

Children are valued for their love, affection companionship and their role in the family unit.

In the above case of Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors (supra), the Apex Court has awarded compensation

of Rs. 40,000/- each to the father and sister of the deceased on the basis of filial consortium. In the present case, as the respondent Nos. 1 & 2 are

the parents of the deceased, this Court is of the view that the amount awarded by the learned Tribunal under loss of love of affection would come

within the meaning of filial consortium and accordingly, the amount of Rs. 40,000/- awarded by the learned Tribunal is not interfered with.

23. This Court also finds that the future prospects of the deceased would have to be considered in terms of the judgments of the Apex Court in Sarla

Verma & Others v. Delhi Transport Corporation & Another, reported in 2009 6 SCC 121 and Pranay Sethi & Others (supra), by taking into account

50% of his income, as the deceased was an ASI in the BSF and was only 23 years of age at the time of his death. Also, as the deceased was a

bachelor, 50% of his income would have to be deducted as personal expenses.

24. In view of the above reasons, the compensation payable would be as follows:

1) Monthly Income = Rs. 22,817

- 2) Future prospects@50% of income = Rs. 11,408
- 3) Compensation amount = $22817 + 11408 \times 12 \times 18 \times 1/2$
= Rs. 36,96,300/-
- 4) Loss of estate = Rs. 15,000/-
- 5) Loss of consortium = Rs. 40,000/-
- 6) Funeral expense = Rs. 15,000/-
- Total = Rs. 37,66,300/-

25. The appellant is accordingly directed to deposit the above compensation amount of Rs. 37,66,300/-, before the learned Tribunal, minus the amount already deposited and paid by the appellant. The total compensation amount indicated above, minus the future prospects, will carry interest @ 6% per annum from the date of filing the claim petition, i.e., 01.09.2014 till final payment. It is also directed that out of the awarded amount, Rs. 10 lakhs shall be kept in a fixed deposit in the name of the mother of the deceased for 3 years. Consequently, the impugned Judgment dated 30.08.2016 passed by the MACT No. 1, Kamrup, Metro in MAC Case No. 1446/2014 is hereby modified to the extent indicated above. Appeal is accordingly disposed off.

Send back the LCR.