
(2016) 10 SHI CK 0082
In the High Court Of Himachal Pradesh
Case No : FAO No. 60 of 2011

United India Insurance Company Limited	APPELLANT
Vs	
Satinder Kaur alias Surinder Kaur	RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 168, Section 173

Citation : (2017) AAC 215

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Suneet Goel, Advocate, for the Appellant; Mr. Vivek Chandel, Advocate, for the Respondent Nos. 1 to 4; Mr. Ajay Sharma, Advocate, for the Respondent Nos. 5 & 6

Final Decision : Disposed Off

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral)—Subject matter of this appeal is award, dated 31st December, 2010, made by the Motor Accident Claims Tribunal, Fast Track Court, Una, District Una, HP (for short "the Tribunal") in M.A.C. Petition No. 4/2008, titled as Smt. Satinder Kaur and others v. Navdeep Kaushal and others, whereby compensation to the tune of Rs. 3,22,000/- with interest @ 7% per annum from the date of filing of the petition came to be awarded in favour of the claimants and the insurer was saddled with liability (for short "the impugned award").

2. The claimants, owner-insured and driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has called in question the impugned award on the ground that the Tribunal has fallen in an error in saddling it with liability.

4. In order to determine the issue involved in this appeal, it is necessary to give a flashback of the case, the womb of which has given birth to the appeal in hand.

5. The claimants invoked the jurisdiction of the Tribunal in terms of the mandate of Section 163-A of the Motor Vehicles Act, 1988 (for short "MV Act") for grant of compensation to the tune of ten lacs, as per the break-ups ? given in the claim petition, on the ground that they became the victims of the vehicular accident, which was caused by the driver, namely Shri Ashish Kaushal, while driving motorcycle, bearing registration No. HP-20B-6516, rashly and negligently, on 3rd November, 2006, at about 6.00 A.M., at Village Tahliwal, District Una, in which Balbir Singh sustained injuries and succumbed to the said injuries on 9th November, 2006.

6. The respondents in the claim petition resisted the same on the grounds taken in the respective memo of objections.

7. On the pleadings of the parties, the following issues came to be framed by the Tribunal on 11th September, 2008:

"1. Whether the petitioners are entitled to compensation, if so, how much and from whom? OPP

2. Whether the petition is bad for non-joinder of necessary parties as alleged? OPR-1&2

3. Whether the petition is not maintainable? OPR-1&2

4. Whether the respondent No. 2 was not holding any valid and effective driving licence at the time of accident in question, if so, its effect? OPR-3

5. Whether the motorcycle in question was being used against the terms and conditions of insurance policy? OPR-3

6. Relief."

8. The parties have led evidence.

9. The Tribunal, after scanning the evidence, oral as well as documentary, awarded compensation to the tune of Rs. 3,22,000/- in favour of the claimants and saddled the insurer with liability in terms of the impugned award.

10. The appellant has questioned the said impugned award on the grounds taken in the memo of the appeal. The appeal is meritless and deserves to be dismissed for the following reasons:

11. Before dealing with issue No. 1, I deem it proper to determine issues No. 2 to 5.

Issue No. 2 & 3:

12. It was for the owner-insured and driver of the offending vehicle to prove both these issues, have not led any evidence to this effect. However, I have gone through the impugned award. The Tribunal has rightly made discussion in paras 12 and 13 of the impugned award, needs no interference. Moreover, the owner-

insured and driver of the offending vehicle have not questioned the said findings. Accordingly, the findings returned by the Tribunal on issues No. 2 and 3 are upheld.

Issues No. 4 and 5:

13. It was for the insurer to plead and prove that the driver of the offending vehicle was not having a valid and effective driving licence to drive the same and the offending vehicle was being driven in violation of the terms and conditions of the insurance policy, has not led any evidence, thus, has failed to discharge the onus.

14. The driving licence is on the record as Ext. RA, the perusal of which does disclose that the driver of the offending vehicle was having a valid and effective driving licence. There is not even a single iota of evidence on the file to prove that the offending vehicle was being driven in violation of the terms and conditions of the insurance policy. Accordingly, the findings returned by the Tribunal on issues No. 4 and 5 are upheld.

Issue No. 1:

15. The claimants have proved that the driver, namely Shri Ashish Kaushal, while driving the motorcycle, bearing registration No. HP-20B-6516, rashly and negligently, on 3rd November, 2006, at about 6.00 A.M., at Village Tahlial, District Una, rammed the same from the wrong side into the scooter of the deceased, due to which Balbir Singh sustained injuries and succumbed to the said injuries on 9th November, 2006. The said findings have not been questioned by the owner-insured and driver of the offending vehicle.

16. Keeping in view the facts of the case, the Tribunal has fallen in an error in assessing the compensation for the reasons to be recorded hereinafter.

17. The question is - whether the Tribunal or Appellate Court is/are within its/their jurisdiction to enhance the compensation without the prayer being made for the same?

18. This Court in series of cases, i.e., in FAO No. 663 of 2008 titled Mani Devi v. Sh. Baldev and another decided on 7.8.2015, FAO No. 224 of 2008 titled Hem Ram and another v. Krishan Ram and another decided on 29.5.2015, along with connected matters, FAO No. 226 of 2006 titled United India Insurance Co. Ltd. v. Kulwant Kaur and another decided on 8.3.2014 and FAO No. 524 of 2007 titled Jagdish v. Rahul Bus services and others decided on 15.5.2015, has held that in case the claimant has not questioned the award, the Court, while hearing the appeal, can suo motu modify the award and enhance the compensation.

19. This Court in FAO No. 203 of 2010, titled as Nati Devi and another v. Maya Devi and others, along with connected matters decided on 20.5.2016, has held that if any order is required to be passed and impugned award is to be modified or reversed, the appellate Court has power to do so, in order to achieve the goal

of social legislation, without their being any cross appeal or cross-objections. It is apt to reproduce paras 15 to 32 of the said judgment herein.

"15. Now, the question is whether the Appellate Court while hearing an appeal under Section 173 of the Act can pass such an order which ought to have been passed by the Tribunal, without there being any appeal or cross objections from the person against whom the order has been made. The answer is in the affirmative for the reasons given herein above, read with the mandate of the Apex Court and of the High Courts.

16. Part VII and Order 41 of the CPC deal with the powers and the scope of the Appellate Court in appeal proceedings.

17. The Apex Court in *Sharanamma and others v. Managing Director, Divisional Contr., North-East Karnataka Road Transport Corporation*, (2013) 11 SCC 517, has held that there are no fetters on the powers of the appellate Court to consider the entire case on facts and law, while hearing an appeal under Section 173 of the Act. It is apt to reproduce paragraphs 10, 11 and 12 of the said decision hereunder:

"10. When an Appeal is filed under Section 173 of the Motor Vehicles Act, 1939 (hereinafter shall be referred to as the "Act"), before the High Court, the normal Rules which apply to Appeals before the High Court are applicable to such an Appeal also. Even otherwise, it is well settled position of law that when an Appeal is provided for, the whole case is open before the Appellate Court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the Appellate Court to consider the entire case on facts and law.

11. It is well settled that the right of Appeal is a substantive right and the questions of fact and law are at large and are open to Review by the Appellate Court. Thus, such powers and duties are necessarily to be exercised so as to make the provision of law effective.

12. Generally, finding of fact recorded by Tribunal should not be interfered with in an Appeal until and unless it is proved that glaring discrepancy or mistake has taken place. If the assessment of compensation by the Tribunal was fair and reasonable and the award of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available on record then as mentioned herein above, the High Court would not interfere in the Appeal. In the case in hand, nothing could be pointed out to us as to what were the glaring discrepancies or mistakes in the impugned Award of the Tribunal, which necessitated the Appellate Court to take a different view in the matter."

18. It is also beaten law of the land that Claims Tribunal is within its powers to award compensation more/higher than claimed and compensation can be enhanced by the appellate Court while deciding the appeal under Section 173 of

the Act, even in the absence of any appeal or cross objections. The Apex Court in the case of Nagappa v. Gurudayal Singh and others, reported in AIR 2003 Supreme Court 674 has taken the same view. It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is ? it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8.

9. It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation."

19. The Apex Court in the cases, titled as State of Haryana and another v. Jasbir Kaur and others, reported in AIR 2003 Supreme Court 3696, The Divisional Controller, K.S.R.T.C. v. Mahadeva Shetty and another, reported in AIR 2003 Supreme Court 4172, A.P.S.R.T.C. & another v. M. Ramadevi & others, reported

in 2008 AIR SCW 1213, and Oriental Insurance Co. Ltd. v. Mohd. Nasir & Anr., reported in 2009 AIR SCW 3717, while discussing the ratio laid down in the judgments rendered in the cases titled as Nagappa v. Gurudayal Singh & Ors, (2003) 2 SCC 274; Devki Nandan Bangur and Ors. v. State of Haryana and Ors. 1995 ACJ 1288; Syed Basheer Ahmed & Ors. v. Mohd. Jameel & Anr., (2009) 2 SCC 225; National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700; Punjab State Electricity Board Ltd. v. Zora Singh and Others (2005) 6 SCC 776; A.P. SRTC v. STAT and State of Haryana & Ors. v. Shakuntla Devi, 2008 (13) SCALE 621, has held that the Appellate Court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

20. The Apex Court in another case titled as Ningamma & another v. United India Insurance Co. Ltd., reported in 2009 AIR(SCW) 4916, held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce paragraph 25 of the judgment herein:

"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

21. The Apex Court in a latest judgment in a case titled Sanobanu Nazirbhai Mirza & others v. Ahmedabad Municipal Transport Service, reported in 2013 AIR SCW 5800, has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross appeal/objections. It is apt to reproduce paragraph 9 of the judgment herein:

"9. 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 appellants."

22. The Apex Court in a latest judgment in the case titled as Smt. Savita v. Bindar Singh & others, reported in 2014 AIR SCW 2053, has laid down the same proposition of law and held that the Tribunal as well as the Appellate Court can ignore the claim made by the claimant in the application for compensation. It is apt to reproduce paragraph 6 of the judgment herein:

"6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."

22-A. The Apex Court in Giani Ram v. Ramjilal, 1969 (1) SCC 813, held that Order 41, Rule 33 CPC empowers the appellate Court to pass any decree which justice may require. It is apt to reproduce paragraphs 8 and 9 of the said decision hereunder:

"8. Order 41, Rule 33 of the CPC was enacted to meet a situation of the nature arising in this case. In so far as it is material, the rule provides:

"The Appellate Court shall have power to pass any decree and 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, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

The expression "which ought to have been passed" means "which ought in law to have been passed". If the Appellate Court is of the view that any decree which ought in law to have been passed, but was in fact not passed by the subordinate court, it may pass or make such further or other decree or order as the justice of

the case may require.

9. If the claim of the respondents to retain any part of the property after the death of Jwala is negated, it would, be perpetrating grave injustice to deny to the widow and the two daughters their share in the property to which they are in law entitled. In our view, the case was one in which the power under Order 41, Rule 33, CPC ought to have been exercised and the claim not only of the three sons but also of the widow and the two daughters ought to have been decreed."

23. The Apex Court in the cases in *Narayanarao (dead) through LRs and others v. Sudarshan*, 1995 Supp.(4) SCC 463, *Mahant Dhangir and another v. Madan Mohan and others*, 1987 (Supp.) SCC 528 and in *T.N. Rajasekar v. N. Kasiviswanathan and others*, AIR 2005 SC 3794 held that the High Court, in order to do complete justice to the parties, can invoke the powers under Order 41, Rule 33 of the CPC and pass orders accordingly.

24. The Apex Court in *Delhi Electric Supply Undertaking v. Basanti Devi and another*, JT 1999 (7) SC 486, while replying upon its earlier decision in *Mahant Dhangir* (supra), it was held as under in paragraph 19:

"19. Conditions as laid in provision of Order 41, Rule 33 are satisfied in the present case. When circumstances exist which necessitate the exercise of discretion conferred by Rule 33, the Court cannot be found wanting when it comes to exercise its powers."

25. This Court in *H.P. Road Transport Corporation v. Pt. Jai Ram and etc. etc.*, AIR 1980 Himachal Pradesh 16, held that under Order 41, Rule 33 of the CPC, wide powers have been given to the appellate Court and once it is seized of a matter in its appellate jurisdiction, it is within its power to do complete justice between all the concerned parties. It is apt to reproduce relevant portion of paragraph No. 39 and paragraph 40 of the said decision hereunder:

"..... Moreover, theme of Order 41 and especially the wide powers given to the Court under Rule 33 Order 41 suggests that the intention of the Legislature is to see that "once the Court is seized of a matter in its appellate jurisdiction, it is able to do complete justice between all the concerned parties. To us, therefore, it is very clear that the provision enabling a respondent to file cross-objections made in Rule 22 is a procedural provision under which even if a respondent has not preferred any appeal, the Court is enabled to do complete justice to the parties by allowing the respondent concerned to prefer cross-objections within the period of limitation. Under these circumstances, with great respect to the learned Judges of the Allahabad High Court, we find ourselves unable to accept their view that provision enabling a respondent to file cross-objections is a substantive provision and not a procedural one.

40. In view of our finding that provision for filing cross-objections contemplated by Order 41, Rule 22 is a procedural provision, the ratio of the above referred two decisions of the Supreme Court would at once be attracted, and this Court

being seized of an appellate jurisdiction conferred by Section 110-D of the Motor Vehicles Act, It has to exercise that jurisdiction in the same manner in which it exercises its other appellate jurisdiction allowing the respondents in such appeals to prefer cross-objections."

26. Keeping in view the ratio of the judgment supra, it can safely be held that the appellate Court is competent to pass any order in the interest of justice.

27. The High Court of Rajasthan, while dilating upon the powers of the Appellate Court under Order 41, Rule 33 , held in *United India Insurance Co. Ltd. v. Dama Ram and others*, 1994 ACJ 692, that the appellate Court can rectify the error invoking Order 41, Rule 33 even in the absence of Cross Objections or appeal by the claimants. It is apt to reproduce paragraph 7 of the said decision hereunder:

"7. The Tribunal has not passed award in any case against the owner (insured) of the vehicle. It has passed awards against the appellant insurance company only. It is not in dispute that the Tribunal has categorically held that the said accident took place due to rash and negligent driving of the truck by its driver. As such his employer, namely, Mohd. Rafiq, owner of the said truck, was liable for his negligent act. Thus the Tribunal committed a serious error in not making liable the owner and driver of the offending truck to pay the said amounts of compensation. This error can well be corrected by this court by invoking the provisions of Order 41, Rule 33 , Civil Procedure Code, even if no cross-objection or appeal has been filed by the claimants-respondents. It has been observed in *Kok Singh v. Deokabai* AIR 1976 SC 634, paras 6 and 7, as follows:

In *Giani Ram v. Ramji Lal* AIR 1969 SC 1144, the court said that in Order 41, Rule 33 , the expression "which ought to have been passed" means "what ought in law to have been passed" and if an appellate court is of the view that any decree which ought in law to have been passed was in fact not passed by the court below, it may pass or make such further or other decree or order as the justice of the case may require.

(7) Therefore, we hold that even if the respondent did not file any appeal from the decree of the trial court, that was no bar to the High Court passing a decree in favour of the respondent for the enforcement of the charge.

Reference of *Murari Lal v. Gomati Devi* 1986 ACJ 316 (Rajasthan), may also be made here. Similar view has been taken by me while deciding *United India Ins. Co. Ltd. v. Dhali* 1992 ACJ 1057 (Rajasthan)."

28. The High Court of Orissa at Cuttack, in *M. Adu Ama v. Inja Bangaru Raja and another*, 1995 ACJ 670, has laid down the same principle of law.

29. This High Court in *Himachal Road Transport Corporation v. Saroj Devi and others*, 2002 ACJ 1146, held that appellate Court is not precluded from passing order which it considers just in the facts of the case, without there being any cross objection or cross appeal. It is profitable to reproduce paragraph 15 of the said decision hereunder:

"15. Keeping in view the aforesaid decisions of Supreme Court and different High Courts including this Court, we feel that there being no prohibition in law, i.e., either under Motor Vehicles Act or under the provisions of Civil Procedure Code, this Court is not precluded from passing order which it considers just in the circumstances of a case without there being either cross-objection or cross-appeal. As such we are further of the view that Order 41, Rule 33 is fully applicable to the appeals under the Motor Vehicles Act."

30. In *National Insurance Co. Ltd. v. Mast Ram and others*, 2004 ACJ 1039, the question arose before this High Court was ? Whether the appellate Court can modify the award in the absence of cross-appeal. This High Court answered in the affirmative. It is apt to reproduce paragraph 13 of the said judgment hereunder:

"13. Because of what has been held in this judgment, it is felt necessary to exercise power vested in this court under Order 41, Rule 33 of the Civil Procedure Code to set aside the findings in the operative portion of the award requiring the appellant to pay the amount and then to recover it from the "insurer" (it should have been "insured"?). This is a direction in the impugned award that needs to be set aside. On this aspect, Mr. Sharma had argued that there is no cross-appeal by the owner of the vehicle. To meet such a situation, legislature had enacted Order 41, Rule 33 in the Civil Procedure Code even in cases where an appeal is not filed by a party, like the owner in the present appeal. As such, this plea cannot be accepted."

31. This High Court in *LAC Solan and another v. Bhoop Ram*, 1997(2) Sim.L.C. 229, modified the awards in exercise of powers under Order 41, Rule 33 of the CPC.

32. Faced with the similar situation, the Jammu and Kashmir High Court, in *State Bank of India v. M/s Sharma Provision Store and another*, AIR 1999 J&K 128, held that a High Court can pass a decree which ought to have been passed by the trial Court. It is apt to reproduce relevant portion of paragraph 7 of the said decision hereunder:

"7. This is an exceptional situation which authorises this Court in the present appeal to pass such decree as ought to have been passed or as the nature of the case demands. Similarly discretion vested in this Court under the aforesaid provision of law will not be refused to be exercised simply because respondents have not either filed an appeal or cross-objections."

20. The Tribunal has assessed the income of the deceased at Rs. 2400/- per month, which is legally and factually not correct. The claimants have specifically pleaded that the deceased was a carpenter by profession, which fact is not in dispute. So, he would have been earning not less than Rs. 4500/- per month. However, the claimants have pleaded that the deceased was earning Rs. 3200/- per month, is reluctantly maintained.

21. The Tribunal has also fallen in an error in deducting one third towards the personal expenses of the deceased. The claimants are four in number, thus, one fourth was to be deducted in view of the law laid down by the Apex Court in the case titled as Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases 121, which was upheld by a larger Bench of the Apex Court in Reshma Kumari & Ors. v. Madan Mohan & Anr., reported in 2013 AIR SCW 3120. Accordingly, it is held that the claimants have lost source of dependency to the tune of Rs. 2400/- per month.

22. Admittedly, the deceased was 32 years of age at the time of the accident. The Tribunal has applied the multiplier of "16", is just and appropriate in view of the ratio laid down by the Apex Court in Sarla Verma and Reshma Kumari's cases (supra) read with the Second Schedule appended with the MV Act.

23. Viewed thus, it is held that the claimants are entitled to compensation to the tune of $2400 \times 12 \times 16 = \text{Rs. } 4,60,800/-$ under the head "loss of dependency".

24. The claimants are also held entitled to compensation to the tune of Rs. 10,000/- each under the heads "loss of consortium", "loss of estate", "loss of love and affection" and "funeral expenses".

25. The Tribunal has also committed a legal mistake in awarding interest @ 7% per annum, which was to be awarded as per the prevailing rates.

26. It is a beaten law of the land that the rate of interest should be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others, reported in (2002) 6 SCC 281; Santosh Devi v. National Insurance Company Ltd. and others, reported in 2012 AIR SCW 2892; Amrit Bhanu Shali and others v. National Insurance Company Limited and others, reported in (2012) 11 SCC 738; Smt. Savita v. Binder Singh & others, reported in 2014 AIR SCW 2053; Kalpanaraj & others v. Tamil Nadu State Transport Corpn., reported in 2014 AIR SCW 2982; Amresh Kumari v. Niranjan Lal Jagdish Pd. Jain and others, reported in (2015) 4 SCC 433; and Mohinder Kaur and others v. Hira Nand Sindhi (Ghoriwala) and another, reported in (2015) 4 SCC 434, and discussed by this Court in a batch of FAOs, FAO No. 256 of 2010, titled as Oriental Insurance Company v. Smt. Indiro and others, being the lead case, decided on 19.06.2015.

27. Having said so, I deem it proper to enhance the rate of interest from 7% per annum to 7.5% per annum from the date of filing of the claim petition till its realization.

28. Having said so, compensation to the tune of Rs. 4,60,800/- + Rs. 10,000/- + Rs. 10,000/- + Rs. 10,000/- = Rs. 5,00,800/- with interest @ 7.5% per annum from the date of the claim petition till its realization is awarded in favour of the claimants and the insurer is saddled with liability.

29. The enhanced awarded amount be deposited before the Registry within eight

weeks. On deposition of the amount, the entire awarded amount be released in favour of the claimants strictly as per the terms and conditions contained in the impugned award after proper identification through payee's account cheque or by depositing the same in their respective bank accounts.

30. Having glance of the above discussions, the impugned award is modified, as indicated herein above, and the appeal is disposed of accordingly.

31. Send down the record after placing copy of the judgment on Tribunal's file.