

at Jagadhri (hereinafter referred to as 'Tribunal') in a motor vehicle accident which occurred on 08.11.2014.

2. Brief facts relevant to the present *lis* are that the claimants had filed the claim petition *inter alia* averring therein that on 08.11.2014, Sachin Kumar (since deceased) alongwith his colleague, namely, Pawan Kumar, who was working in ISGEC, Yamuna Nagar, after attending their duty, were returning to their village i.e. Indri Ki Tapriya on their respective motorcycles. Sachin Kumar was going ahead and was being followed by Pawan Kumar. At about 7.00 pm, when they reached near Atar Singh Filling Station (Petrol Pump), Aurangabad, a truck (dumper) bearing Registration No.HRE-9134, being driven by the driver in a rash and negligent manner and at very high speed, came from the opposite side i.e. Radaur side and struck the motorcycle of Sachin Kumar. Due to the impact, Sachin Kumar fell on the road and sustained multiple and grievous injuries and his vehicle was also damaged. Pawan Kumar telephonically informed Parveen Kumar, brother-in-law (sister's husband) of Sachin Kumar, who was employed at Atar Filling Station, Aurangabad. Thereafter, Sachin Kumar was taken to Civil hospital, Yamuna Nagar, where he was declared dead. A FIR bearing No.254 was registered under Sections 279, 304-A of the Indian Penal Code, 1860 at Police Station Sadar Yamuna Nagar. It has come in the evidence that in the FIR originally lodged, description and colour of the vehicle was given. However, the registration number of the vehicle was subsequently given by author of the FIR. It was further pleaded that the deceased was 22 years of age at the time of the accident and was earning ₹20,000/- per month. The claim petition was contested by the owner and driver of the offending vehicle denying the

involvement of the offending truck. It was further averred that the vehicle was insured. The Insurance Company raised preliminary objections regarding maintainability, non-joinder of necessary parties and misjoinder. On merits, the factum of the accident was denied. It was further stated that the FIR was a false FIR. It was further stated that if any accident did take place, it was because of the fault of the rider of the motorcycle.

3. Replication was not filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the accident in question resulting into the death of Sachin Kumar took place due to rash and negligent driving of truck bearing registration no.HRE- 9134 by respondent no. 1 ? OPP

2. If issue no. 1 is proved in affirmative, what amount of compensation the petitioners are entitled to and from whom ? OPP

3. Whether respondent no.1 has violated the terms and conditions of the insurance policy. If so, to what effect ?
OPR-3

4. Relief.

4. The Tribunal vide the impugned award held it to be a case of rash and negligent driving and held that the factum of the accident was proved and awarded the following compensation :

| Sr. No. | Heads | Compensation Awarded |
|---------|----------------|-----------------------------|
| 1 | Monthly income | ₹6,000/- |
| 2 | Deduction ½ | [₹6,000 – 3,000] = ₹3,000/- |

| | | |
|---|--------------------------------------|----------------------------------|
| 3 | Annual income after multiplier of 18 | [₹3,000 x 12 x 18] = ₹6,48,000/- |
| 4 | Funeral expenses | ₹25,000/- |
| 5 | Love and affection | ₹50,000/- |
| 6 | Total Compensation | ₹7,23,000/- |
| | Interest | 8% per annum |

5. Learned counsel for the Insurance Company in FAO-3249-2017 would contend that initially when the FIR was lodged by Pawan Kumar (PW1), the registration number of the offending vehicle was not given and the same was introduced at a later stage which shows the false implication of the offending vehicle. So far as the appeal being FAO-3083-2017 of the claimants is concerned, the learned counsel for the Insurance Company would contend that vide the impugned award sufficient amount has already been awarded as compensation and that there is no further scope of any enhancement.

6. Learned counsel for the claimants would contend that in the present case, at the time of lodging of the FIR, a complete description as well as the colour of the offending truck was given and later the registration number of the truck was given. Both the witnesses PW1 and PW4 were cross-examined at length and nothing could be elicited from both the said witnesses to even remotely suggest that the accident did not take place with the offending vehicle. The learned counsel for the claimants would contend that the income of the deceased as ₹6,000/- per month assessed by the Tribunal is on the lower side inasmuch as the deceased had already passed his senior secondary examination. It is further the contention of the learned counsel that though the deduction of 50% as well as multiplier of '18' have rightly been applied, however, no amount has been awarded towards loss of future

prospects which ought to have been 40%. It is further the contention of the learned counsel for the claimants that the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are not as per the law laid down by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

7. I have heard the learned counsel for the parties.

8. In the present case, at the time of lodging of the FIR the description as well as the colour of the offending vehicle (truck) was given as "*one red colour dumper*". The argument of the learned counsel for the Insurance Company qua the false implication of the vehicle deserves to be rejected. In the FIR, a complete description of the vehicle was given as '*one red colour dumper*'. Both the witnesses i.e. PW1 (author of the FIR) and PW4 were put through a lengthy cross-examination, however, nothing could be elicited. There is no evidence to the contrary to even remotely suggest that the said vehicle was not involved. In view thereof, the argument stands rejected.

9. Coming to the quantum of compensation, admittedly the deceased had already passed his senior secondary examination at the time of the accident and, in the opinion of this Court, the Tribunal has rightly assessed his income as ₹6,000/- per month inasmuch as the minimum wages of a skilled worker prevailing at the relevant point of time were ₹5,937/- per month and hence the income of the deceased as ₹6,000/- per month is maintained.

Though the Tribunal has correctly applied deduction of 50% as well as the multiplier of '18', however, no addition has been made towards future prospects and, hence, as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is made towards future prospects as the deceased was 22 years of age at the time of the accident. Further, the amounts awarded under the conventional heads and under the head 'loss of consortium' are not as per the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra) and hence, the claimants would be entitled to ₹18,000/- (₹15,000+20% increase) towards loss of estate and ₹18,000/- (₹15,000+20% increase) towards funeral expenses and the claimants (wife, one daughter, parents and sister of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

| Sr. No. | Heads | Compensation Awarded |
|---------|--|--|
| 1 | Monthly Income | ₹6,000/- |
| 2 | Annual Income | ₹72,000/- [₹6,000 x 12] |
| 3 | Deduction 50% | ₹36,000/- [₹72,000 – 36,000] |
| 4 | Future Prospects - 40% | ₹50,400/- [₹36,000 + 14,400] |
| 5 | Multiplier - 18 | ₹9,07,200/- [₹50,400 x 18] |
| 6 | Loss of estate | ₹18,000/- |
| 7 | Funeral expenses | ₹18,000/- |
| 8 | Loss of consortium (i) Parental (ii) Filial [₹48,000/- x 3] (iii) Spousal's | ₹48,000/- ₹1,44,000/- ₹48,000/- (Total ₹2,40,000/-) |
| | Total Compensation | ₹11,83,200/- |

10. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 8% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

11. In view of the above discussion, the impugned award passed by the Tribunal stands modified to the above extent and accordingly, the appeal (FAO-3083-2017) filed by the claimants is allowed and the appeal (FAO-3249-2017) filed by the Insurance Company is dismissed. Pending applications, if any, also stand disposed off.

10.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO