

HIGH COURT OF KARNATAKA**Bench: The Hon'ble Mr. Justice M.I. Arun****Date of Decision: 14th December, 2023**

MISCELLANEOUS FIRST APPEAL NO. 5134 OF 2021 (MV-D)

1. LAKSHMAMMA
2. RAJANNA ...APPELLANTS

Versus

1. RANGASWAMY

THE MANAGER, UNITED INDIA INSURANCE CO.LTD.
...RESPONDENTS**Legislation:**

Section 173(1) of the Motor Vehicles Act

Subject:

Compensation Claim under the Motor Vehicles Act – Enhancement of Compensation – Rash and Negligent Driving Leading to Death – Loss of Dependency, Loss of Consortium, Medical Expenses, Transportation of Dead Body, Funeral Expenses, Loss of Estate – Interest on Enhanced Compensation.

Headnotes:

Motor Vehicles Act – Compensation Claim – Appeal against the judgment and award of the Motor Vehicles Accident Claims Tribunal – Deceased's parents seeking enhancement of compensation – Accident caused by rash and negligent driving of a motorcycle resulting in the death of the deceased – Compensation awarded by the Tribunal – Appeal allowed in part – Enhanced compensation of Rs. 5,69,200/- granted with 6% interest p.a. – Directions to the Insurance company to pay the enhanced compensation within six weeks. [Para 1-18]

Loss of Dependency – Notional fixation of the deceased's income – Application of multiplier – Deduction of personal expenses – Addition towards future prospects – Awarded compensation of Rs. 18,90,000/- [Para 4]

Loss of Consortium – Each petitioner entitled to Rs. 40,000/- towards loss of consortium – Total of Rs. 80,000/- awarded to both petitioners. [Para 6, 12-14]

Medical Expenses – Compensation of Rs. 13,885/- awarded by the Tribunal upheld. [Para 15]

Transportation of Dead Body and Funeral Expenses – Compensation of Rs. 15,000/- awarded by the Tribunal upheld. [Para 15]

Loss of Estate – Compensation of Rs. 15,000/- awarded by the Tribunal upheld. [Para 15]

Interest – 6% interest p.a. awarded on enhanced compensation from the date of the petition before the Tribunal until realization. [Para 17]

Directions – Insurance company directed to pay the enhanced compensation within six weeks. [Para 18]

Referred Cases:

- SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION & ANOTHER (2009) 6 SCC 121
- NATIONAL INSURANCE CO. LTD. V. PRANAY SETHI AND OTHERS (2017) 16 SCC 680
- Magma General Insurance Co.Ltd., VS. NANU RAM ALIAS CHUHRU RAM AND OTHERS (2018) 18 SCC 130
- SHRI RAM GENERAL INSURANCE COMPANY LIMITED VS. BHAGAT SINGH RAWAT, reported in LAWS (SC)–2023-3-140

JUDGMENT

1. Aggrieved by the judgment and award dated 06.03.2021 passed in MVC No.7807/2018 by the Court of the Motor Vehicles Accident Claims Tribunal, Bengaluru City, SCCH-14 (for short 'the Tribunal'), the petitioners therein have preferred this appeal.
2. For the sake of convenience, the parties are referred to herein as per their status before the Tribunal.
3. Brief facts of the case are as under: On 14.10.2018, at about 8.30 p.m., the deceased Chetan was proceeding as a pillion rider in a motorcycle bearing registration No.KA-02/HM-6122 and when he reached near Lupith Daba, Mallipalya, Kunigal Town, the rider of the motorcycle drove it in a rash and negligent manner, because of which the motorcycle fell down and the said Chetan sustained grievous injuries and because of which he died on 17.10.2018. The petitioners are his parents. The accident happened due to

the rash and negligent driving of the motorcycle, which was duly insured with respondent No.2/Insurance Company. The Tribunal has awarded a compensation of Rs.14,44,700/- along with interest at the rate of 7% p.a. from the date of petition till its realization. Not satisfied by the same, the petitioners have preferred this appeal.

4. The accident occurred in the year 2018. The petitioners have not established the income of the deceased before the Tribunal. Hence, it is deemed appropriate to fix his income notionally as per the chart prepared by the Karnataka State Legal Services Authority in consultation with Insurance Companies, which will be Rs.12,500/- per month. The deceased was aged 23 years at the time of the accident. Hence, a multiplier of 18 is adopted as per the law laid down by the Apex Court in SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION & ANOTHER reported in (2009) 6 SCC 121. As the deceased was a bachelor, 50% of his income needs to be deducted towards his personal expenses. As per the law laid down by the Hon'ble Supreme Court in NATIONAL INSURANCE CO. LTD. V. PRANAY SETHI AND OTHERS reported in (2017) 16 SCC 680, 40% of the income of the deceased has to be added towards future prospects. Thus, on the count of 'loss of dependency', petitioners are entitled to a sum of Rs.18,90,000/- (Rs.12,500 X 12 X 18 X ½ + 40%).

5. Petitioners are also entitled to a sum of Rs.30,000/- towards 'loss of estate and funeral expenses'.

6. Advocate for the petitioners contend that each of the petitioners are entitled to a sum of Rs.40,000/- towards 'loss of consortium' as per the law laid down by the Hon'ble Supreme Court in Pranay Sethi (supra), MAGMA GENERAL INSURANCE CO.LTD., VS. NANU RAM ALIAS CHUHRU RAM AND OTHERS reported in (2018) 18 SCC 130 and RAHUL GANAPATRAO SABLE VS. LAXMAN MARUTI JADHAV (DEAD) THROUGH LRS AND

OTHERS, passed in SLP(C) No.26871 of 2019 and SLP(C) No.27394 of 2019 and submit that together they are entitled to a sum of Rs.80,000/- under this head.

7. However, the advocate for the Insurance Company contends that together petitioners are entitled to a sum of Rs.40,000/- towards 'loss of consortium'. They also place their reliance on the judgment of the Hon'ble Supreme Court in Pranay Sethi's case (supra) and the decision of the Hon'ble Supreme Court in SHRI RAM GENERAL INSURANCE COMPANY LIMITED VS. BHAGAT SINGH RAWAT, reported in LAWS (SC)–2023-3-140.

8. Paragraphs 46 and 59.8 of the judgment in Pranay Sethi (supra) reads as under:

46. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi v. National Insurance Co. Ltd. [(2012) 6 SCC 421] the two-Judge Bench followed the traditional method and granted Rs.5000 for transportation of the body, Rs.10,000 as funeral expenses and Rs.10,000 as regards the loss of consortium. In Sarla Verma v. DTC, [(2009) 6 SCC 121], the Court granted Rs.5000 under the head of loss of estate, Rs.5000 towards funeral expenses and Rs.10,000 towards loss of consortium. In Rajesh v. Rajbir Singh [(2013) 9 SCC 54], the Court granted Rs.1,00,000 towards loss of consortium and Rs.25,000 towards funeral expenses. It also granted Rs.1,00,000 towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socioeconomic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi. On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote: [Rajesh v. Rajbir Singh (2013) 9

SCC 54, para 17]

"17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is

entitled to get, has to be compensated appropriately. The concept of nonpecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

9. Paragraphs 21 to 24 of the judgment in Magma General Insurance Co. (supra) reads as under:

21. A Constitution Bench of this Court in National Insurance Co.Ltd., V. Pranay Sethi, (2017) 16 SCC 680, dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husbandwife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation”.

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training”.

21.3. 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.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldwide have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in *Pranay Sethi*. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of filial consortium.

10. Paragraph 33 of the judgment in *Rahul Ganapatrao Sable* (supra) reads as under:

33. In the present case, the MACT had granted a meagre amount of Rs.5,000/- towards loss of consortium. However, the High Court granted a total amount of Rs.70,000/- as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In the case of *Pranay Sethi* (supra), Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs.40,000/- to each of the dependents. Considering the same, an amount of Rs.40,000/- each is awarded to each of the four dependents towards loss of consortium.

11. The judgment in Shri Ram General Insurance Co.(supra) reads as under:
 - (1.) Leave granted.
 - (2.) Heard learned counsel for parties.
 - (3.) The notice in terms of the order dtd. 13/10/2020 was confined only to two aspects i.e. the sum for loss of love and affection being Rs.50,000.00 and for loss of consortium for Rs. 40,000.00 could not have been granted to each of the three dependents separately but in toto and that would be the amount quantified. This was in terms of the judgment in National Insurance Company Ltd. v. Pranay Sethi & Ors - (2017) 16 SCC 680.
 - (4.) We have heard learned counsel for parties. Learned counsel for the respondents did endeavour to persuade us that it should be per the legal heir by relying on Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.-2018 SCC OnLine SC 1546.
 - (5.) We are, however, of the view that the total amount has to be assigned under a particular heading and that will go depending on the number of legal heirs present.
 - (6.) The amounts fixed in terms of Pranay Sethi's case (supra) are Rs.50,000.00 and Rs.40,000.00 respectively under the two heads and that should be the total amount payable.
 - (7.) Having said so, learned counsel for the respondent points out that this amount so determined by us is liable to be enhanced by a percentage of 10 per cent every three years as opined in para 61 (viii) of the judgment in Pranay Sethi's case (supra) which reads as under:

"61(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000.00 Rs.40,000.00 and Rs.15,000.00 respectively.
The aforesaid amounts should be enhanced at the rate of 10% in every three years."
 - (8.) The aforesaid position is not disputed by learned counsel for the appellant.
 - (9.) Thus, this escalation on account of interest would also to be admissible for the benefit of the respondents from the date of the Award which will mean that in the present case there will be two escalations of 10 per cent each.

- (10.) The impugned judgment is modified to the aforesaid extent.
- (11.) The appellant to deposit the balance amount within four weeks from today with the Tribunal.
- (12.) The appeals stand allowed.

SLP(C) No. 1185-1186/2021

- (13.) We are not inclined to interfere with the impugned order(s) on ground raised.
- (14.) The Special Leave Petitions are dismissed.

ORDER 1.SLP [C] NOS.11669-

11671/2020

2.Leave granted.

3.The appeals are allowed in terms of the signed order.

4.Pending application, if any, stands disposed of.

SLP(C) No.1185-1186/2021

5.The Special Leave Petitions are dismissed in terms of the signed order.

6.Pending application, if any, stands disposed of.

12. Though in Pranay Sethi's Case (supra), the Hon'ble Apex Court has not stated, in those many words, that each of the petitioners are entitled to compensation under the head 'loss of consortium', to an extent of Rs.40,000/- , the same has been explained in the case of Magma Insurance Co. (supra) and Rahul Ganapatrao Sable (supra). In the said cases, the Hon'ble Apex Court has held that, each of the person, who is entitled to compensation as a relative of the deceased, is entitled to a sum of Rs.40,000/- towards 'loss of consortium'.

13. Though in the case of Shri Ram General Insurance Co. (supra), the Hon'ble Apex Court has awarded a total sum of Rs.40,000/- towards 'loss of consortium', no reason is assigned for the same and it does not interpret the decision in Pranay Sethi's case (supra) and hence the same has to be considered per incuriam in this respect.

14. Thus, the petitioners are held to be entitled to a sum of Rs.40,000/- each towards 'loss of consortium' and together they are entitled to a sum of Rs.80,000/-.
15. Further, the facts reveal that the deceased after accident was admitted to hospital and based on the actual bills submitted, the Tribunal has awarded a sum of Rs.13,885/- towards 'medical expenses'. I do not see any reason to disagree with the Tribunal in this regard.
16. Thus, the petitioners are entitled to a total compensation of Rs.20,13,885/- as detailed in the table below:

S l. N o .	Compensation towards	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of dependen cy	Rs.13,60,8 00.00	Rs.18,90,0 00.00
2	Medical expenses	Rs.13,885. 00	Rs. 13,885.00
3	Transport ation of dead body and Funeral expenses	Rs.15,000. 00	Rs.15,000. 00
4	Filial consortiu m	Rs.40,000. 00	Rs.80,000. 00
5	Loss of estate	Rs.15,000. 00	Rs.15,000. 00
	Total	Rs.14,44,68 5.00	Rs.20,13,88 5.00

17. Thus, the petitioners are entitled to an enhanced compensation of Rs.5,69,200/- over and above what has been awarded by the Tribunal (Rs.20,13,885/- minus Rs.14,44,685/-). Further, given the bank rate of interest, I deem it appropriate to award interest at the rate of 6% p.a. on the enhanced compensation from the date of petition till realization.

18. Hence, the following:

ORDER

- (i) The appeal is allowed in part;
- (ii) The petitioners are entitled to an enhanced compensation of Rs.5,69,200/- along with interest at the rate of 6% p.a. from the date of petition before the Tribunal till realization, which shall be over and above what has been awarded by the Tribunal;
- (iii) Respondent No.2/Insurance company shall pay the enhanced compensation within a period of six weeks from the date of receipt of certified copy of this order;
- (v) Office to draw modified award accordingly.

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