IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 4116 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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TATA AIG GENERAL INSURANCE CO. LTD.
Versus
BHUMI HARESHKUMAR RAMNANI & ORS.

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Appearance:
MS KIRTI S PATHAK(9966) for the Appellant(s) No. 1
JIGNESHKUMAR M NAYAK(8558) for the Defendant(s) No. 5,7
MR DK CHAUDHARI(5361) for the Defendant(s) No. 6
MR RATHIN P RAVAL(5013) for the Defendant(s) No. 8
MR.HIREN M MODI(3732) for the Defendant(s) No. 1,2,3,4

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**
Date : 25/08/2025
ORAL JUDGMENT

1. The present appeal is filed at the instance of the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the “Act, 1988”) being aggrieved and dissatisfied with the impugned judgment and award dated 05.09.2024 passed by the learned Motor Accident Claims Tribunal, Ahmedabad (Rural) in MACP No.1156 of 2020. By the said impugned judgment and award, the Tribunal has partly allowed the claim petition preferred by the present respondents no. 1 to 4 – original claimants under Section 166

of the Act, 1988, thereby holding them entitled to recover an amount of Rs.55,37,476/- from the original opponent nos. 1 and 2, jointly and severally together with interest at the rate of 9% from the date of filing of claim petition till its actual realization, along with proportionate cost. The Tribunal has further exonerated the original opponents no. 3 to 6 from their liability to pay compensation. Hence, the present appeal at the instance of the appellant – Insurance Company mainly disputing the awarding of amount of compensation.

2. The Coordinate Bench noticing the only issue of income of the deceased being determined on higher side has vide order dated 28.11.2024 issued notice for final disposal. In the meantime, the application for stay preferred by the present appellant- Insurance Company, the Court had stayed the operation, execution and implementation of the impugned judgment and award passed by the Tribunal on condition to deposit of entire decreetal amount, along with the costs and interest, by the applicant Insurance Company before the concerned Tribunal. The Coordinate Bench had also issued appropriate direction about disbursement of the 30% of the amount deposited and remaining 70% of the amount to be

invested in the Fixed Deposits Scheme with any Nationalized Bank initially for a period of five years, which was further directed to be renewed, pending the appeal.

3. In response to the aforesaid notice, learned advocate Mr. Hiren Modi has entered his appearance on behalf of the respondent nos. 1 to 4 – original claimants and Mr. Jignesh Nayak, learned advocate has entered his appearance on behalf of respondent nos. 5 and 7, Mr. D.K. Chaudhari, learned advocate has entered his appearance on behalf of respondent no.6 and Mr.Rathin Raval, learned advocate has entered his appearance on behalf of respondent no.8. The matter was taken up for hearing with the assistance of the learned advocates for the respective parties on record.

4. Learned advocate Ms. Pathak, appearing on behalf of the appellant has vehemently assailed the impugned judgment and award by submitting that the Tribunal committed grave error in considering the income tax returns of the deceased, more particularly of financial year 2016-2017, produced on record at Exhibit 43, as the basis for the purpose of determination of income of the deceased at the time of accident which had admittedly taken on 16th February 2020.

According to learned advocate, admittedly, no proof of income was led by the original claimants about the income of the deceased prevailing at the time of occurrence of accidents i.e. on 16th February 2020. She has therefore submitted that as per the settled legal position, the Tribunal ought to have followed the criteria of minimum wages for the purpose of determination of the income of the deceased at the time of the occurrence of accident. Learned advocate had invited my attention to the findings and reasons assigned by the Tribunal and has submitted that no reasons have been assigned by the Tribunal to consider the gross income for the financial year 2016-17 as reflected in the income tax returns of FY 2016-17 produced on record at Exh.43 for the purpose of determination of the income of the deceased. The reliance was placed on the decision of the Hon'ble Supreme Court In the case of **National Insurance Company Ltd versus Pranay Shetty and others**, reported in (**2017) 16 SCC, 680**. According to the learned advocate, the Hon'ble Supreme Court while considering the issue of future prospects, has observed that though Section 168 of the Act deals with the concept of just compensation, the same has to be determined on the foundation of fairness, reasonableness and equitability

on acceptable legal standards. She has further emphasised on the observation made by the Hon’ble Supreme Court that though the aim is to achieve an acceptable degree of proximity to arithmetical precision, the same has to be on the basis of material brought on record in every individual case. She has therefore submitted that the determination of the income has to be on the foundation of evidence brought on record as regards the age as well as the income of the deceased. She has further submitted that the heavy burden lies upon the claimants to prove the income of the deceased as on the date of occurrence of accident by leading evidence. Learned advocate had also emphasised on the doctrine of ”actual income” at the time of the death of the deceased. According to her, the Hon’ble Supreme Court in the aforesaid decision has held that the Courts are bound to follow the doctrine of actual income at the time of death and not to add an amount with regard to future prospects to the income for the purpose of determination of multiplicant. Thus, according to her, the Tribunal committed grave error in ignoring the aforesaid principles of doctrine of actual income while determining the income of the deceased on notional basis, in absence of any direct evidence of proof of income of the

deceased at the relevant point of time being produced on record. She has therefore urged this Court to apply the prescribed minimum wages notified by the State Government at the time of occurrence of accident for the purpose of future prospects.

5. Per contra, learned advocate Mr. Hiren Modi appearing for the respondents- original claimants has vehemently argued that in absence of any controversy with regard to foundational facts of the case, it is an undisputed fact that the deceased was aged around 42 years at the time of accident and was engaged in business of vegetable on large scale. The aforesaid fact has been established by the original claimants by bringing on record the income tax returns filed by the deceased. The attention of this Court was invited to the fact that the income tax returns are spread over for long years has been brought on record, which starts from Financial Year 2011-12, 2012-13, 2014-15, 2015-16 and 2016-17. Referring to the aforesaid income tax returns produced on record at Exhibit No. 43, learned advocate had further drawn my attention to the fact that the gross income of the deceased for FY 2011-12 as reflected in the ITR is Rs.151,358/-, Rs.

1,70,175/- (FY 2012-13), Rs.3,22,670/- (FY2014-15), Rs.3,81,660/-, (FY 2015-16) and Rs. 4,15,450/- (FY 2016-17). He has therefore submitted that there is a consistent rise in the gross income of the deceased across these years. He has further clarified that for some reasons, unfortunately, the deceased has not filed the income tax returns for last two preceding years from the date of the accident, however, that does not mean that he was not having any income at all during the aforesaid years. He has tried to contradict the submission of learned advocate to consider the minimum wages by contending that the legal heirs of the deceased could have very well subsequently submitted the income tax return of the deceased in order to receive higher amount of compensation, however, they have chosen not to take such undue benefit of the death of the deceased. He has therefore submitted that no error can be found with the approach of the Tribunal who has considered the income tax returns of FY 2016-17 as the base group of income for the purpose of determining the base income of the deceased at the time of the occurrence of accident. In support of his submission, learned advocate had relied upon the decision of Hon'ble Supreme Court in the case of **Malarvizhi and others versus**

United India Insurance Company reported in **2020 ACJ 526** and has pointed out that the facts suggest that the accident had taken place on 25th May 2001 and the claimants have brought on record the income tax returns of the years 1995 to 2001. The Hon'ble Supreme Court while upholding the decision of the High Court which had proceeded to determine the income reflected in the income tax return of assessment year 1997-1998, which was prior to 2 years of the date of occurrence of accident by observing that the determination must proceed on the basis of income tax returns were available. The Hon'ble Supreme Court held that the income tax returns is a statutory document on which reliance can be placed to determine the annual income of the deceased. He has therefore submitted that even in case where the income tax return of the date of occurrence of accident was made available on record, the Hon'ble Supreme Court has upheld the approach of the High Court in considering the income tax returns reflecting the highest income of the deceased for the purpose of determining the income of the deceased as on the date of occurrence of accident. He has therefore submitted that applying the aforesaid principles in the facts of the case, the Tribunal having noticed the gross

annual income of the deceased of Financial Year 2016-17 (Exhibit 43), reflecting the highest income of the deceased, has rightly considered the same for the purpose of determining the future prospects. He has also relied upon the unreported decision of the Division Bench of this Court in the case of **Rajeshwariben Vs. Yunusbhai** order dated 6th May 2022 passed in First Appeal No. 579 of 2019 and allied matters. It was pointed out that in the facts of the said case, the accident had taken place on 9th April 2011. The income tax returns filed for 2003 to 2008 were placed for consideration. The last returns filed by the deceased brought on record relate to FY 2007-2008. The heirs and legal representative of the deceased had thereafter chosen to submit the last two returns which were filed after the date of accident. The returns indicated a hike in the income. The Hon'ble Division therefore ignored the aforesaid last two returns filed by the heirs of the deceased by taking it as an artificial hike in the income and has chosen to consider the income tax returns of FY 2007-2008 for the purpose of determining future prospects. He has therefore submitted that there is no straight jacket formula to be applied in case if the income tax returns are made available on record to

determine the amount of income based on the last returns filed. He has therefore submitted that considering the benevolent scheme of the Act, the legislation in its wisdom has left the discretion with the Tribunal's / Courts to determine the income in the facts of each case individually and independently, basically guided by the evidence brought on record. He has therefore urged this Court to dismiss the present appeal.

6. Having submitted so, the learned advocate had further urged this Court to invoke the powers conferred under Order XLI, Rule 33 of the Code of Civil Procedure to modify the impugned judgment and award passed by the Tribunal, more particularly, by considering the amount of compensation awarded under the head of loss of consortium is concerned. The attention of this Court was invited to the fact that the claimants included, apart from the widow of the deceased, three minor children. Mr. Modi, learned advocate for the respondents- original claimants has placed reliance upon the decision of the Hon’ble Supreme Court in the case of **Surekha w/o Rajendra Nakhate vs. Santosh/ so Namdeo Jadhav** reported in **(2021) 16 SCC 467** as well as the

judgment dated 19.4.2024 passed by the Division Bench of this Court in the case of **ICICI Lombard General Insurance Company Limited vs. Legal heirs of the deceased Bharat Narshibhai Parmar and ors** rendered in **First Appeal No.1840 of 2015** and the decision of the learned Single Judge in the case of **New India Assurance Company Limited vs. Zaverbhai @Durlabbhai Chhanabhai Ahir and Ors** rendered in **First Appeal No.912 of 2015** dated 20.12.2024. He has therefore submitted that considering the settled principles of law laid down by the Constitutional Bench in the case of **Pranay Sethi (supra)** and revisited by the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhur Ram & Ors** reported in **(2018)18 SCC 130,** each of the claimants shall be entitled to the amount of compensation under the head of loss of consortium. The concept of consortium as evaluated by the Hon'ble Supreme Court is not only confined to spousal consortium, but also children can claim the loss of a parent's consortium- parental consortium. He has therefore urged this Court to consider a 10% rise to the amount of consortium awarded and to enhance such amount from Rs. 40,000/- to Rs.1,93,600/-.

7. In rejoinder, learned advocate Ms. Pathak appearing for the Insurance Company has vehemently objected to the aforesaid submissions of learned advocate for the original claimants. It was submitted that in absence of any appeal or cross objection being filed by the original claimants, the other components of quantum of compensation has attained the finality and therefore, this Court may not exercise its discretion by invoking the powers conferred under Order XLI Rule 33 of the Code of Civil Procedure. In support of her submission, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Samundra Devi and Others vs. Narendra Kaur and others** reported in **(2008) 9 SCC 100** as well as decision of the Hon'ble Supreme Court in the case of **Lakshmanan and Others vs. G.Ayyasamy** reported in **(2016) 13 SCC 165** which has followed the earlier decision in the case of **Samundra Devi and Others (supra).** Referring to the relevant observations of the Hon'ble Supreme Court, learned advocate has submitted that this Court may not exercise the power under Order XLI Rule 33 of the Code ignoring the legal interdict laid down in the aforesaid decisions. She has therefore, reiterated her prayer to allow

the appeal and not to grant any further relief by enhancing the amount of compensation as prayed for the first time in the appeal preferred at the instance of the Insurance Company.

8. Learned advocate appearing for the respondent Insurance Company though being exonerated from their liability to pay amount of compensation, have supported the findings and reasons assigned by the Tribunal.

9. I have given thoughtful consideration to the aforesaid submissions of the learned advocates appearing for the respective parties, in light of the findings and reasons assigned by the Tribunal as well as settled principles of law laid down by the respective Courts as relied upon by the learned advocates for the respective parties. The only issue which falls for consideration of this Court in the present appeal is whether in absence of income tax returns of the deceased being produced on record, in relation to the FY 2019-20, corresponding year in which accident had occurred, the Tribunal was right in considering the income tax returns of FY 2016-17 for the purpose of assessment of income of the deceased on the date of accident viz. 16.2.2020?

10. At the outset, it would be required to be noted that looking to the limited controversy raised by the appellant – Insurance Company, the other issues which were decided by the Tribunal i.e. issue of negligence of driver of offending vehicle - insured vehicle of the appellant Insurance Company and the liability of the owner of the insured vehicle, in absence of any challenge, has attained the finality. The foundational facts including age of the deceased, the nature of the business of the deceased has remained uncontroverted. Upon appreciation of the original Record and proceedings, in light of the findings and reasons assigned by the Tribunal, this Court is of the view that the Tribunal has rightly considered the age of the deceased as 42 years as noted by the Tribunal. The Pan Card of the deceased has been produced on record at Exh.37. Even the driving license of the deceased has also been produced on record at Exh.36. On bare appreciation of the aforesaid documentary evidence from the record, the date of the birth of the deceased is indicated as 02.09.1978 whereas the accident had taken place on 16.02.2020. Thus, the age of the deceased at the time of occurrence of the accident was 41 years 5 months i.e. approximately 42 years. As regards the nature of vocation of the deceased is concerned, it has

transpired on record, more particularly, the evidence of the widow of the deceased and the corroborative material in the nature of income tax returns produced on record which is established by the original claimants that the deceased was doing business as vegetable vendor on larger scale.

10.1. Having noted the aforesaid factors, coming to the core controversy raised in the present appeal, as regards the issue of actual income of the deceased is concerned, the income tax return filed by the deceased from AY 2011-12 (mark 27/8), AY 2012-13 (mark 27/9), AY2014-14 (mark 27/10), AY 2015-16 (mark 27/11) and 2016-17 (Exh.43) has been produced on record. As rightly pointed out by learned advocate for the respondents- original claimants that on bare comparison of the gross income of the deceased spread across aforesaid Assessment Years, it is evident that the gross income of the deceased for the AY 2016-17 relates to the highest income of the deceased amongst these years. On the other hand, it is undisputed that no proof of income in the form of ITR has been produced on record as on the date of occurrence of accident i.e. AY 2019-20. The seminal issue therefore, arises for consideration of this Court is as to whether the Tribunal

was justified in considering the income of the tax return of the year 2016-17 as proof of the base income of the deceased for the purpose of future prospects. In order to appreciate the controversy raised at the instance of the Insurance Company, it would be relevant to look into the relevant observation of Hon'ble Supreme Court in the case of the **Pranay Sethi (supra).** The Constitutional Bench was constituted in order to answer the reference raised by the two Judges Bench of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pushpa and others** reported in (**2015) 9 SCC 166** noticing the cleavage of opinion prevailing in light of two different views expressed by the Hon'ble Supreme Court in its earlier decision in the case of **Reshmakumari and others vs. Madan Mohan and Another** reported in **(2013) 9 SCC 65** and in the case of **Rajesh and others vs. Rajbir Singh and others** reported in (**2013) 9 SCC 54.** The principal controversy involved in the aforesaid decision, which was to be decided by the Constitutional Bench was on the appropriate multiplier to be applied in case of claim petition preferred under Section 166 of the Motor Vehicles Act, more particularly, in fatal cases and deduction for personal and living expenses to be considered

while determining the just and proper compensation. In the process, the Constitutional Bench had also ruled on grant of loss of estate, loss of consortium and funeral expenses and had also touched on the different approach of the Courts being noticed with regard to fixation of the future prospects in case of the deceased being self-employed on a fixed salary. Learned advocate for the appellant –Insurance Company has highly emphasized on the doctrine of actual income to be applied by the Tribunal / Courts while considering the income of the deceased. I have given thoughtful consideration to the aforesaid submissions of the learned advocate for the appellant –Insurance Company. Learned advocate for the Insurance Company to substantiate her arguments has mainly relied upon the observations of the Constitutional Bench as recorded in para 12, 13, 46, 55 to 59. Undoubtedly, burden lies on the claimant to prove actual earning of the deceased at the time of accident by leading proof of actual income, however, there is no straight jacket formula that in case of self employee deceased, in absence of proof of income including IT returns of particular assessment year of date of accident, the Courts are required to strictly consider minimum wages for the purpose of determining the income of

the deceased more so where earlier year income tax returns are made available for consideration. The Courts can certainly deviate from the aforesaid principle by considering the notional income of the deceased in order to fulfill the object of just and proper compensation as aimed by the legislation. Learned advocate for the appellant –Insurance Company is right in contending that “just compensation” has to be determined on foundation of fairness, reasonableness and equitability on acceptable legal standard, the Constitutional Bench of the Hon’ble Supreme Court in the case of **Pranay Sethi (supra)** while considering the controversy of the multiplication to be applied had also considered argument canvassed on behalf of the claimant on the concept of the “just compensation” and what should be included within the ambit of of “just compensation”. The Court had also noted the range of self-employed persons which can include unskilled labourer to a skilled person and had thereby concluded that therefore, while introducing the element of standardization and categories in which the person can be self employed would tantamount to remaining oblivious of ground realities. The Court also noted the difficulties to assimilate the entire range of self-employed categories or professionals in one

compartment. The Court held that the aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The Court also held that the determination has to be on the foundation of evidence brought on record, as regards the age and income of the deceased and thereafter the opposite multiplier to be applied. The Court therefore observed that the Tribunals and the Courts have to bear in mind that the basic principle lies in pragmatic computation, which is in proximity to reality. While deciding the seminal issue of fixation of future prospects in case of deceased who are self-employed on a fixed salary, the Constitutional Bench mainly approved its earlier view in the case of **Sarla Verma and ors. vs. Delhi Transport Corporation and Anr**. reported in **(2009) 6 SCC 121.** While distinguishing the two categories of self-employed and fixed salary deceased is concerned, the Court made few remarkable observations with regard to self-employed persons, which reads thus:

> "*57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the*

income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of

> *difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."*

Thus, even considering the doctrine of actual income, the Court in the case of self-employed deceased, held that while determining income of the deceased between 40 to 50 years, the addition of 25% should be made to the actual salary of the income of the self-employed deceased for the purpose of future prospective.

11. Considering the aforesaid principles of law laid down by the Hon'ble Supreme Court in light of the view taken in the case of **Malarvizhi and others (supra)**, in my view the

income tax return being statutory document as rightly been considered as the evidence for the purpose of determination of the income of the deceased at the time of accident. This Court is of the view that no error can be found with the approach of the Tribunal in treating the income tax return of AY 2016-17 at Exh.43 to be the best evidence available on record for the purpose of determination of base income of the deceased on the date of occurrence of accident. This view is further strengthened in light of the decision of the Hon'ble Division Bench of this Court in the case of **Rajeshwariben (supra).**

11.1 On bare reading of the facts of the case of **Malarvizhi and others (supra),** as rightly pointed out by the learned advocate for the respondents- original claimants the date of occurrence of accident was 25.5.2001 though income tax return of FY 1995-96 to 2000-01 were made available on record by the original claimants, the Hon'ble Supreme Court had upheld the approach of the High Court in considering the income tax return of AY 1997-98 as the evidence for the purpose of considering the base income of the deceased at the time of accident. Following the aforesaid principles in the

facts of the case, the argument of the learned advocate for the appellant – Insurance Company that Tribunal committed error in not considering the minimum wages in absence of income tax returns of the date of accident being produced on record is fallacious. Assuming for the sake of argument of the learned advocate for the Appellant- Insurance Company that income tax returns were not filed by the deceased for the aforesaid last two preceding year of the date of accident, one of the possible inference which can be drawn is that the income of the deceased was not falling within the range of taxable income, which was Rs.2,50,000/- or more. Thus, considering the aforesaid income limit of Rs.2,50,000/- for the last two preceding years as compared to the other income tax returns being produced on record right from AY 2011-12 to 2016-17, this Court noticing benevolent scheme of the Act can always consider the highest income of the deceased as reflected in AY 2016-17 as the indicator of the base income of the deceased at the time of accident.

12. For the foregoing reasons, the only challenge at the instance of the appellant- Insurance Company in the present appeal with regard to the income of the deceased is

concerned, the same being misconceived is hereby rejected.

13. This brings me to the second limb of controversy raised with regard to invocation of powers conferred under Order XLI Rule 33 of the Code of Civil Procedure is concerned. Considering the objections raised by the learned advocate for the appellant- Insurance Company about legal interdict to be considered before exercising power under Order XLI Rule 33 of the Code of Civil Procedure is concerned. It would be appropriate to revisit the settled principles of law laid down by the Hon'ble Supreme Court in this regard in the case of **Ranjana Prakash and others versus Divisional Manager and Another** reported in **(2011) 14 SCC 639**, the appeal was preferred by the claimant who were widow, two sons and mother of the deceased, who had unfortunately expired in motor accident. In absence of any evidence as to the actual income of the tax paid, the order of the Tribunal with regard to the amount of compensation though being upheld by the High Court had opined that the Tribunal ought to have deducted 30% of the annual income towards income tax. The insurer appeal was first entertained by relying upon the decision of the Hon'ble Supreme Court in the case of **Sarla**

Verma and ors. vs. Delhi Transport Corporation and Anr. reported in **(2009) 6 SCC 121**1 and **Shyam Vakil Sarma versus Karam Sing** reported in **(2010)12 SCC 378**. In the appeal referred by the claimants, the Hon'ble Supreme Court in para 6 and 7 observed that the High Court committed an error in ignoring the contention of the claimants. In the process, the Court held that though the claimants have not challenged the award of the Tribunal before the High Court, the claimant can certainly defend the quantum of compensation awarded by the Tribunal by pointing out the other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. The Hon'ble Supreme Court was guided by the principles, which flows from Order XLI Rule 33 of the Code, to do complete justice between the parties. The Court observed that provisions of Order XLI Rule 33 of the Code can be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to the litigation to share the benefits or the liability, though it cannot be invoked to get a larger or higher benefit. The Court also observed that if the compensation determined by the High Court is lesser than the compensation

awarded by the Tribunal, the High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation. The three Judges Bench of the Hon'ble Supreme Court in the case of **Surekha (supra)** has gone to the extent by finding that in matter of insurance claim, compensation in reference to motor accident claim, the Court should not take hypothetical approach and ensure that just compensation is awarded to the affected persons or claimants.

13.1. Unfortunately, the tribunal has lost sight of the well settled principles of law in so far as awarding an amount of compensation under the head of loss of consortium is concerned. For the benefit of all concerned stake holders, It is necessitated to reiterate the legal position in this regard as settled by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra).** It would be relevant to consider the principles laid down as observed :

> *48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench*

followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, 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 socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (supra). 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:-

> *"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 non- pecuniary 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."

61 In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at

earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%.

Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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."

13.2. The aforesaid decision of the Hon'ble Constitutional Bench of the Supreme Court was pronounced on 31.10.2017 holding the reasonable amount of compensation towards loss of consortium to be Rs. 40,000 however, the Court has further clarified that the aforesaid amount fixed shall be revised by applying 10 % rise in every three years. The aforesaid view expressed by the Constitutional Bench was followed and further clarified by Hon'ble Supreme Court in the case of **Magma General Insurance Company (supra)**, pronounced on 18.09.2018, wherein the Court has observed thus:

"*6. We have heard learned Counsel for the parties, and perused the record.*

The principal grounds on which the S.L.P. has been filed by the Insurance Company are:

i. The High Court has erroneously awarded 50% towards Future Prospects, even though as per the judgment of this Court in National Insurance Co. Ltd. v. Pranay Sethi only 40% could have been awarded.

ii. The deduction of the income of the deceased ought to have been made at ½, and not at 1/3rd, as he was a bachelor.

iii. The minimum wages of the deceased ought to have been taken at Rs. 5,341 and not Rs.

6,000 as that was the prevailing rate of minimum wages in Haryana at the time of the accident.

iv. The father and sister of the deceased could not be considered as dependants, and were not entitled to compensation. In the case of death of a bachelor, only the mother could be considered to be a dependant.

v. The grant of Rs. 1,00,000 on account of loss of love and affection, and Rs. 25,000 towards funeral expenses is erroneous.

It was contended that only Rs. 30,000 could have been awarded as per the judgment in Pranay Sethi (supra).

8.6. The MACT as well as the High Court have not awarded any compensation with respect to Loss of Consortium and Loss of Estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognized by the Constitution Bench in Pranay Sethi (supra).

The Motor Vehicles Act is a beneficial and welfare legislation. The Court is dutybound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the Claimant.

In exercise of our power under Article 142, and in the interests of justice, we deem it appropriate to award an amount of Rs. 15,000 towards Loss of Estate to Respondent Nos. 1 and 2.

8.7. A Constitution Bench of this Court in Pranay Sethi(supra) 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.

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, cooperation, affection, and aid of the other in every conjugal relation."

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."

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 parentis to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldover have recognized 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.*
>
> *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 count5. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.*
>
> *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 (supra).*
>
> *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."*

Thus, the Court has evolved the concept of consortium which was initially confined to the spousal consortium and has thereby held the parents and /or unmarried son/ daughter also entitled to be awarded loss of consortium towards Filial / parental consortium respectively.

13.3. Applying the aforesaid principles in the facts of the case, while considering the impugned judgement and award passed by the Tribunal, in absence of any appeal being preferred by the original claimants, though the amount of compensation awarded under the other heads is to be treated as having attained finality. However, at the same time, the Court cannot obliviate from the object of the Act, which otherwise aims to award just and proper compensation. The Tribunals/ Courts are bound by the settled principles of law as laid down by the Hon'ble Supreme Court wherein in the catena of judgments much emphasised has been laid on awarding of just and proper compensation including the amount of compensation under the head of loss of consortium.

13.4 Undisputedly, the claimants include the widow as well as their three minor children. In such circumstances, it was obligatory for a Tribunal to award the amount of compensation under the head of loss of consortium individually to each of the claimants. Having failed to do so, in order to meet with the ends of justice, this Court is guided by the provisions, more particularly Order XLI Rule 33 of the Code, in the absence of any appeal or cross objections being

filed by the original claimants, to extend the benefit of this scheme. Thus, in light of the decision of the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and **Magma General Insurance Company (supra)**, the Tribunal committed grave error in not extending the benefit of loss of consortium to each of the claimants. Noticing the date of accident, as rightly pressed by learned advocate for the original claimants, the amount of compensation awarded under the head of loss of consortium is required to be reconsidered and is enhanced to Rs. 1,93,600/-.

14. For the foregoing reasons, the appeal is dismissed.

14.1. However, the impugned judgment and award dated 5.9.2024 passed by the learned Motor Accident Claims Tribunal (Auxi), Ahmedabad Rural, Ahmedabad passed in MACP No.1156 of 2020 is hereby modified by holding the original claimants entitled to recover an amount of **Rs.56,82,676/-** (Rs.55,37,476/- + Rs.1,45,200/-) with running interest at the rate of 9% pa from the date of filing of the claim petition till its actual realization, along with the proportion costs. The present appellant Insurance Company, who has been held jointly and severally liable along with

original opponent nos. 1 and 2 to pay the amount of compensation, is directed to deposit the enhanced amount of compensation to the tune of Rs.1,45,200/-(Rs.1,93,600/- minus Rs.48,400/-) with interest and costs as awarded by this Court, within a period of eight weeks from the date of receipt of the certified copy of this order. The deposited award amount is directed to be apportioned in terms of the impugned judgment and award amongst the claimants, which shall be followed by the disbursement and investment as directed herein above. On deposit of the aforesaid enhanced amount of compensation with proportionate costs and interest, the Tribunal is hereby directed to release the entire award amount qua the respondent no.1 wife of the deceased subject to due verification.

14.2. So far as the amount of award to be deposited qua present respondent nos. 2 to 4, who are minor children of the deceased, is directed to be invested in the Fixed Deposit Scheme, till they attained the age of majority with any nationalized bank. The Tribunal shall retain the original FDR’s in the name of respective claimants till they attained the date of majority. The interest which may accrue on such Fixed

Deposits is permitted to be withdrawn periodically through their natural guardian / respondent no.1 herein being mother of the minor children.

15. Before parting with the judgement, this Court would like to express the concern over the ignorance of settled principles of law on the amount of compensation to be awarded under the head of loss of consortium. The claimants are unnecessary drag to High Court to apply in appeal to secure rightful compensation towards the conventional heads, at their cost and expenses of court fees and advocate fees, adding to the figures of pendency of cases. It is painful to note that despite the settled principle of law being laid down by the highest Court of the nation, whereby, the Constitutional Bench of the Supreme Court has expressed and held the victims / claimants of motor vehicle accident entitled to compensation under the head of loss of consortium along with other heads recognized, and the aforesaid principle being further clarified by the Hon’ble Supreme Court holding each of the dependent being entitled to loss of consortium under the related heads, this Court has noticed that the Tribunals have failed to implement the aforesaid ratio in its true spirit. This Court has come

across various matters, whereby the amount of compensation under the head of loss of consortium is only confined to spousal consortium despite presence of the parents and the children as party to the proceedings. Thus, Registrar General of this Court is directed to circulate the present order amongst the learned Members of the Tribunals to draw their kind attention about the settled principles of law and with a hope that the same shall be duly adhered to as and when circumstances demand. Article 141 of the Constitution of India mandates that a principle of law enunciated by the Supreme Court shall be a binding precedent for the Courts below including the Tribunals.

16. With these observations, the First Appeal stands disposed of. The Record and proceedings are directed to be sent back forthwith to the concerned Tribunal.

sd/-
(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KAUSHIKSINH JILUSINH RATHOD(HC00957), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 30/08/2025 17:19:38