GAHC010025642016

2026:GAU-AS:11765

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MACApp. 246 of 2016

1. **Smt Putul Deka**
   W/o. Late Bani Deka

2. **Sri Raju Deka**
   S/o Late Bani Deka

3. **Sri Kaju Deka**
   S/o Late Bani Deka

   All are residents of vill. Borka,
   P.S. Kamalpur, District- Kamrup, Assam.

.......Appellants/ Claimants

-Versus-

1. **Sri Kamal Rajbongshi**
   S/o. Sri Naren Rajbongshi
   Vill. Borka, Dist. Kamrup, Assam.

2. **The Branch Manager**
   IIFCO TOKIO General Insurance Co. Ltd
   Keot villa, H/No. 24, Nilamoni Phukan
   Path, Christianbasti, Guwahati-6, Assam.

.... Respondents

– B E F O R E –

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s)	**:** Mr. K. Bhattacharjee, Advocate.
For the Respondent(s)	**:** Mr. R. Goswami, learned counsel for the respondent No. 3.
Date on which judgment is reserved	**: N/A**
Date of pronouncement of judgment	**: 18.08.2026**
Whether the pronouncement is of the operative part of the judgment ?	**: No.**
Whether the full judgment has been pronounced	**: Yes.**

JUDGMENT & ORDER (ORAL)

Heard Mr. K. Bhattacharjee, learned counsel appearing for the appellants. Also heard Mr. R. Goswami, learned counsel appearing for the respondent No. 3.

2. The present appeal under Section 173 of the Motor Vehicles Act, 1988 is presented against the Judgment and Award dated 22.06.2016 passed by the learned Additional District Judge, (FTC) No. 3, Kamrup (M), at Guwahati in MAC Case No. 132/2013 for enhancement of the awarded compensation of Rs. 5,89,000/- together with interest at 6% per annum.

3. The brief facts of the case are that the widow of the deceased, along with her two sons, namely, Raju Deka and Kaju Deka, aged about 20 years and 19 years respectively, filed a claim petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of the death of the deceased, Lt. Bani Deka, who was the husband of the claimant No.1 and father of claimant Nos.2 and 3, in a road traffic accident.

4. Upon consideration of the evidence and materials available on record, the learned Tribunal determined the compensation under the following heads:

i) Lost of dependency (Rs. 36,000/-x14)	*: Rs. 5,04,000/-*
ii) Funeral expenses	*: Rs. 25,000/-*
iii) Loss of consortium	*: Rs. 50,000/-*
iv) Loss of estate	*: Rs. 10,000/-*
Total	*: Rs. 5,89,000/-*

5. The specific case of the appellants is that, notwithstanding the law laid down by the Constitution Bench of the Apex Court in the case of ***National Insurance Company Limited v. Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***, no amount towards future prospects was assessed or awarded by the learned Tribunal. It is further contended that the compensation towards loss of consortium was also not determined in accordance with the principles laid down in ***Pranay Sethi*** (supra). Aggrieved thereby, the present appeal has been preferred.

6. Mr. K. Bhattacharjee, learned counsel appearing for the appellants, relying upon the decision of the Apex Court in ***Pranay Sethi*** (supra), submits that the compensation awarded by the learned Tribunal is not in conformity with the principles laid down therein. He submits that the Tribunal failed to take into consideration the future prospects of the deceased and awarded only Rs.50,000/- towards loss of consortium, instead of the amount permissible under the applicable principles. It is further submitted that the monthly income of the deceased was assessed at Rs.4,500/- despite evidence on record establishing his monthly income at Rs.5,000/-. Learned counsel also submits that the amount awarded towards loss of estate, i.e. Rs.10,000/-, is also liable to be enhanced.

7. Learned counsel for the appellants accordingly submits that, upon taking into consideration the future prospects of the deceased, the appropriate amount towards loss of consortium and loss of estate, the compensation payable to the appellants deserves to be enhanced to Rs.9,78,000/-.

8. Mr. R. Goswami, learned counsel appearing for respondent No.3, in his usual fairness, concedes that the learned Tribunal erred in not awarding compensation towards future prospects and in not determining the compensation under the head of loss of consortium in accordance with the principles laid down by the Apex Court in ***Pranay Sethi*** (supra).

9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. The Apex Court in ***Pranay Sethi*** (supra) has, while laying down the principles governing the determination of compensation, held as follows:

> *"**59**. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> ***59.1**. 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.*
>
> ***59.2**. 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.*
>
> ***59.3**. 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.*
>
> ***59.4**. 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.*
>
> ***59.5**. 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.*
>
> ***59.6**. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.*

> ***59.7***. *The age of the deceased should be the basis for applying the multiplier.*
>
> ***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.”*

11. It is thus apparent from the aforesaid principles that, in the case of a deceased who was self-employed or was on a fixed salary, an addition of 40% of the established income is to be made towards future prospects where the deceased was below 40 years of age; 25% where the deceased was between 40 and 50 years of age; and 10% where the deceased was between 50 and 60 years of age.

12. In the present case, admittedly, no amount towards future prospects was assessed or awarded by the learned Tribunal. The omission, therefore, warrants correction in terms of the law laid down in ***Pranay Sethi*** (supra).

13. It appears from the materials on record that the deceased was aged about 44 years at the time of the accident. He was survived by his wife, who was aged about 42 years, and his two sons, who were aged about 20 years and 19 years respectively at the time of filing of the claim petition.

14. It further appears from the evidence adduced on behalf of the claimants that the deceased was working as a Power Tiller Operator and was earning a monthly income of Rs. 5,000/-.

15. Having regard to the principles laid down in ***Pranay Sethi*** (supra), since the deceased was self-employed and was aged 44 years at the time of the accident; the claimants would be entitled to an addition of 25% of the established income towards future prospects. Accordingly, taking the monthly income of the deceased at Rs. 5,000/-, his monthly income after addition of 25% towards future prospects would work out to Rs. 6,250/-.

16. The annual income, therefore, comes to Rs. 75,000/-. Upon deducting one-third towards the personal and living expenses of the deceased, the annual contribution to the family would be Rs. 50,000/-. Applying the multiplier of 14, in terms of the table in ***Sarla Verma (Smt) and Ors. Vs. Delhi Transport Corporation and Anr.***, reported in ***(2009) 6 SCC 121***, read with paragraph 42 of that judgment, the loss of dependency would accordingly work out to Rs. 7,00,000/-.

17. The next issue is with regard to the compensation payable towards loss of consortium. It appears that the deceased was survived by his wife and two sons, all of whom were claimants before the learned Tribunal. However, the Tribunal awarded compensation only towards spousal consortium and did not award parental consortium to the two sons.

18. In ***Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Ors.***, reported in ***2018 0 Supreme (SC) 892***, the Apex Court has explained that consortium is a compendious term encompassing spousal consortium, parental consortium and filial consortium. The Court further held that parental consortium is to be awarded to children who lose their parent in a motor vehicle accident. The relevant observations of the Apex Court read as follows:

> *"8. The grounds of challenge by the Insurance Company are dealt with seriatim.*
> *8.1. With respect to the issue of Future Prospects, a Constitution Bench of this Court in Pranay Sethi (supra) has held that in case the deceased was self employed or on a fixed salary, and was below 40 years of age, an addition of 40% of the established income should be granted towards Future Prospects.*
> *Future Prospects are to be awarded on the basis of:*
> *i. the nature of the deceased's employment; and*
> *ii. the age of the deceased.*
> *In the present case, it is claimed by the family of the deceased that he was engaged in making namkeen, and was earning a monthly income of about Rs. 15,000 per month. However, no evidence was brought on record to establish the same. The MACT as well as the High Court assessed the income of the deceased on the basis of the minimum wage of an unskilled worker. The nature of his employment being taken as a self-employed person.*
> *The deceased was 24 years old at the time of the accident. Hence, future Prospects ought to have been awarded at 40% of the actual income of the deceased, instead of 50% as awarded by the High Court.*
> *Hence, the judgment of the High Court on this issue is modified to that extent.*
> *8.2. With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been ½, and not 1/3rd, since the deceased was a bachelor.*
> *This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger nonearning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two-third.*

Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No. 2 an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count.

8.3. With respect to the income of the deceased, as the family could not produce any evidence to show that the income of the deceased was Rs. 15,000 per month, as claimed, the High Court took his income to be Rs. 6,000, which is marginally above the minimum wage of an unskilled worker at Rs. 5,342. This finding is also not being interfered with.

8.4. The Insurance Company has submitted that the father and the sister of the deceased could not be treated as dependents, and it is only a mother who can be dependent of her son. This contention deserves to be repelled. The deceased was a bachelor, whose mother had pre-deceased him. The deceased's father was about 65 years old, and an unmarried sister. The deceased was contributing a part of his meagre income to the family for their sustenance and survival. Hence, they would be entitled to compensation as his dependents.

8.5. The Insurance Company has contended that the High Court had wrongly awarded Rs. 1,00,000 towards loss of love and affection, and Rs. 25,000 towards funeral expenses.

The judgment of this Court in Pranay Sethi (supra) has set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant extract of the judgment is reproduced herein below :

"Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified

should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years."

As per the aforesaid judgment, the compensation of Rs. 25,000 towards funeral expenses is decreased to Rs. 15,000.

The amount awarded by the High Court towards loss of love and affection is, however, maintained.

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 duty-bound 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, Rajesh and Ors. v. Rajbir Singh and Ors. (2013) 9 SCC 54.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation", (BLACK'S LAW DICTIONARY (5th ed. 1979).

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 parent is 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 world-over 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 count, Rajasthan High Court in Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors 2017 (4) RLW 3368 (Raj);

Uttarakhand High Court in Smt. Rita Rana &Anr. v. Pradeep Kumar & 6 Ors., 2014 (3) UC 1687;

Karnataka High Court in Lakshman and Ors. v. Susheela Chand Choudhary &Ors , (1996) 3 Kant LJ 570 (DB)]. 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."

19. The Apex Court further explained that parental consortium is awarded to children who lose their parents in motor vehicle accidents and that the amount of compensation under the said head is to be governed by the principles laid down in ***Pranay Sethi*** (supra).

20. In view of the aforesaid settled position, and since the learned Tribunal did not award any amount towards parental consortium to the two sons of the deceased, the Judgment and Award dated 22.06.2016 requires modification to that extent. The claimants would accordingly be entitled to compensation towards spousal consortium in favour of the widow and parental consortium in favour of the two sons.

21. Accordingly, applying the amount of Rs. 40,000/- prescribed in ***Pranay Sethi*** (supra), as enhanced in accordance with the principle of periodic enhancement laid down therein, the wife and the two sons of the deceased would be entitled to Rs.48,400/- each towards loss of consortium.

22. In light of the aforesaid discussion, the appellants/claimants are entitled to compensation under the following heads:

Loss of dependency	*Rs. 7,00,000.00*
Loss of spousal consortium	*48,400.00*
Loss of parental consortium @ 48,400x2	*96,800.00*
Funeral Expenditure	*18,150.00*

Loss of estate	*18,150.00*
Total Rs.	***8,81,500.00***

23. Accordingly, the appellants/claimants are held entitled to enhanced compensation of Rs. 8,81,500/- together with interest at the rate and from the date as awarded by the learned Tribunal.

24. The Judgment and Award dated 22.06.2016 passed by the learned Tribunal is accordingly modified to the aforesaid extent.

25. The appeal stands disposed of in the above terms.

26. Consequently, respondent No.3/ Insurance Company shall be liable to pay the enhanced amount of compensation, together with the interest as awarded by the learned Tribunal, to the appellants/claimants.

27. At this stage, it is brought to the notice of this Court that the amount awarded under the Judgment and Award dated 22.06.2016 has already been deposited by respondent No.3 and received by the claimants. The balance enhanced amount, as determined hereinabove, shall be deposited by respondent No.3/ Insurance Company and paid to the appellants/claimants within a period of 6 (six) weeks from today.

28. Send back the TCR.

JUDGE

Comparing Assistant