(2022-3)207 PLR 392 (SC) , 2022 SCeJ 1007, PLRonline 413573

SUPREME COURT OF INDIA

Before: Justice Hemant Gupta and Justice Vikram Nath.

JANABAI WD/O DINKARRAO GHORPADE and Others – Appellants,

versus

I.C.I.C.I. LAMBORD INSURANCE COMPANY LTD. – Respondent.

Civil Appeal No.5220 of 2022 (Arising out of SLP (Civil) No. 21077 of 2019)

(i) Motor Vehicles Act, 1988, Section 166 – Evidence – Rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature – Report after one month of the accident – FIR did not contain number of offending vehicle – Claimant disclosed car number in her examination-in-chief – The owner and the Insurance Company had the opportunity to cross-examine the witness – She deposed that she was mentally disturbed and hospitalized, therefore, she filed the complaint late – There is no reason to doubt the veracity of the statement of claimant who suffered injuries in the accident – The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial – Order of High Court set aside – Claim allowed. [Para 10]

*Held, r*eport against unknown car driver i.e., after one month from the date of incident – In the FIR, there is no mention that her injured husband was taken to hospital in Maruti-800 bearing Registration No. XXXX but the said vehicle was involved in the accident was not disclosed – Primary concern of claimant or other relatives at the time of incident was to take care of the deceased in his critical condition – The health and well-being of her husband was her priority rather than to lodge an FIR – Claimant has filed her examination-in-chief disclosing the car number of the offending vehicle – The owner and the Insurance Company had the opportunity to cross-examine the witness in support of their stand that the vehicle number given by her was not involved in the accident – In cross examination, she deposed that she was brought to the hospital in the vehicle which dashed into their vehicle – She deposed that she was mentally disturbed and hospitalized, therefore, she filed the complaint late – There is no reason to doubt the veracity of the statement of claimant who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial.

(ii) Motor Vehicles Act, 1988, Section 166 – Daughters of deceased not impleaded as claimants – It is immaterial as the amount of compensation payable by the tortfeasor will not get enhanced because of the daughters being party to the claim application – It is since the daughters are married, the mother has not impleaded, the daughters as the claimants – It is not really of any consequence as held by the High Court. [Para 11]

(iii) Motor Vehicles Act, 1988, Section 166 – Appeal – Claimants did not filed any appeal seeking enhancement of compensation awarded by the Tribunal before the High Court – Appeal filed by the Insurance Company was accepted – Appellant-Claimants held entitled to enhanced compensation in exercise of powers conferred under Article 142 of the Constitution. [Para 12]

Cases referred to:

1. (2017-4)188 PLR 693 (SC) , *National Insurance Company Limited v. Pranay Sethi.*
2. (2021-2)202 PLR 449 (SC), 2020 SCeJ 1602 , 2020 PLRonline 11306, *United India Assurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur.*

The JUDGMENT of the Court was delivered by

Hemant Gupta, J.- *(10th August, 2022)* **–** The legal heirs of deceased Dinkar Shankarrao Ghorpade are in appeal against an order passed by the High Court of Judicature at Bombay on 14.12.2018 whereby, the award passed by the Motor Accident Claims Tribunal awarding a sum of Rs. 8,90,000/- along with interest @7% p.a. was set aside.

2. The deceased was driving motorcycle bearing No. MH-20/AD-956 on 1.6.2007 when Maruti-800 Car bearing No. MH-41/C-1777 came from the opposite direction and dashed into the motorcycle of the deceased as per the appellants. The deceased and appellant No. 1 received serious injuries. The deceased was thus admitted in a Government Hospital (Ghati Hospital). On 2.6.2007, the deceased was shifted to Kamal Nayan Bajaj Hospital but he died on 25.6.2007. The cause of death was head injury.

3. Appellant No. 1 lodged a complaint on 2.7.2007 where an FIR was registered against unknown vehicle and unknown driver. It was on 20.8.2007, the registration of the offending vehicle and the names of the driver and the owner of the vehicle were informed. Thereafter, the Police started its investigation and charge sheeted the driver Sanjay S/o Ramesh Sonwane.

4. On account of death of the deceased, an application under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation was filed on 8.5.2009. The owner of the vehicle denied the accident. It was stated by the owner in his written statement that the driver – Sanjay was never engaged by him and there is no relation of employer and employee between them. The driver neither filed written statement nor appeared as witness. The Insurance Company did not lead any evidence.

5. After considering the evidence of appellant No. 1, Janabai (PW-1) and the statement of owner – Chudaman Vanji Patil, the learned Tribunal, in the absence of any salary certificate, assessed the income of the deceased as Rs. 10,000/- and after deducting 1/3rd salary towards personal expenses, assessed the monthly expenses as Rs. 6,670/-. The multiplier of 11 was applied. A sum of Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium, Rs. 2,500/- towards loss of estate was awarded, thus, a total sum of Rs. 8,90,000/- was assessed as compensation. The learned Tribunal held that the accident occurred by the vehicle owned by the owner, when the following finding was recorded:

> "...He admitted that, Cr. No. 58/2007 was registered against driver of his car and charge-sheet was filed against respondent No. 3 Sanjay. Police has seized his car and it was returned as per the order of the Court. He admitted that, he had not filed any proceeding to quash the FIR against Sanjay. He further deposed that he had taken bail of Sanjay in the said crime. The Bail Application and surety and 7/12 extract are at Exhs.68, 69 and 70. It is to be noted that, in the examination-in-chief, Chudaman Patil has stated that he is not concerned with respondent No. 3 and respondent No. 3 was not serving as a driver with him. However, the bail application form at Exh.68 shows that, Chudaman Patil i.e. respondent No. 1 remained surety for respondent No. 3 Sanjay Sonavane and it is mentioned that accused is the driver of the surety's vehicle. It clearly shows that, respondent No. 1 deposed falsely before the Court that, he was not concerned with respondent No. 3. It is also to be noted that, neither respondent No. 3 nor respondent No. 1 had filed any petition for quashing the FIR. Police carried out the investigation and thereafter filed the charge-sheet against respondent No. 3. So, it clearly shows that, Maruti Car bearing No. MH-41/C-1777 was involved in the accident and gave dash to the motorcycle of deceased and caused the accident. Respondent No. 3 drove the Maruti Car rashly and negligently...."

6. However, in an appeal filed by the Insurance Company, the High Court did not accept the findings that the accident was caused by the car owned by the owner and the negligent driving on the part of the driver. The High Court, *inter alia*, held that the appellants have not examined the Investigating Officer in respect of the source of information disclosing

registration number of the offending car as the Appellant No. 1 had given the registration number of the offending car to the Police in a supplementary statement. Therefore, it cannot be said that link is established in between the accident and the offending car by the appellants.

7. The High Court noticed the fact that neither the owner of the offending car nor the Insurance Company has examined the driver to prove that the offending car was not involved in the accident. It was further held that appellant No. 1 – the injured pillion rider has lodged report against unknown car driver on 2.7.2007 i.e., after one month from the date of incident. In the FIR, there is no mention that her injured husband was taken to hospital in Maruti-800 bearing Registration No. MH-41/C-1777 but the said vehicle was involved in the accident was not disclosed. It was also found that the married daughters of the deceased were not made party to the claim petition, doubting the bona fides of the appellants. Thus, doubting the statement of appellant No. 1 regarding the accident, the appeal filed by the Insurance Company was allowed and the claim petition was dismissed.

8. We have heard learned counsel for the parties and find that the order of the High Court is unsustainable. Appellant No. 1 and her husband had received injuries in an accident which took place on 1.6.2007. She lost her husband on 25.6.2007. The primary concern of appellant No. 1 or other relatives at the time of incident was to take care of the deceased in his critical condition. The health and well-being of her husband was her priority rather than to lodge an FIR. The High Court has proceeded primarily on the basis of information to the Police regarding non-disclosure of the name of the driver of the car in the FIR. Appellant No. 1 has filed her examination-in-chief on 1.8.2011 disclosing the car number of the offending vehicle. The owner and the Insurance Company had the opportunity to cross-examine the witness in support of their stand that the vehicle number given by her was not involved in the accident. In cross examination, she deposed that she was brought to the hospital in the vehicle which dashed into their vehicle. She deposed that she was mentally disturbed and hospitalized, therefore, she filed the complaint late.

9. On the other hand, the owner has appeared as a witness. He admitted that he had taken the vehicle on superdari and that he has not filed any proceedings to quash FIR against Sanjay, driver of the Car. He admitted that bail application form and surety bond (Ex.68, 69 and 70) show that he has stood surety for the driver wherein he has mentioned the accused as driver of his vehicle. It has also come on record that the owner has not made any complaint in respect of false implication of his vehicle or the driver.

10. We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable.

11. If the daughters of the deceased have not been impleaded as claimants, it is immaterial as the amount of compensation payable by the tortfeasor will not get enhanced because of the daughters being party to the claim application. It is since the daughters are married, the mother has not impleaded, the daughters as the claimants. It is not really of any consequence as held by the High Court.

12. The appellants have not filed any appeal seeking enhancement of compensation awarded by the Tribunal before the High Court. The Constitution Bench judgment in *National Insurance Company Limited* v. *Pranay Sethi*, (2017-4)188 PLR 693 (SC) , (2017) 16 SCC 680 was rendered when the appeal was pending before the High Court but since the appeal filed by the Insurance Company was accepted, there was no occasion for the High

Court to examine the question of enhancement of compensation. We find that the appellants are entitled to enhanced compensation particularly in respect of future prospects and other damages in terms of the judgment of this Court in *Pranay Sethi*. Therefore, in exercise of powers conferred under Article 142 of the Constitution, we have decided to recompute the amount of compensation to be in tune with the constitution Bench Judgment.

13. The appellant has claimed compensation on account of love and affection as well on account of spousal consortium for wife and for the parental consortium for the children in the calculation given to this Court but in view of three Judge Bench judgment reported as *United India Insurance Company Limited* v. *Satinder Kaur*, (2021-2)202 PLR 449 (SC) , 2020 SCeJ 1602 , 2020 PLRonline 11306, (2021) 11 SCC 780 the compensation under the head on account of loss of love and affection is not permissible but compensation on account of spousal consortium for wife and for the parental consortium for children is admissible. This Court held as under:

> "30. In *Magma General Insurance Co. Ltd.* v. *Nanu Ram* [*Magma General Insurance Co. Ltd.* v. *Nanu Ram*, (2019-1)193 PLR 213 (SC), this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as 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.
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> 31. 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 and affection, and their role in the family unit.
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> 32. Modern jurisdictions world over 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 permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.
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> 33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of 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 the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017-4)188 PLR 693.
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> 34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017-4)188 PLR 693, has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In *Magma General* [*Magma General Insurance Co. Ltd.* v. *Nanu Ram*, (2019-1)193 PLR 213 (SC),, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial

consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."

14. The evidence of appellant No. 1 on affidavit is that her husband was getting salary of Rs. 12,450/- and that he was over 50 years of age. The learned Tribunal assessed monthly income of the deceased as Rs. 10,000/- in the absence of proof of salary. Therefore, keeping in view the income and the age and the future prospects in terms of judgment of this Court in *Pranay Sethi*, the compensation is assessed as follows:

	Head	Amount
A	Loss of earnings @ monthly salary @ 10,000/- and future prospects @ 15% (6,670/- + 1000 × 12 × 11)	Rs. 10,12,440.00
B	Loss of Estate	Rs. 15000.00
C	Spousal consortium for wife	Rs. 40,000/-
		Rs. 80000.00
	Parental consortium for two children (Appellant Nos. 2 & 3) @ Rs. 40,000/- each	
D	Funeral Expenses	Rs. 15000.00
	Total	Rs. 11,62,440.00
	Rounded off	Rs. 11,63,000.00

15. Hence, the compensation comes out to be Rs. 11,63,000/- along with interest @ 7% p.a. as awarded by learned Tribunal from the date of filing of the claim application till realization.

16. Consequently, the order passed by the High Court is set aside. The appeal thus stands allowed.