

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO (MV) No. 47 of 2019
Reserved on : 15.6.2026
Decided on : 20.6.2026
Uploaded on:20.6.2026

Leela Devi & ors.

.....Appellants

Versus

Manoj Kumar & ors.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ yes

For the appellants:

Ms. Dhanwanti, Advocate.

For the respondents:

None for respondents No. 1 and 2.

**Mr. Bhupinder Pathania,
Advocate, for respondent No.3.**

Virender Singh, Judge

The appellants have preferred the present appeal, under Section 173 of the Motor Vehicles Act (hereinafter referred to as 'the M.V.Act') against the award dated 27.10.2018, passed by the learned Motor Accident Claims Tribunal (III) Solan, District Solan, H.P. Camp at Arki

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

(hereinafter referred to as 'the Tribunal'), in Claim Petition No. 6-AK/2 of 2017, titled as, 'Smt. Leela & others versus Manoj Kumar & others'.

2. By way of award dated 27.10.2018, the learned Tribunal has allowed the claim petition filed by the claimants by awarding a sum of Rs. 5,36,980/-, as compensation, along with interest @ 7% per annum, from the date of filing of the petition, till deposit. The ultimate liability to pay the compensation has been fastened upon the Insurance Company (respondent No.3).

3. For the sake of convenience, the parties to the present *lis* are, hereinafter, referred to, in the same manner, as were, referred to, by the learned Tribunal.

4. Brief facts, leading to filing of present appeal, before this Court, may be summed up, as under:-

Claimants, being the widow and sons of of Baldev Krishan Moudgil, had filed claim petition, under Section 166 of the M.V. Act, against respondent No.1-driver, respondent No. 2-owner and respondent No. 3-Insurer of vehicle No. HP-11B-3215 (hereinafter referred to as 'the offending vehicle').

4.1 According to the claimants, Baldev Krishan Moudgil died in a motor vehicle accident, involving the offending vehicle, on 15.6.2017, at about 11:00 a.m. at a

place near Mayur Dhaba, Bhararighat, Police Station, Darlaghat, District Solan, H.P.

4.2 Elaborating their stand, it has been pleaded by the claimants that on 15.6.2017 at about 11:00 a.m., Baldev Krishan Moudgil was riding as a pillion rider on motorcycle No. HP12A-9767, and was going towards Chamakari Pul, and when, they reached near Mayur Dhaba, Bhararighat, on the National Highway, then the offending vehicle, being driven by respondent No. 1, in a rash and negligent manner came there and hit the motorcycle. Consequently, Baldev Krishan Moudgill sustained injuries. After the accident, he was brought to Indira Gandhi Medical College, Shimla for treatment, however, he could not reach there and expired near Boileauganj. He was declared 'brought dead' by the Doctors at IGMC, Shimla.

4.3 The information regarding the accident was given to Police of Police Station, Darlaghat, where, FIR No. 0049, dated 15.6.2017, was registered under Sections 279 and 337 of the IPC and Section 187 of the M.V. Act.

4.4 According to the claimants, Baldev Krishan Moudgill, at the time of death, was 69 years of age and he was receiving a pension of Rs. 24098/- per month. Apart from

this, he was also earning a sum of Rs. 25,000/- by following agricultural pursuits and by selling milk.

4.5 The claimants have also pleaded about their bright past and bleak future.

4.6 Since, the accident in question has solely been attributed to rash and negligent driving of the respondent No. 1. As such, compensation of Rs. 5,00,000/- has been sought alongwith 12% interest per annum.

5. When put to notice, the claim petition has been contested by the respondents, by filing reply(ies).

6. Respondent Nos. 1 and 2 have filed joint reply, in which, they have taken the plea that Baldev Krishan Moudgil has not expired due to the injuries sustained by him in the accident, as he had expired after a gap of about 9 months from the date of accident. Registration of the FIR has also not been disputed. According to respondents No. 1 and 2 they had provided financial assistance to deceased Baldev Krishan Moudgil by paying a sum of Rs. 50,000/- to him.

7. Insurance Company of the vehicle, i.e. respondent No. 3 has filed separate reply, by taking preliminary objections that the claim petition is not maintainable. According to the Insurance Company, the driver of the offending vehicle was not having valid and effective driving

license, at the time of accident. As such, the offending vehicle was being permitted to ply, in violation of the terms and conditions of the Insurance Policy.

7.1. On merits, the contents of the claim petition have mainly been denied for want of knowledge. However, it has been pleaded that widow of deceased is receiving family pension, as such, according to the Insurance Company, there is no loss of income. Rest of the contents have also been denied.

8. On the basis of above facts, a prayer has been made by the respondents to dismiss the claim petition.

9. From the pleadings of the parties, the following issues were framed, by the learned Tribunal, vide order dated 20.2.2018:-

1. Whether the deceased Baldev Krishan Moudgil died on dated 15. 6. 2017 at about 11a.m at place Mayur Dhaba near Bhararighat, P.O. Bhararighat within the jurisdiction of P.S. Darlaghat, Tehsil Arki, Distt. Solan, H.P., due to the rash and negligent driving of a vehicle bearing No. HP-11B-3215 driven by the respondent No. 1, as alleged? OPP.

2. If issue No.1 is proved in affirmative, whether the petitioners are entitled for the grant of compensation, if so, to what amount and from which of the respondents? OPP.

3. Whether the petition is not maintainable? OPR.

4. Whether the driver of the offending vehicle was not having valid driving licence at the time of accident? OPR-3.

5. Whether the offending vehicle was being driven in violation of the provisions of Motor Vehicle Act and

terms and conditions of Insurance policy as alleged?

OPR-3.

6. Relief.

10. Thereafter, the parties to the *lis* were directed to adduce evidence and after hearing learned counsel for the parties, the learned Tribunal has partly allowed the claim petition by awarding a sum of Rs. 5,36,980/-, alongwith interest @ 7% per annum, from the date of filing the petition, till realization of the whole amount. However, the ultimate liability to pay the amount of compensation has been fastened upon respondent No. 3, i.e. the National Insurance Company Limited.

11. Dis-satisfied with the amount of compensation, the claimants have preferred the present appeal, seeking enhancement of the compensation, mainly on the ground that the learned Tribunal has not considered the oral, as well as, documentary evidence, properly.

12. According to the claimants, the learned Tribunal has wrongly held that loss of income is only Rs. 12,049/-as claimant No. 1 is receiving pension @ Rs. 12,730/- per month, after the death of Baldev Krishan Moudgil.

13. Enhancement in the amount of compensation has also been sought on the ground that the learned Tribunal has

not taken into consideration the agricultural income of the deceased, during his lifetime.

14. On the basis of above facts, Ms. Dhanwanti, Advocate has prayed that amount of compensation may kindly be enhanced, so that, the same may fall within the purview of 'just compensation'.

15. The prayer, so made, has been opposed by Mr. Bhupinder Pathania, Advocate, for respondent No. 3, on the ground that learned Tribunal has already awarded adequate compensation to the claimants and the award of the learned Tribunal does not require any interference by this Court.

16. As stated above, the impugned award has only been assailed by the claimants only on the ground of inadequacy of the amount of compensation, whereas, the Insurance Company, as well as, the owner and driver of the offending vehicle have not assailed the same. In such situation, the only question, which arises for determination, before this Court, is with regard to the fact as to whether amount of compensation, which has been awarded to the claimants, by the learned Tribunal, falls within the definition of 'just compensation' or not?

17. The Hon'ble Apex Court in *Oriental Insurance Company Limited vs. Mohd. Nasir and another, (2009) 2 SCC*

(Cri.) 987 has held that the provisions of M.V. Act are beneficial piece of legislation and the endeavour of the Court/Tribunal should be to provide “just compensation”. The relevant paras 23 and 24 of the judgment are reproduced as under:-

“23. Both, the 1923 Act and 1988 Act are beneficent legislation insofar as they provide for payment of compensation to the workmen employed by the employers and/or by use of motor vehicle by the owner thereof and/or the insurer to the petitioners suffering permanent disability. The amount of compensation is to be determined in terms of the provisions of the respective Acts. Whereas in terms of the 1923 Act, the Commissioner who is a quasi judicial authority, is bound to apply the principles and the factors laid down in the Act for the purpose of determining the compensation, Section 168 of the 1988 Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be just.

24. Both the Acts aim at providing for expeditious relief to the victims of accident. In these cases, the accidents took place by reason of use of motor vehicles. Both the statutes are beneficial ones for the workmen as also the third parties. The benefits thereof are available only to the persons specified under the Act besides under the Contract of Insurance. The statutes, therefore, deserve liberal construction. The legislative intent contained therein is required to be interpreted with a view to give effect thereto.”

(self emphasis supplied)

18. This view has again been reiterated by Hon’ble Apex Court in **Govind Yadav versus The New India Assurance Co. Ltd.**, reported in 2012 ACJ 28 (SC). Relevant paragraphs 12 to 15 of the judgment are reproduced as under:

12. In *Reshma Kumari v. Madan Mohan* (2009) 13 SCC 422, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependents and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not

only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in Oriental Insurance Co. Ltd. v. Jas huben held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."

(emphasis supplied)

19. Being guided by the judgments of Hon'ble Supreme Court, as reproduced above, this Court would now proceed further to ascertain whether the compensation awarded by the learned Tribunal falls within the definition of 'just compensation' or not?

20. In order to ascertain the said fact, this Court would further proceed to ascertain the age of Baldev Krishan Moudgil, at the time of his death.

21. The age of Baldev Krishan Moudgil, at the time of his death, has rightly been held by the learned Tribunal as 69 years, on the basis of copy of Pariwar Register, Ext. PW1/A. As such, said findings do not require any interference.

22. So far as income of Baldev Krishan Moudgil, during his lifetime, is concerned, the learned Tribunal has taken a sum of Rs. 12,049/- per month, as loss of income to the claimants.

23. The claimants have examined Naresh Kumar, Assistant, SBI, New Shimla, who has proved the statement of account of Leela Devi and Baldev Krishan Moudgil, as Ext. PW2/A. As per this document, monthly pension of Baldev Krishan Moudgil was Rs. 24,098/- per month.

24. The claimants are widow and sons of Shri Baldev Krishan Moudgil. The learned Tribunal has deducted a sum of Rs. 12,730/- out of the pension of Baldev Krishan Moudgil, on account of the fact that claimant No. 1, after death of her husband, is receiving pension @ Rs. 12,730/- per month.

25. Although, the claimants have also pleaded that apart from receiving pension, deceased Baldev Krishan Moudgil was also doing agricultural pursuits, however, in the absence of any evidence to that effect, as well as, keeping in

view the age of Baldev Krishan Moudgil, it cannot be expected from a senior citizen to earn money from agricultural pursuits.

26. The findings of the learned Tribunal, qua deduction of family pension of Baldev Krishan Moudgil, has been assailed by the claimants, before this Court.

27 Hon'ble Supreme Court in a case titled as, '**Helen C. Rebello (Mrs) and others versus Maharashtra State Road Transport Corporation and Anr.**', reported in (1999) 1 SCC 90 has elaborately discussed the above legal proposition and held that family pension is earned by an employee for the benefit of his family, in the form of his contribution, in the service, in terms of the service conditions receivable by the heirs after his death. Relevant paragraphs 35 and 36, of the judgment, are reproduced as under:

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive

family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against torfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.

36. As we have observed the whole scheme of the Act, in relation of the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought under Section 110-B of 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is addition to any other right to claim compensation respect whereof under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have given of this statute, evidenced by two distinct sets of decisions of the various high courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these consideration we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intends of the

legislature under various provisions of the Motor Vehicles Act, 1939.”

(self emphasis supplied)

28. Said view has again been reiterated by the Hon’ble Supreme Court in a case titled as, **‘Lal Dei and others versus Himachal Road Transport’**, reported in (2007) 8 Supreme Court Cases 319. Relevant paragraph 4 of the judgment is reproduced as under:

“4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello v. Maharashtra SRTC¹ this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the appellants would be entitled for an amount of Rs 10,27,000 as compensation with interest at the rate of 9% from the date of the filing of the petition.”

29. Similar view has again been taken by Hon'ble Supreme Court in a three-judge Bench decision, in a case titled as, '**Sebastiani Lakra and others versus National Insurance Company Ltd. & anr.**', reported in AIR 2018 Supreme Court 5034. Relevant paragraph-14 of the judgment is reproduced as under:

"14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement, he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever, be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted."

(self emphasis supplied)

30. The Hon'ble Supreme Court in a case titled as, '**Pramod Kumar Tiwari versus Premlal Gautam & others**', arising out of SLP (C) No. 26620 of 2023, has again reiterated the aforesaid similar view. Paragraphs 5 and 6 of the judgment are reproduced as under:

"5. The issue whether deduction of pension amount from the salary can be made has been settled by the judgment of this Court in the case of 'Helen C. Rebello (Mrs.) and Others Vs. Maharashtra State Road Transport Corporation and Another, (1999) 1 SCC 90', wherein, this Court drawing an analogy in para 35 observed as under:-

"35. Broadly, we may examine the receipt of the provident fund which is out of the deferred payment contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental amount is This death. secured, is certain to be received, the under amount while the Vehicles Act uncertain is Motor and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the a statute amount receivable under occasioned only on account of accidental death. How could such an amount come within the periphery of the

Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is of no correlation. The semblance insured any (deceased) contributes his own money for which he receives the amount which has is no on correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

6. *Later, in a recent judgment in the case of 'Sebastiani Lakra and others Vs. National Insurance Company Limited and Another, (2019) 17 SCC 465', this Court observed that deductions cannot not be allowed from amount of compensation either on account of insurance or pensionary benefits gratuity or grant of employment to kith and kin of the deceased. The Court in para 12 noted as thus-*

"12. The law is well settled that deductions cannot be allowed from the either on amount of compensation account of insurance, or on account of deceased. The main reason is that all pensionary benefits or gratuity or grant of employment to a kin of the these amounts are deceased earned by the of contractual account on relations entered into by him with others. It cannot

be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to "just compensation" under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death."

31. In a recent decision, in **Hanumantharaju B. (dead) by LRs. Versus M. Akram Pashan & another**, reported in 2025 SCC Online SC 1106, Hon'ble Supreme Court has again reiterated the aforesaid view. Relevant paragraph-19 of the judgment is reproduced as under:

"19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as "pecuniary advantage" liable to be deducted for the purpose of computation of compensation within the scope of [Motor Vehicles Act, 1988](#). For this proposition of law, we may refer to the decision

in Vimal Kanwar & Ors. v. Kishore Dan & Ors. (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90, held as follows:-

“19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90: 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court: (SCC pp. 111-12, para 35) “35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity

after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co- relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual." Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating

compensation. This principle was reiterated in Reliance General Insurance Co. Ltd. v. Shashi Sharma & Ors. (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender & Ors. (2020) 11 SCC 356.”

(self emphasis supplied)

32. A similar view has again been taken by Hon'ble Supreme Court in **The Managing Director, KSRTC versus P. Chandramouli & others**, 2026 INSC 241. Relevant paragraphs 13 to 16 of the judgment are reproduced as under:

13. This court in Helen C. Rebello & Ors. Vs. Maharashtra State Road Transport Corporation² and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan & Ors.³ held thus :

“33. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to . be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident any amount received out of such insurance on the happening of such incident may be an amount liable for deduction.” “34. This is based on the principle that the claimant for. the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the Legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz.,

either under- the Motor Vehicle Act from the employer, the compensation receivable by the claimant . either statutory or through the security of the employer securing from his employee but in both the cases he receives the amount without his contribution”.

“35. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it. then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.”

“36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation.

There must be some correlation between the absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured”.

14. Further this court in the matter of *Sebastiani Lakra vs National Insurance Co.Ltd*⁴ on the issue of the deduction held as follows:

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to "just compensation" under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death”

15. On the analysis of the above decisions of this court deductions ordered by the tribunals in both the cases is not correct and modifying the said finding by the High court is to be accepted. (2019)17SCC465

Conclusion

16. In view of the foregoing discussion , and in light of the settled principles laid down by this Court in Helen C. Rebello(Supra), United India Insurance Co. Ltd. (supra) and Sebastiani Lakra (Supra), It is clear that amounts received by the dependants of the deceased under employer-provided group insurance or other contractual or social security benefits cannot be treated as “pecuniary advantages” liable to be deducted from compensation awarded under the Motor Vehicles Act, 1988. Such benefits arise out of an independent contractual relationship and lack the requisite nexus with the statutory compensation payable for death in a motor vehicle accident. The principle of balancing loss and gain cannot therefore be invoked to diminish the statutory entitlement of the claimants to just compensation.”

(self emphasis supplied)

33. If the facts and circumstances of the present case are seen in the light of above decisions, as referred to above, this Court is of the view that claimant No. 1 is getting the family pension, as per Mark C-1. Entitlement of claimant No. 1 for family pension is on the ground of death of her husband. In other words, it can be said that claimant No. 1 was entitled for the family pension, even after the demise of Baldev Krishan Moudgil, and the same is not in co-relation

with compensation payable on account of accidental death. She would be entitled for the family pension otherwise in normal course, i.e. on account of death of her husband. Since, the family pension was earned by deceased Baldev Krishan Moudgil for the benefit of his family by contributing in the service, in terms of service conditions, and the same is not receivable only in the case of accidental death, thus, the findings of learned Tribunal, to this extent are liable to be interfered with. Consequently, loss of income to the claimants, on account of death of Baldev Krishan Moudgil comes to Rs. 24,098/- per month.

34. Keeping in view the number of dependents, and in view of law laid down in **National Insurance Co. Ltd. v. Pranay Sethi**, (2017) 16 SCC 680, 1/3rd is liable to be deducted towards the personal expenses of the deceased, had he been alive. Thus, his monthly contribution towards his family, comes to (Rs. 24,098/- minus 1/3rd of Rs. 24,098/- i.e. Rs. 8032/-) = Rs. 16,066/-.

35. In view of the decision of Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others**, (2018) 18 SCC 130, all the claimants are held entitled for the amount under the head

'loss of consortium'. Relevant paragraphs 21 to 24, are reproduced as under:-

21. A Constitution Bench of this Court in Pranay Seth(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.

21.1. 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, corporation, 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 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.

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 parents has lost their minor child, or unmarried son of 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 fe 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 preset case, we deem it appropriate to award the father and sister of the deceased, as amount of Rs.40,000/- each for loss of filial consortium.

36. The learned Tribunal has applied the multiplier of 5, in view of decision of Hon’ble Supreme Court in **Sarla Verma (smt) and others versus Delhi Transport Corporation & another**, (2009) 6 SCC 121, which does not require any interference by this Court.

37. In view of the decision of Hon'ble Supreme Court in **Pranay Sethi's** case (supra), the claimants are also held entitled for compensation under the heads 'loss of estate', 'funeral expenses' and 'loss of consortium' with increase @ 10% after every three years.

38. Thus, the entitlement of the claimants, for which, they are held entitled, is assessed, as under:-

1.Loss of contribution	=	Rs.16,066 x 12 x5= Rs.
		9,63,960/-
2.Loss of estate	=	Rs.15,000/- + Rs. 4500/-=Rs.
		19,500/-
3.Funeral expenses	=	Rs.15,000/- + Rs. 4500/-
	=	Rs. 19,500/-
4.Loss of consortium	=	Rs.40,000x3=Rs.1,20,000/-
	+ Rs.	36,000/-= Rs. 1,56,000/-
Total	=	Rs.9,63,960+19,500+19,500+
		Rs.1,56,000= Rs. 11,58,960/-

39. In view of the above, the compensation awarded by the learned Tribunal is liable to be enhanced.

40. The learned Tribunal has rightly awarded interest @ 7% per annum, which does not require any interference by this Court.

41. In view of above, the present appeal is allowed by enhancing the compensation amount from Rs. 5,36,980 to Rs. 11,58,960/-.

42. Consequently, the claimants are held entitled for the amount of Rs. 11,58,960/-, along with interest @ 7%, from the date of filing of petition till the realization of amount. The award passed by the learned Tribunal is modified in the above terms. The liability has rightly been fastened upon the Insurance Company.

43. Memo of costs be prepared.

44. Pending application(s), if any, are also disposed of.

45. Record be sent back.

20.6.2026

(kalpana)

(Virender Singh)
Judge