IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 67 OF 2024

Arati Rani Singha & Ors.

Versus

The Oriental Insurance Company Ltd. & Anr.

For the appellants	:	Mr. Gobinda Saha, Adv. Ms. Srija Bhowmik, Adv. Mr. Milan Chandra Laskar, Adv.
For the Insurance Company	:	Mr. Rishin Chakraborty, Adv.
Heard on	:	02.07.2026
Judgment on	:	09.07.2026
Uploaded on	:	09.07.2026

Ajay Kumar Gupta, J:

1. The appellants/claimants have filed this appeal being aggrieved by and dissatisfied with the judgment and award dated 26th day of September, 2023 passed by the Learned Judge, MAC Tribunal -cum- Learned Additional District & Sessions Judge, 4th Court, Jalpaiguri in M.A.C. Case No. 75 of 2013 filed under Section 166 of the Motor Vehicles Act, 1988, thereby the Tribunal awarded compensation to the tune of Rs. 9,10,000/- in favour of appellants/petitioners, out of which petitioner no. 1 will get fifty percent and petitioner nos. 2 and 3 will get twenty five percent each of the award.

2. The fact, leading to the filing of the case, is that on 07.01.2013, at about 3.30 pm, while the victim was standing at Dhupguri Bazar, suddenly one bus bearing registration no. WB-73B-0047, which was going towards Jalpaiguri Town, dashed the victim. As a result, the victim received severe injuries all over his person. He was taken to Dhupguri Rural Hospital, where he was declared "brought dead" by the attending doctor. An application under Section 166 of the Motor Vehicles Act was filed by the legal heirs and representatives of the victim for compensation, and the same was disposed of by the Learned Tribunal after awarding compensation as aforesaid in favour of the appellants, but, the same is not adequate as per the appellants. Hence, this appeal is preferred by them.

3. The appellants prayed for enhancement of quantum of compensation only on three-fold submissions, i.e., the learned Tribunal has not allowed actual compensation towards the specific heading, 'Loss of consortium for spouse and children separately', under the head of general damages and no interest has been granted from the date of filing of the application on the awarded compensation. As such, the quantum of compensation is required to be re-assessed on those heads and allowed the appeal after enhancing compensation. It was further submitted that the Hon'ble Supreme Court has repeatedly given guidelines for granting compensation on different heads in a motor vehicle accident claim case.

4. It was further submitted that the learned Tribunal has also considered the notional income of the victim on the lower side comparing with the present market economic conditions. Rs. 5,000/- per month was considered to be the income of the victim, although as per the present minimum wages stipulated in the notification of the Government of West Bengal, the notional income should be more than Rs. 6,000/- even in the case of an unskilled labourer. The Appellants have no other grievances in this appeal. There are no disputes regarding the quantum of compensation awarded on other heads, the multiplier or the statutory deduction.

5. The learned counsel representing the appellants has placed reliance on the following judgment in support of his aforesaid contention for enhancement of compensation as follows:-

i. Kaushnuma Begum (Smt) and Ors. Vs. New India Assurance Co. Ltd. and Ors.[1]

6. On the other hand, the learned advocate appearing on behalf of the respondent no. 1/Insurance Company vehemently opposed the prayer of the appellants and further submitted that the learned Tribunal has assessed the compensation under the different heads correctly. The learned Tribunal further assessed the victim's notional income prior to the accident at Rs. 5,000/- per month, as the appellants failed to prove the actual income with cogent, oral or documentary evidence. Therefore, there is no need to interfere with the compensation awarded by the Learned Tribunal. The Insurance Company has already paid the entire amount, and the appellants have already received the same.

7. The learned counsel representing the Insurance Company has also placed reliance on the following judgments in support of his aforesaid contentions and further bolster his submission that the income of the victim is rightly assessed at Rs. 5,000/- per month. Appellants are

[1] (2001) 2 SCC 9

also not entitled for interest on compensation amount. Those are as follows:-

i. ***Bony Dubey Vs. M/s. Shyam Bidi Work's and Anr.***[2]***;***
ii. ***Sangita Devi and Ors. Vs. Shaikh Nazir and Ors.***[3]***;***
iii. ***Manomati Chouhan and Anr. Vs. Oriental Insurance Co. Ltd. and Ors.***[4]***;***
iv. ***T.C. John (deceased) through L.Rs Vs. V.J. Antony and Ors.***[5]***;***
v. ***Mehmooda Bee and Ors. Vs. National Ins. Co. Ltd.***[6]***;***
vi. ***Angad Tiwari and Anr. Vs. National Insurance Co. Ltd. and Anr.***[7]***;***
vii. ***Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Co.***[8]***.***

8. Heard learned counsels appearing on behalf of the respective parties and upon perusal of the materials on record, this court finds that the following issues raised by Appellants are required to be decided by this court.

i. Whether the amount under the head 'general damages' can be enhanced under the particular heads of spousal and parental Consortium?

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[2] 2025 (2) T.A.C. 38 (S.C.);
[3] 2026 (1) T.A.C. 376 (S.C.);
[4] 2026 ACJ 742;
[5] 2025 ACJ 24;
[6] 2023 ACJ 329;
[7] 2025 ACJ 312.
[8] 2014 (2) SCC 735;

ii. Whether interest ought to be imposed upon the awarded compensation from the date of filing the application till final realisation?

iii. Whether the learned Tribunal should have assessed the monthly income of the victim more than Rs. 5,000/- in view of the guidelines given by the Hon'ble Supreme Court from time to time?

9. It is an undisputed fact that the appellants failed to prove the actual income of the victim prior to the accident. There are further undisputed facts about the date, time and manner of the accident. The victim died due to a motor vehicle accident caused due to the rash and negligent driving of the driver of the offending vehicle.

10. Consequently, disputes are only regarding the income of the victim, and actual compensation towards general damages and entitlement of interest. The other issues and findings of the learned Tribunal have not been challenged or raised by the learned counsel for the parties.

11. This Court, therefore, keeps only those issues which were for consideration. The Hon'ble Apex Court in a case ***National Insurance Co. Ltd. Vs. Pranay Sethi***[9]*,* specifically held that reasonable figures on conventional heads should be granted, namely, Loss of estate, Loss of consortium and funeral expenses @ of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. Another judgment passed in

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[9] (2017) 16 SCC 680

the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Ors.***[10] is also squarely applicable in the present case with regard to the grant of compensation under the head of spousal and parental consortium. The Hon'ble Supreme Court has particularly held that loss of consortium should be granted in a death case to the claimants under the specific heads 'Spousal Consortium', 'Parental Consortium' and 'Filial Consortium' as applicable, in paragraph No. 8.7, is quoted hereinbelow:-

> *"**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'.*
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> *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 S.C.C. 54 : 2013 (3) T.A.C. 679**.*
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> *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." [BLACK'S LAW DICTIONARY (5th ed. 1979)]*
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> *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."*

[10] 2018 (4) T.A.C. 345 (S.C.);

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 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 count [Rajasthan High Court in ***Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors., 2017 (4) R.L.W. 3368 (Raj.)****; Uttarakhand High Court in* ***Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors., 2014 (3) U.C. 1687****; Karnataka High Court in* ***Lakshman and Others v. Susheela Chand Choudhary and Others, (1996) 3 Kant. L.J. 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."

12. Therefore, this court finds substance in the submissions of the learned advocate for the appellants/claimants in this regard. Consequently, the appellants are entitled to receive compensation under the heading of spousal and parental consortium.

13. So far as the interest is concerned, it would be appropriate to refer to the Judgment passed by this Hon'ble High Court in the case of ***Rekha Dutta & Ors. vs. Ram Avatar Lohia & Anr.***[11], wherein this Hon'ble High Court held that: -

> *"In our opinion, the very approach of the Tribunal was based on the wrong notion that interest is payable as a penal measure. In this connection, it will not be out of place to refer to the following observations of the Supreme Court about the object of grant of interest in the case of* ***Alok Shanker Pandey vs. Union of India and Ors*** *reported in* ***AIR 2007 SC 1198****:*
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> *"It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A*

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[11] **2009 (3) TAC (Cal) 783**

> *paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B."*
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> (*Emphasis supplied)*

14. Consequently, the claimants are also entitled to get interest on the awarded compensation amount from the date of filing of the claim application, i.e. on 18.02.2013, till realisation.

15. So far as the income is concerned, the learned Tribunal has rightly held that the claimants failed to prove or establish either by oral or documentary evidence that the victim was coupon Collector of Maxi Taxi and his actual earning by leading any cogent evidence and in absence of any evidence, there is no option but to ascertain the claim of income based on notional income of the victim prior to his death. The Learned Tribunal has extensively discussed this issue and finally concluded that his notional income was Rs. 5,000/- per month. Therefore, this court, upon considering the view taken by the Learned Tribunal and further perusal of the aforesaid judgments referred by the respondent/Insurance company, the income of the victim should be at least considered @ Rs. 200/- per day, in total Rs. 6,000/- per month prior to his accident.

16. Keeping in mind the above observation, discussion and proposition laid down by the Hon'ble Apex Court, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 6,000/-
Annual Income (Rs. 6,000 X 12)	Rs. 72,000/-
Add: Future prospect @ 40% of the income of victim (As per Pranay Sethi's case)	Rs. 28,800/-
Total Income	Rs. 1,00,800/-
Less: deduction 1/3rd of the total income (Towards personal and living expenses)	Rs. 33,600/-
Total income after deduction	Rs. 67,200/-

Total loss of dependency (Rs. 67,200 X 15) Multiplier as per age of the victim is 15	Rs. 10,08,000/-
Add: General Damages 1. Loss of Estate 2. Funeral Expenses 3. Loss of parental consortium (Rs. 40,000/- each for two) 4. Loss of spousal consortium	 Rs. 15,000/- Rs. 15,000/- Rs. 80,000/- Rs. 40,000/-
Total compensation	Rs. 11,58,000/-

17. Thus, the appellants/claimants are entitled to get an enhanced compensation amount of Rs. 2,48,000/= (Rs. 11,58,000/- minus Rs. 9,10,000/-), which shall carry interest of 6% per annum from the date of filing of the claim application, i.e. from 18.02.2013 till final payment and, in addition, interest @ 6% per annum shall also be calculated and paid on the awarded amount of Rs. 9,10,000/- from the date of filing of the application for compensation as aforesaid till final payment, if not already paid.

18. The respondent no. 1/Insurance Company is directed to deposit the enhanced compensation amount, i.e. Rs. 2,48,000/-, and the interest as indicated above by way of cheque before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri within a period of four weeks from date.

19. Learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri, upon deposit of the amount and interest as indicated above, shall release the amount in favour of the appellants /claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the enhanced amount, if not already paid, in equal share.

20. With the above observations, the instant appeal being **FMA 67 of 2024** stands disposed of without order as to costs.

21. Connected applications, if any, are also, thus, disposed of. Interim order, if any, stands vacated.

22. The impugned judgment and award of the learned Tribunal dated 26th day of September, 2023 is modified to the above extent. No order as to costs.

23. Let a copy of this judgment along with Trial Court Records, if received, be forwarded to the learned Tribunal for information.

24. Urgent Photostat copy of this Judgment be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)