

**THE HIGH COURT OF SIKKIM AT GANGTOK  
(Civil Appellate Jurisdiction)**

**J U D G M E N T**

**S.B. MAC App. No. 02/2014**

The Branch Manager,  
Bajaj Allianz General Insurance Co. Ltd.,  
City Plaza (4<sup>th</sup> Floor),  
2<sup>nd</sup> Mile, Sevoke Road,  
Siliguri, West Bengal.

.....

**Appellants.**

- versus -

1. Smt. Rita Thapa (Manger),  
W/o late Bhanu Thapa (Manger),  
Aged about 45 years.
2. Shri Mahesh Thapa,  
S/o late Bhanu Thapa (Manger),  
Aged about 24 years.
3. Shri Dinesh Thapa (Manger)  
S/o late Bhanu Thapa (Manger),  
Aged about 19 years.

All permanent Residents of  
Jorethang, South Sikkim  
And presently residing at Gari Gaon,  
Tadong, East Sikkim.

.....

**Respondents.**

**CORAM**

**HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE N. K. JAIN**

**Date of Judgment : 01.05.2014**

For Appellant : Mr. Thupden Gyatso Bhutia,  
Advocate.

For Respondents : M/s. Ajay Rathi and Saroj  
No. 1 to 3 Singh, Advocates.

For Respondent No. 2 : Ms. Sabina, Advocate.

**Jain, CJ.**

Heard learned counsel for the parties.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred as "the Act") is directed against the impugned judgment/award dated 30.07.2013 passed by the Member, Motor Accidents Claims Tribunal, East and North Sikkim at Gangtok (hereinafter referred as "the Tribunal) in MACT Case No. 01 of 2012, whereby the learned Tribunal passed an award of Rs.8,01,500/- (Rupees eight lakh one thousand five hundred) in favour of claimants/

respondents No. 1 to 3 under different heads and directed the opposite party No.1/appellant to pay the said compensation with interest @ 10 % per annum from the date of filing of the claim petition, till the date of its realization.

**3.** Briefly stated the facts of the case are that the claimants/ respondents No. 1 to 3, who are wife and sons of the deceased Bhanu Thapa, filed an application for compensation of Rs.9,78,000/- (Rupees nine lakh seventy eight thousand) before the Tribunal on 02.01.2012 in respect of death of late Bhanu Thapa, who died in an accident, arising out of use of motor vehicle. At the top and subject of the claim application, it is mentioned that the Application is under Section 163A (at two places) of the Motor Vehicles Act, 1988, whereas in the prayer, it is mentioned that it is filed under Section 166 of the Motor Vehicles Act. However, learned counsel for the parties argued the case treating this application under Section 163A of the Act. Learned Tribunal has also tried and decided the application treating it as under Section 163A of the Act. The facts of the accident, other relevant facts and details of

compensation claimed in various heads of pecuniary and non-pecuniary damages, are mentioned in the claim application.

4. The opposite party No. 1 /appellant filed its written objection denying the contents of the claim application and praying therein that the claim petition be dismissed. The opposite party No. 2, i.e. the owner of the vehicle, also filed his written objection, wherein he submitted that the vehicle in question was duly insured at the relevant time. Therefore, he is not liable to pay any compensation to the claimants.

5. Learned Tribunal, on the basis of averments made in the claim application and written objections, framed five issues, which have been reproduced in paragraph 5 of the impugned award. In support of the case, the claimant No. 1 filed an affidavit on her own behalf and on behalf of claimants No. 2 and 3, in evidence. She was cross-examined by learned counsel for opposite party No. 1 and 2, both. Both the opposite parties did not adduce any evidence.

6. Learned Tribunal, after hearing learned counsel for the parties and examining the records of the case, passed an award on 30.07.2013 and directed the opposite party No. 1/appellant to pay a sum of Rs.8,01,500/- (Rupees eight lakh one thousand five hundred) towards compensation to claimants in the following heads: -

(i)	Loss of earning	Rs.3,90,000.00
(ii)	Funeral Expenses	Rs. 2,000.00
(iii)	Loss of Estate	Rs. 2,500.00
(iv)	Loss of Consortium	Rs. 5,000.00
(v)	Future prospects	Rs.2,50,000.00
(vi)	Taxi fare from hospital	Rs. 2,000.00
(vii)	Non-pecuniary	<u>Rs.1,50,000.00</u>
	Total	<u>Rs.8,01,500.00</u>

7. Being aggrieved with the aforesaid award, opposite party No. 1-Insurance Company has preferred this appeal before this Court.

8. Learned counsel appearing on behalf of appellant-Insurance Company fairly and frankly submitted that he is not disputing/ challenging that the

vehicle in question was insured with appellant at the relevant time, the present application under Section 163A of the Act, is maintainable, annual income of the deceased, the claimants are legal representatives of deceased, who died in motor accident, which is subject matter of this case, and they are entitled to receive the compensation. His arguments are two folds: -

- (i) Learned Tribunal committed an illegality in recording a finding in respect of age of the deceased i.e. 41 years and consequently applying the multiplier of 15 for calculating and awarding compensation. The age of deceased was 47 years, therefore, the multiplier of 13 will be applied.
- (ii) Learned Tribunal committed an illegality in awarding the compensation of Rs.2,50,000/- (Rupees two lakh fifty thousand) under the head "future prospectus" and Rs.1,50,000/- (Rupees one lakh fifty thousand) under the head of "non-pecuniary damages".

9. Except the above two fold submissions, learned counsel for the appellant did not challenge the other amount of compensation and also the finding of the Tribunal on the other issues.

10. While arguing on point No. (i), learned counsel for the appellant submitted that the claimants themselves filed the "election identity card" in support of age of the deceased, wherein the age of the deceased was mentioned as 43 years as on 01.01.2007, the accident took place on 22.01.2011, as per election identity card, the age of the deceased, on the date of accident, is about 47 years and as per second schedule appended to Section 163A of the Act, the multiplier of 13 ought to have been applied in place of 15. He has submitted that the learned Tribunal did not consider the "election identity card" at all and recorded its findings on the basis of "driving licence" of the deceased, and while treating the age of the deceased as 41 years applied the multiplier of 15 and awarded compensation of Rs.3,90,000/- towards loss of earning. He, therefore, submitted that finding of the

Tribunal to that extent is liable to be set aside and amount of compensation awarded under the head "loss of earning" be reduced proportionately.

**11.** While arguing the second point, learned counsel for the appellant submitted that the claim application was filed under Section 163A of the Act, therefore, compensation should have been awarded exclusively as per second schedule, wherein there is no provision for awarding compensation under the head, "future prospects". He also submitted that the compensation was awarded separately under different heads of "funeral expenses, loss of estate, loss of consortium and taxi fare from hospital", therefore, no further compensation under the head "non-pecuniary" could be awarded. He, therefore, submitted that the amount of compensation of Rs.2,50,000/- awarded under head "future prospects" and Rs.1,50,000/- awarded under head "non-pecuniary" be set aside and the award of the Tribunal be modified accordingly. While arguing the case with regard to award of compensation for "future prospects" he, in alternative, submitted that, even if, it is held that the claimants are

entitled to receive compensation under head, "future prospects", then it could not have been more than 30% of the salary of the deceased, as the deceased was above 40 years of age. In support of his submissions, he relied upon a judgment of the Kerala High Court in **National Insurance Company Ltd. Vs. Chacko** reported in **2012 (1) T.A.C. 464 (Ker.)** and the judgment of the Hon'ble Apex Court in **Rajesh and others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54**.

**12.** Learned counsel appearing on behalf of the claimants/ respondents No. 1 to 3 submitted that the impugned award passed by the learned Tribunal is just and reasonable and no interference in the same is called for by this Court.

**13.** While replying the argument No. (i) of learned counsel for the appellant, the learned counsel for the claimants/respondents No. 1 to 3 submitted that the claimants in their claim application mentioned the age of deceased as 41 years and the exact/correct date of birth of the deceased was also mentioned as

25.02.1969. The claimants also filed the "driving licence" of the deceased, which was issued in the year 2005, wherein the date of birth of deceased was mentioned as 25.02.1969. The learned counsel submitted that the "driving licence" was proved by AW-1, Smt. Rita Thapa in her affidavit filed in support of evidence. AW-1 was cross-examined and in her cross-examination she specifically stated that "it is not a fact that the age of my late husband was not 41 years as mentioned in the claim petition". No other question was put on the question of age of the deceased to AW-1 by the opposite parties. He submitted that the "driving licence" was old one than the "election identity card", which was issued in 2007. He also submitted that this is with regard to compensation in respect of deceased, who died in motor accident, and it being a social and welfare legislation, the document, which is favourable to claimants, should be accepted and believed. He submitted that the learned Tribunal was absolutely right in relying upon "driving licence" of the deceased and calculating and awarding compensation

under the head, "loss of earning" while applying a multiplier of 15, as per second schedule.

**14.** While replying to second submission, learned counsel for the respondents No. 1 to 3 submitted that the compensation under the head, "future prospects" can always be awarded under Section 163A of the Act also. He has submitted that the Hon'ble Apex Court in number of cases have awarded compensation, while considering future prospects of the deceased, under Section 163A of the Act also. He also submitted that the Tribunal is fully empowered to award compensation more than the claim claimed in the application. The Tribunal is required to pass an award, which should be "just and reasonable". He submitted that the deceased was the bread-earner of the claimants, who died in a motor accident. However, he fairly and frankly conceded that as per principles laid down by Hon'ble Apex Court, 30% of the salary of the deceased, ought to have been awarded under the head "future prospects", as the age of the deceased was about 41 years. But, he submitted that as per law laid down by the Hon'ble Apex Court, the amount of compensation

on account of "funeral expenses" and "loss of consortium" should have been awarded as Rs.25,000/- and Rs.1,00,000/- respectively, in place of Rs.2,000/- and Rs.5,000/-, awarded by the Tribunal. He, therefore, submitted that proportionate amount of compensation may be reduced under the head "future prospects", but it may be enhanced under heads "funeral expenses" and "loss of consortium". So far as compensation awarded under head "non-pecuniary damage" is concerned, he could not refer any law or citation of any High Court or Supreme Court, to justify the same. He only submitted that the Tribunal can always award just compensation, therefore, even if the compensation is awarded under head "non-pecuniary damage", the same calls for no interference by this Court. In support of his submissions, he relied upon a judgment of the Delhi High Court in **National Insurance Co. Ltd. Vs. Ram Rati Devi & Ors.** reported in **2013 ACJ 583**, judgment of the Hon'ble Apex Court in **R.K. Malik & Anr. vs. Kiran Pal & Ors.** reported in **2009 (3) TAC 1 (SC)**; **Raj Rani & Ors. vs. Oriental Insurance Co. Ltd. & Ors.** reported in

**(2009) 13 SCC 654; Rajesh & Ors. vs. Rajbir Singh & Ors.** reported in **(2013) 9 SCC 54; Reshma Kumari & Ors. vs. Madan Mohan & Anr.** reported in **(2013) 9 SCC 65.**

**15.** I have considered the submissions of learned counsel for the parties and examined the judgment of the learned Tribunal and also the entire record of the case. Before dealing with the submissions urged on behalf of parties, it will be appropriate to consider the case law referred by learned counsel for the parties.

**16.** In **National Insurance Co. Ltd. Vs. Chacko** (supra), the Kerala High Court was dealing with various questions about amount of compensation payable in the case of death, under Section 163A of the Act and held that in a claim under Section 163A of the Act, negligence is absolutely irrelevant and further that second schedule has to be accepted in claims under Section 163A of the Act.

**17.** In **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra), the Hon'ble Apex Court considered the meaning of expression "just compensation" as

mentioned in Section 168 of the Act, principles for computing compensation under the head "future prospects" and also considered its earlier judgments delivered in the case of **Santosh Devi vs. National Insurance Co, Ltd., (2012) 6 SCC 421** and **Sarla Verma vs. DTC, (2009) 6 SCC 121**. Paragraphs 8 to 16 and 19 are reproduced as under: -

"8. Since, the Court in **Santosh Devi case** actually intended to follow the principle in the case of salaried persons as laid down in **Sarla Verma case** and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In **Sarla Verma case**, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

10. Whether the Tribunal is competent to award compensation in excess of what is claimed in the Application under Section 166 of the Motor Vehicles Act, 1988, is another issue

arising for consideration in this case. At para 10 of **Nagappa case**, it was held as follows:

"10. Thereafter, Section 168 empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, the only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

The principle was followed in the later decisions in **Oriental Insurance Co. Limited v. Mohd. Nasir** and in **Ningamma v. United Indian Insurance Co. Ltd.**

11. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

12. There is another reason why the Court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the Act by Act No. 54 of 1994 with effect from 14.11.1994, the Report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under Sub-section (6) of Section 158 has to be treated as an Application for Compensation.

13. Section 158 (6) of the Act reads as follows:

**"158. Production of certain certificates, licence and permit in certain cases.-**

(1) - (5) \* \* \*

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report

under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the insurer concerned, and, where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer."

14. Section [166\(4\)](#) of the Act reads as follows:  
 "166. (4) The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section [158](#) as an application for compensation under this Act."

15. Prior to the amendment in 1994, it was left to the discretion of the Tribunal as to whether the report be treated as an application or not. The pre-amended position under Sub-section (4) of Section [166](#) of the Act, read as under:

"166. (4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks it necessary so to do, treat the report as if it were an application for compensation under this Act."

16. In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build own that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

x                      x                      x

19. The petitioners have produced before this Court Annexure P-4, salary certificate of the

deceased Bijender Singh which shows that after the revision of the salary by the Sixth Pay Commission with effect from 01.01.2006, the deceased had a monthly salary of Rs. 9,520/-. It is submitted that since the Sixth Pay Commission benefits were announced only subsequently making it to operate retrospectively from 01.01.2006, the salary certificate could not be produced before the Tribunal or the High Court. Applying the principles laid down in **Sarla Verma case** as explained in **Santosh Devi case**, and in the instant case, the compensation has to be re-assessed as follows:

Sl.No.	HEADS	CALCULATION
(i)	Salary	Rs.9,520.00 per month.
(ii)	<u>50% of (i) above to be added as future prospects</u> =	[R.9,520.00 + Rs.4,760.00] = Rs.14,280.00 per month
(iii)	1/4 <sup>th</sup> of (ii) deducted as personal expenses of the deceased =	[Rs.14280.00 – Rs.3,570.00]= Rs.10,710.00 per month
(iv)	Compensation after multiplier of 16 is applied =	[Rs.10,710.00 x 12 x 16] = Rs.20,56,320.00
(v)	<u>Loss of consortium</u> =	<u>Rs.1,00,000.00</u>
(vi)	Loss of care and guidance for minor children =	Rs.1,00,000.00
(vii)	<u>Funeral expenses</u> =	<u>Rs.25,000.00</u>
<b>TOTAL COMPENSATION AWARDED</b> =		<u>Rs.22,81,320.00</u>

The amount will carry interest @ 7.5% as awarded by the Tribunal from the date of the filing of the petition, viz., 26.11.2007 till realization."

(emphasis supplied)

**18. In National Insurance Co. Ltd. vs. Ram Rati Devi & Ors.** (supra) , the Delhi High Court held that in view of the contradictory documentary evidence,

the age favourable to the claimants has to be considered for grant of compensation as the provision of Section 166 is a piece of social legislation.

**19.** In **R.K. Malik & Anr. vs. Kiran Pal & Ors.** (supra), the Hon'ble Apex Court was considering a case, wherein, the application for compensation was filed under Section 163A of the Act and after considering various judgments held that in addition to awarding compensation for pecuniary loss, compensation must also be granted with regard to the future prospects of the children. Paragraph 31 of the said judgment is reproduced as under: -

"31. A forceful submission has been made by the learned counsels appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in [General Manager, Kerala S. R. T. C. v. Susamma Thomas](#), (1994) 2 SCC 176; [Sarla Dixit v.](#)

Balwant Yadav, (1996) 3 SCC 179; and Lata Wadhwa case (supra)."

(emphasis supplied)

**20.** In **Raj Rani & Ors. vs. Oriental Insurance Co. Ltd. & Ors.** (supra), the Hon'ble Apex Court considered the provisions of Section 163A, 166 and 168 of the Act and held that immediate future prospect though not relevant for computation of amount of compensation under Section 163A, would be a relevant factor to be considered for determining annual income for computation of amount of compensation. The Hon'ble Apex Court also held that it is the duty of the Court to award just compensation irrespective of fact whether any plea in that behalf was raised by claimant or not.

**21.** In **Reshma Kumari & Ors. vs. Madan Mohan and Anr.** (supra) the larger Bench of the Hon'ble Apex Court considered various questions including the question relating to award of compensation for "future prospects" and held that while making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the judgment in

**Sarala Verma's** case. Hon'ble Apex Court also considered its three-Judge Bench judgment in **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra) and held that the amount to be awarded for loss of consortium to the spouse and funeral expenses of the deceased, having regard to inflation factor and rising price index, must be at least Rs.1.00 lakh and Rs.25,000/- respectively.

22. From the discussions of the case law referred to above, it is clear that provisions of the Act are piece of social and welfare legislation, if there are contrary documents, then the document which is favourable to the claimant has to be considered. Ordinarily, compensation under Section 163A of the Act should be awarded as per second schedule appended to Section 163A of the Act, however, "future prospects" would be a relevant factor, to be considered for determining the annual income for calculating and awarding the amount of compensation. It is the duty of the Court to award just compensation irrespective of the fact whether any plea in that behalf was raised by claimants or not. Three-Judge Bench in **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra) in paragraph 16 held that the

Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation. The larger Bench of the Hon'ble Apex Court in **Reshma Kumari's** case (supra) has held that the amount for loss of consortium and funeral expenses must be at least Rs.1.00 lakh and Rs.25,000/- respectively as awarded in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra). Three-Judge Bench of Hon'ble Apex Court in **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra) considered its earlier decision in **Santosh Devi** and **Sarala Verma's** cases about computation of compensation for future prospects and held that there should be addition in compensation for future prospects @ 50% of income where deceased victim is below 40 years, @ 30%, where the age group of deceased victim is 40 to 50 years, @ 15% where age group of deceased is 50 to 60 years and no addition thereafter.

**23.** Now, I will deal with submissions raised in the present case by learned counsel for the parties. So

far as first submission of learned counsel for the appellant about age of deceased and consequently adopting the multiplier of 15 is concerned, it is pertinent to mention that the age of deceased in claim petition has been mentioned as 41 years and his date of birth has also been mentioned as 25.02.1969. The claimant No. 1, in her affidavit in support of evidence has specifically mentioned that deceased was 41 years and in her cross-examination, she has stated that it is not correct that deceased was not 41 years of age at the time of accident. The driving licence of the deceased was filed and the date of birth of the deceased was mentioned in it as 25.02.1969 and as per this document, the age of deceased at the time of accident was 41 years. The election identity card is also on record, wherein the age of deceased as on 01.01.2007 has been mentioned as 43 years and as per this identity card, the age of deceased on the date of accident comes to 47 years. Learned Tribunal has relied upon the driving licence of the deceased wherein his exact date of birth has been mentioned and recorded a finding that the age of deceased was 41

years at the time of accident. In my view, the finding of the learned Tribunal is absolutely correct and no interference in the same is called for. Claimants in their claim application has mentioned the age of deceased as 41 years. This is a first document. Apart from age, date of birth of the deceased has also been mentioned in it. The claimant No. 1 in her statement also stated that the age of deceased was 41 years. No evidence has been adduced on behalf of any of the opposite parties in rebuttal there to. Driving licence was issued in the year 2005. It was an old document in comparison to election identity card, which is of the year of 2007. The opposite parties have not placed on record any document to substantiate the age of deceased mentioned in the election identity card. Even if there are two contradictory documents in respect of age of deceased, then it being a social and welfare legislation, the document which favours the claimants has to be accepted. In these circumstances, the learned Tribunal has committed no illegality in recording the finding that the deceased was 41 years of

age at the time of accident and rightly applied the multiplier of 15.

**24.** So far as second submission of learned counsel for the appellant, about the compensation awarded under the heads of "future prospects" and "non-pecuniary" are concerned, it is clear from various judgments of Hon'ble Apex Court that in such a matter the compensation under the head "future prospects" can be awarded. However, in view of judgment delivered in **Sarala Verma's** case, which was relied upon by a subsequent judgment of the three-Judge Bench in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra), the only addition should have been @ 30% of the total income as deceased was 41 years of age i.e. in the age group of 40 to 50 years. Therefore, the award of the learned Tribunal to that extent is liable to be modified and it is directed that a sum of Rs.1,17,000/- (Rupees one lakh seventeen thousand) i.e. 30% of Rs.3,90,000/- will be awarded as compensation in place of Rs.2,50,000/- under the head "future prospects".

25. So far as compensation under the heads of funeral expenses and loss of consortium are concerned, the three-Judge Bench of Hon'ble Apex Court in **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra), has awarded Rs.25,000/- and Rs.1.00 lakh respectively and the said judgment of Hon'ble Apex Court was further relied upon in subsequent judgment by larger Bench of three-Judge in **Reshma Kumari & Ors. vs. Madan Mohan and Anr.** (supra). Therefore, the said amount is liable to be awarded in the present case also. In these circumstances, the award of the learned Tribunal is modified and it is directed that Rs.25,000/- (Rupees twenty five thousand) will be awarded towards compensation on account of funeral expenses and Rs.1.00 lakh (Rupees one lakh) towards loss of consortium in place of Rs.2,000/- and Rs.5,000/- respectively, awarded by the Tribunal.

26. I am conscious that the compensation awarded on account of "funeral expenses" and "loss of consortium" has not been claimed in the claim petition nor it has been awarded by the Tribunal, but as held by Hon'ble Apex Court that the Tribunal/Court should

award just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation. During the course of arguments, learned counsel for appellant also submitted that he has no objection in case the amount of Rs,25,000/- and Rs.1.00 lakh is awarded towards compensation for "funeral expenses" and "loss of consortium" in place of Rs.2,000/- and Rs.5,000/- respectively in view of two judgments of three-Judge Bench of the Hon'ble Apex Court as referred above. That apart, it is relevant to mention that the second schedule was inserted with effect from 14.11.1994, whereas the present incident took place in the year 2011. Therefore, due to inflation factor and rising price index, the amount mentioned under the head "funeral expenses" and "loss of consortium" in second schedule cannot be said to be just reasonable or adequate. The Hon'ble Apex Court has considered this aspect specifically in the above referred judgments.

**27.** I am also conscious that no appeal or cross objection on behalf of respondents have been filed/ preferred for enhancement of amount of compensation

in these heads, but in view of judgments of the Hon'ble Apex Court, referred above, the amount of compensation in these heads has to be awarded. This Court, being Appellate Court, is empowered under Order 41 Rule 33 CPC, to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees. Therefore, even if there is no cross-appeal or cross objection for enhancement of amount of compensation under the head "funeral expenses" and "loss of consortium", this Court can exercise its powers in favour of the respondents No. 1 to 3.

**28.** So far as amount of Rs.1,50,000/- awarded under the head "non-pecuniary" is concerned, it is relevant to mention that apart from compensation for "pecuniary loss", compensation has also been awarded under other heads including future prospects. Therefore, no further amount is needed to be awarded under this head. Learned counsel for respondents has also not disputed this aspect of the matter, rather conceded to set aside it. Therefore, the judgment of the Tribunal to that extent is liable to be set aside and is hereby set aside.

**29.** The net result of the above discussion is that the claimants/ respondents No. 1 to 3 will be entitled for the following compensation: -

(i)	Loss of Earning	Rs.3,90,000.00
(ii)	Funeral Expenses	Rs. 25,000.00
(iii)	Loss of Estate	Rs. 2,500.00
(iv)	Loss of Consortium	Rs.1,00,000.00
(v)	Future prospects	Rs.1,17,000.00
(vi)	Taxi fare from Hospital	<u>Rs. 2,000.00</u>

Total      Rs.6,36,500.00

**30.**      In view of above discussion, the appeal is partly allowed. The total amount of compensation is reduced from Rs.8,01,500/- (Rupees eight lakh one thousand five hundred only) to Rs.6,36,500/- (Rupees six lakh thirty six thousand five hundred only) with interest as directed by the Tribunal. The impugned judgment/ award of the learned Tribunal is modified to the above extent.

**31.**      Parties are directed to bear their own cost.

Sd/-  
**(N.K. Jain)**  
**Chief Justice**  
01.05.2014