

UNITED INDIA INSURANCE CO. LTD.

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v.

SATINDER KAUR @ SATWINDER KAUR & ORS.

(Civil Appeal No. 2705 of 2020)

JUNE 30, 2020

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**[S. ABDUL NAZEER, INDU MALHOTRA AND  
ANIRUDDHA BOSE, JJ.]**

*Motor Vehicles Act, 1988 – Motor vehicle accident – Death – Compensation – Computation of – Person living in Qatar since 1984 was visiting India in Nov. 1998 when he met with an accident while riding a scooter, with his wife as pillion rider, with a Maruti car coming from opposite direction – Tribunal calculated the compensation at Rs.1,90,000 with interest @ 9% p.a. – High Court computed the total compensation at Rs.96,78,000 with interest @ 7.5% p.a. – Held: In the absence of any other evidence produced by the Claimants, the income of the deceased computed by taking his base salary at 750 Qatari Riyal p.m. in 1984 as a skilled labourer, as reflected in his Employment Contract Form – By taking an increment of 10% p.a from 1984 till 1998, the notional income of the deceased is fixed at 2590 Qatari Riyal p.m, rounded off to 2600 Qatari Riyal p.m. – Exchange rate prevailing in 1998- 1 Qatari Riyal was equivalent to 12.41 INR – Income of the deceased- 2600 x 12.41= Rs. 32,266 p.m. i.e. Rs. 3,87,192 p.a. – High Court rightly deducted 50% of his income towards personal and living expenses – Further, as per the judgment of Constitution Bench in Pranay Sethi, future prospects @ 30% are to be awarded – Thus, multiplicand for computing the compensation is Rs. 3,87,192 - 50% + 30% = Rs.2,51,675 – Deceased was 40 years of age at the time of his death, accordingly, the multiplier of 15 would be the appropriate multiplier as per Sarla Verma case. Loss of dependency is Rs.2,51,675 x 15= Rs.37,75,125 – Amounts awarded under conventional heads also – Deduction of 50% by MACT and the High Court towards contributory negligence is affirmed – Total compensation of Rs.19,82,563/- awarded – Defendants have been pursuing legal proceedings since the past 22 years – Interest @12% p.a. be paid on total compensation from the date of filing the claim petition, till realization – Claimant No.1, widow of the deceased*

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- A suffered permanent disability of 25% in this accident – Single-handedly raised her three minor children, and eked out her livelihood through agricultural activity – 50% of the total compensation (inclusive of interest) be given to her and the balance 50% be divided equally between the three children.
- B Disposing of the appeals, the Court
  - HELD 1.1 The income of the deceased in 1984 as per his Employment Contract Form dated 21.08.1984, was 750 Qatari Riyal p.m. This document was duly certified by the Indian Embassy at Doha. In the absence of any other evidence being produced by
  - C the Claimants, the income of the deceased would be required to be computed by taking his base salary at 750 Qatari Riyal p.m. in 1984 as a skilled labourer, as reflected in his Employment Contract Form. A perusal of the passport entries of the deceased reveal that he had continued to remain in employment for a period
  - D of over 14 years in Qatar till he passed away in 1998. He was evidently doing fairly well, since there are numerous entries of foreign travel in his passport during the 14 years of his stay in Doha. By taking an increment of 10% per annum from 1984 till 1998, the notional income of the deceased could be fixed at 2590 Qatari Riyal p.m., which can be rounded off to 2600 Qatari Riyal p.m. As per the exchange rate prevailing in 1998, 1 Qatari Riyal was equivalent to 12.41 INR. Accordingly, the income of the deceased would work out to  $2600 \times 12.41 = \text{Rs. } 32,266$  p.m. i.e. Rs. 3,87,192 p.a. Even though in *Sarla Verma*, it was held that the deduction towards personal and living expenses should be 1/4th, if the number of dependant family members is four, in the present case, 50% of the income of the deceased would be required to be deducted, since he was living in a foreign country. The deceased had to maintain an establishment there, and incur expenditure for the same in commensurate with the high cost of living in a foreign country. Therefore, the High Court rightly deducted 50% of his income towards personal and living expenses. [Paras 9.1, 9.2][688-H; 689-A; 690-D-H; 691-A-B]
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*Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121 : [2009] 5 SCR 1098 – relied on.*

1.2 In the present case, the courts below failed to award any amount towards future prospects. The deceased was just over 40 years of age at the time of his death. As per the judgment of the Constitution Bench in *Pranay Sethi*, future prospects @30% are to be awarded for computing the compensation payable to the Claimants. The multiplicand for computing the compensation would therefore, work out to  $Rs. 3,87,192 - 50\% + 30\% = Rs. 2,51,675$ . The deceased Satpal Singh was 40 years of age at the time of his death. Accordingly, the multiplier of 15 would be the appropriate multiplier as per the table set out in *Sarla Verma*. Multiplying the multiplicand of Rs. 2,51,675 by the multiplier of 15, the loss of dependency payable to the Claimants would work out to Rs. 37,75,125. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in *Pranay Sethi* and *Magma General*, the following amounts are awarded under the conventional heads :-

- i) Loss of Estate: Rs. 15,000
- ii) Loss of Consortium:
  - a) Spousal Consortium: Rs. 40,000
  - b) Parental Consortium:  $40,000 \times 3 = Rs. 1,20,000$
- iii) Funeral Expenses : Rs. 15,000

The deduction of 50% made by the MACT and the High Court towards contributory negligence is affirmed. [Paras 9.3 – 9.8][691-C-H; 692-A]

*National Insurance Co. Ltd. v. Pranay Sethi & Ors.*  
(2017) 16 SCC 680 : [2017] 13 SCR 100 – followed.

*Magma General Insurance Co. Ltd. v. Nanu Ram & Ors.*  
(2018) 18 SCC 130 – relied on.

1.3 Claimants are awarded compensation of Rs. 19,82,563. The deceased Satpal Singh had died on 18.11.1998. His dependants have been pursuing legal proceedings for grant of compensation since the past 22 years. As a consequence, Interest @12% p.a. be paid on the total compensation awarded, from the date of filing the claim petition, till realization. The Claimant No.

- A 1 i.e. widow of the deceased has suffered permanent disability of 25% in this accident. She has single-handedly raised her three minor children, and eked out her livelihood through agricultural activity. 50% of the total compensation (inclusive of interest) be given to the Claimant No. 1 i.e. widow of the deceased, and the balance 50% be divided equally between the three children.
- B [Paras 10, 13 and 14][692-A; 693-A-B]
  - Reshma Kumari & Ors. v. Madan Mohan & Anr. (2013) 9 SCC 65; Munna Lal Jain & Ors. v. Vipin Kumar Sharma & Ors. (2015) 6 SCC 347 : [2015] 7 SCR 207;*
- C *Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors. (2019) 5 SCC 554 : [2019] 6 SCR 941 – relied on.*
- D *General Manager, Kerala S.R.T.C., Trivandrum v. Susamma Thomas & Ors. (1994) 2 SCC 176; U.P.S.R.T.C. & Ors. v. Trilok Chandra & Ors. (1996) 4 SCC 362 : [1996] 2 Suppl. SCR 443; New India Assurance Co. Ltd. v. Charlie & Ors. (2005) 10 SCC 720 : [2005] 2 SCR 1173; Sube Singh & Ors. v. Shyam Singh (dead) & Ors. (2018) 3 SCC 18 : [2018] 1 SCR 636; Sunita Tokas and Ors. v. New India Insurance Co. Ltd. and Ors. 2019 (11) SCALE 24 – referred to.*
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Case Law Reference

	[2009] 5 SCR 1098	relied on	Para 8
	(2013) 9 SCC 65	relied on	Para 8
F	[2017] 13 SCR 100	followed	Para 8
	(1994) 2 SCC 176	referred to	Para 8
	[1996] 2 Suppl. SCR 443	referred to	Para 8
	[2005] 2 SCR 1173	referred to	Para 8
G	[2015] 7 SCR 207	relied on	Para 8
	[2018] 1 SCR 636	referred to	Para 8
	[2019] 6 SCR 941	relied on	Para 8
	(2018) 18 SCC 130	relied on	Para 8
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2705 A  
of 2020.

From the Judgment and Order dated 10.03.2014 of the High Court  
of Punjab and Haryana at Chandigarh in FAO No. 2294 of 2001.

With

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Civil Appeal No. 2706 of 2020.

Ravi Bakshi, Yash Pal Dhingra, Gagan Gupta, Ananth Mishra,  
Advs. for the appearing parties.

The Judgment of the Court was delivered by

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**INDU MALHOTRA, J.**

Leave granted.

1. The deceased – Satpal Singh was residing in Doha, Qatar since 1984. The Employment Contract Form of the deceased dated 21.08.1984 revealed that he was engaged as a labourer initially for a period of one year on a salary of 750 Qatari Riyal p.m., and continued to live in Qatar where he was employed, till he passed away in a motor vehicle accident in India in 1998.

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2. Satpal Singh was visiting India in November, 1998. On 18.11.1998, he was riding a scooter, with his wife as the pillion rider, when he met with an accident with a Maruti car bearing No. CH-01-M-6284 coming from the opposite direction.

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FIR No. 204 dated 18.11.1998 was lodged u/S. 304A, 279, 337, 427 IPC at P.S. Sadar, Rajpura against the driver and owner of the offending car.

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The FIR was lodged on the statement of Satinder Kaur – widow of the deceased, wherein she had stated that the accident had occurred due to the rash and negligent driving of the driver of the Maruti car. It was further stated that the accident took place while her husband was over-taking a tractor-trolley, when the Maruti car was coming at a high speed from the opposite side. This led to the accident, and caused the death of Satpal Singh on the spot.

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The Claimant No. 1 i.e. wife of the deceased was also seriously injured. Her right leg and jaw were fractured. The Claimant No. 1 remained in hospital for over a month. A rod was inserted in her leg, and

- A remained in plaster for about 7 to 8 months. The accident led to 25% permanent disability, which is borne out from the Disability Certificate issued by the Civil Surgeon, Patiala.
3. Claim Petition bearing M.A.C. Application No. 152 was filed before the MACT, Patiala (Punjab) on 24.12.1998 u/S. 166 of the Motor Vehicles Act, 1988 by the widow of the deceased, on behalf of herself and her 3 minor children for compensation on the death of her husband. The Claimants prayed for compensation of Rs. 50 lacs, alongwith Interest @18% p.a. to be paid jointly and severally by the Insurance Company, and the driver and owner of the Maruti car.
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- 3.1. A copy of the FIR was placed before the MACT, as also the Post Mortem Report which recorded the serious head injuries caused by the road accident on the deceased.
  - 3.2. The Claimants filed a photocopy of the Employment Contract Form dated 10.07.1984 certified by the Indian Embassy at Doha, which records the engagement of the deceased as a labourer by the firm Ali Al Fayyad Trading Contracting Est., Doha on a salary of 750 Qatari Riyal p.m., when he first shifted to Qatar.
- D
- 3.3. The Claimants also placed on record a letter dated 27.06.1997 purported to have been issued by his employer – the High Speed Group to the Counsellor, New Zealand Consulate for issuance of a visa. It was stated that the General Manager of their company, Mr. Satpal Harbans Singh was intending to spend his annual vacation during June – August 1997 in New Zealand, and had been employed by this organization since 1984, and was now drawing a salary of \$ 6,700 p.m.
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- It is relevant to note that this letter was not attested by the Indian Embassy at Doha.
- 3.4. The Claimants placed on record the Passport of the deceased, which reveals his date of birth as 10.08.1958. The deceased was a little over 40 years of age at the time of the accident.
- The passport entries reveal frequent foreign travel during the period 1986 till 1998 when he expired.

4. The MACT *vide* Award dated 30.03.2001 held that a perusal of the first statement made by Claimant No. 1 – widow of the deceased in the FIR, revealed that her husband was over-taking a tractor-trolley when the accident occurred, because the Maruti car was coming at a high speed from the opposite side. Consequently, the MACT held that it was a case of contributory negligence on the part of the deceased Satpal Singh, as also on the part of the driver of the Maruti car.

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4.1. The MACT applied the multiplier of 13, since the deceased was a little over 40 years of age at the time of his death.

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4.2. With respect to the income of the deceased, the MACT held that the letter dated 27.06.1997 issued by the High Speed Group, had not been proved by the Claimants, nor was it attested by the Indian Embassy at Doha, and therefore refused to take it into consideration.

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4.3. The MACT assumed that the income of the deceased Satpal Singh should be assessed just as an ordinary skilled worker, and assessed his income at Rs. 4,000 p.m. The amount of dependency was taken as Rs. 2,500 p.m.  $\times$  12  $\times$  13 = Rs. 3.90 lacs. Since it was a case of contributory negligence, the compensation was reduced by 50%, which worked out to Rs. 1.80 lacs. An amount of Rs. 10,000 was awarded towards funeral expenses.

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The compensation of Rs. 1,90,000 would carry Interest @ 9% p.a. from the date of filing the claim, till the date of payment.

4.4. The MACT held all three respondents i.e. the driver of the Maruti car, the owner of the car, and the Insurance Company liable to pay the compensation awarded, jointly and severally.

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5. Aggrieved by the aforesaid Judgment, the Claimants filed an Appeal being F.A.O. No. 2294/2001 before the High Court for further enhancement.

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5.1. The High Court *vide* the impugned Judgment and Order dated 10.03.2014 upheld the findings of the MACT regarding contributory negligence.

5.2. With respect to the income of the deceased, the High Court proceeded on the basis of the letter dated 27.06.1997 issued

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- A by the High Speed Group, , wherein it was stated that Satpal Singh was working as a General Manager, and drawing a salary of \$ 6,700 p.m. which would be equivalent to Rs. 2,68,000 p.m. at the time when the claim was filed.
- B 5.3. The High Court assessed the compensation on the basis of the income at Rs. 2,68,000 p.m. and adopted the multiplier of 12.  
The contribution to the family was fixed at 50% of his income, which would approximately be Rs. 1,34,000 p.m.
- C Rs. 50,000 was awarded towards loss of estate, and Rs. 10,000 towards funeral expenses.  
On this basis, the total compensation payable to the Claimants was computed at Rs. 96,78,000 after making a partial abatement of 50% towards contributory negligence.
- D The High Court held that since 50% of the income was provided to the wife and children, it was not necessary to provide for loss of consortium, and loss of love and affection.
- E 5.4. The High Court held the Insurance Company to be liable to pay the compensation, which would be distributed equally between the widow and children of the deceased. The enhanced amount of compensation would carry Interest @7.5% p.a. from the date of filing the claim, till realization.
- F 6. The Appellant – Insurance Company filed SLP (Civil) No. 28548/2014 to challenge the impugned Judgment.  
The Claimants also filed an SLP bearing SLP (Civil) No. 12520/2015 claiming further enhancement of compensation.
- G 7. We have perused the pleadings and the documentary evidence placed on record before the Courts below, and have considered the oral submissions made by the Counsel for the parties.  
We are of the view that the judgments of both the MACT and the High Court are liable to be set aside, and the compensation is required to be awarded in accordance with the law expounded by this Court in various decisions.
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**8. Relevant principles for assessment of compensation in cases of death as evolved by judicial dicta.** A

The criteria which are to be taken into consideration for assessing compensation in the case of death, are : (i) the age of the deceased at the time of his death; (ii) the number of dependants left behind by the deceased; and (iii) the income of the deceased at the time of his death. B

In *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*,<sup>1</sup> this Court held that to arrive at the loss of dependency, the tribunal ought to take into consideration three factors :-

- i) Additions/deductions to be made for arriving at the income; C
- ii) The deduction to be made towards the personal living expenses of the deceased; and
- iii) The multiplier to be applied with reference to the age of the deceased.

In order to provide uniformity and consistency in awarding D compensation, the following steps are required to be followed :-

***"Step 1 (Ascertaining the multiplicand)***

*The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.* E

***Step 2 (Ascertaining the multiplier)***

*Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.* F G

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<sup>1</sup> (2009) 6 SCC 121. H

- A      ***Step 3 (Actual calculation)***
- The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family. Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- may be added as loss of estate.*
- B      *Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.*
- C      *The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added."*

(emphasis supplied)

- D      **(a) Deduction for personal and living expenses**
- The personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the family. In *Sarla Verma (supra)* (paras 30, 31 and 32), this Court took the view that it was necessary to standardize the deductions to be made under the head personal and living expenses of the deceased.
- E      Accordingly, it was held that :
- where the deceased was married, the deduction towards personal and living expenses should be 1/3<sup>rd</sup> if the number of dependant family members is two to three;
  - 1/4<sup>th</sup> if the number of dependant family members is four to six; and
  - 1/5<sup>th</sup> if the number of dependant family members exceeds six.
  - If the deceased was a bachelor, and the claim was filed by the parents, the deduction would normally be 50% as personal and living expenses of the bachelor.

Subject to evidence to the contrary, the father was likely to have his own income, and would not be considered to be a dependant. Hence, the mother alone will be considered to be a dependant.

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In the absence of any evidence to the contrary, brothers and sisters of the deceased bachelor would not be considered to be dependants, because they would usually either be independent and earning, or married, or dependant on the father.

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Thus, even if the deceased was survived by parents and siblings, only the mother would be considered to be a dependant. The deduction towards personal expenses of a bachelor would be 50%, and 50% would be the contribution to the family.

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- However, in a case where the family of the bachelor was large and dependant on the income of the deceased, as in a case where he had a widowed mother, and a large number of younger non-earning sisters or brothers, his personal and living expenses could be restricted to 1/3<sup>rd</sup>, and contribution to the family be taken as 2/3<sup>rd</sup>.

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A three-judge bench in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*,<sup>2</sup> affirmed the standards fixed in *Sarla Verma (supra)* with respect to the deduction for personal and living expenses, and held that these standards must ordinarily be followed, unless a case for departure is made out. The Court held :

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*"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants."*

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*42. In our view, the standards fixed by this Court in Sarla Verma 2009 (6) SCC 121 on the aspect of deduction for personal living expenses in paragraphs 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out."*

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<sup>2</sup>(2013) 9 SCC 65.

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- A      43. In what we have discussed above, we sum up our conclusions as follows:

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*43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily*

- B      *follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma 2009 (6) SCC 121 subject to the observations made by us in para 38 above. ... ”*

(emphasis supplied)

- C      A Constitution Bench of this Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.*,<sup>3</sup> held that the standards fixed in *Sarla Verma (supra)* would provide guidance for appropriate deduction towards personal and living expenses, and affirmed the conclusion in para 43.6 of *Reshma Kumari (supra)*.

D      **(b) Determination of Multiplier**

- E      With respect to the multiplier, the Court in *Sarla Verma (supra)*, prepared a chart for fixing the applicable multiplier in accordance with the age of the deceased, after considering the judgments in *General Manager, Kerala S.R.T.C., Trivandrum v. Susamma Thomas & Ors.*,<sup>4</sup> *U.P.S.R.T.C. & Ors. v. Trilok Chandra & Ors.*,<sup>5</sup> and *New India Assurance Co. Ltd. v. Charlie & Ors.*<sup>6</sup>

The relevant extract from the said chart i.e. Column 4 has been set out hereinbelow for ready reference :-

	<b>Age of the deceased</b>	<b>Multiplier (Column 4)</b>
F	Upto 15 years	-
	15 to 20 years	18
	21 to 25 years	18
G	26 to 30 years	17
	31 to 35 years	16

<sup>3</sup> (2017) 16 SCC 680.

<sup>4</sup> (1994) 2 SCC 176.

<sup>5</sup> (1996) 4 SCC 362.

H      <sup>6</sup> (2005) 10 SCC 720.

36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	9
61 to 65 years	7
Above 65 years	5

The Court in *Sarla Verma (supra)* held :-

“42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

(emphasis supplied)

In *Reshma Kumari (supra)*, this Court affirmed Column 4 of the chart prepared in *Sarla Verma (supra)*, and held that this would provide uniformity and consistency in determining the multiplier to be applied. The Constitution Bench in *Pranay Sethi (supra)* affirmed the chart fixing the multiplier as expounded in *Sarla Verma (supra)*, and held :-

“44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and “income” means actual income less than the tax paid. The multiplier has already been fixed in Sarla Verma which has been approved in Reshma Kumari with which we concur.

...

- A        59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.”

(emphasis supplied)

- B        **(c) Age of the deceased must be the basis for determining the multiplier even in case of a bachelor.**

In *Sarla Verma (supra)*, this Court held that the multiplier should be determined with reference to the age of the deceased. This was subsequently affirmed in *Reshma Kumari (supra)*, and followed in a line of decisions.

- C        A three-judge bench in *Munna Lal Jain & Ors. v. Vipin Kumar Sharma & Ors.*,<sup>7</sup> held that the issue had been decided in *Reshma Kumari (supra)*, wherein this Court held that the multiplier must be with reference to the age of the deceased. The decision in *Munna Lal Jain (supra)* was followed by another three-judge bench of this Court in *Sube Singh & Ors. v. Shyam Singh (dead) & Ors.*<sup>8</sup>

The Constitution Bench in *National Insurance Company Limited v. Pranay Sethi & Ors.*,<sup>9</sup> affirmed the view taken in *Sarla Verma (supra)* and *Reshma Kumari (supra)*, and held that the age of the deceased should be the basis for applying the multiplier.

- E        Another three-judge bench in *Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors.*,<sup>10</sup> traced out the law on this issue, and held that the compensation is to be computed based on what the deceased would have contributed to support the dependants. In the case of the death of a married person, it is an accepted norm that the age of the deceased would be taken into account. Thus, even in the case of a bachelor, the same principle must be applied.

The aforesaid legal position has recently been re-affirmed by this Court in *Sunita Tokas and Ors. v. New India Insurance Co. Ltd. and Ors.*<sup>11</sup>

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<sup>7</sup> (2015) 6 SCC 347.

<sup>8</sup> (2018) 3 SCC 18.

<sup>9</sup> (2017) 16 SCC 680.

<sup>10</sup> (2019) 5 SCC 554.

H        <sup>11</sup> 2019 (11) SCALE 24.

**(d) Future Prospects**

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In the wake of increased inflation, rising consumer prices, and general standards of living, future prospects have to be taken into consideration, not only with respect to the status or educational qualifications of the deceased, but also other relevant factors such as higher salaries and perks which are being offered by private companies these days. The dearness allowance and perks from which the family would have derived monthly benefit, are required to be taken into consideration for determining the loss of dependency.

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In *Sarla Verma (supra)*, this Court held :

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*"24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."*

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(emphasis supplied)

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In *Pranay Sethi (supra)*, the Constitution Bench evaluated all the judicial precedents on the issue of future prospects including *Sarla Verma (supra)*, and devised a fixed standard for granting future prospects. It was held :

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- A “57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined
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*to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.*

59. *The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*

59. *In view of the aforesaid analysis, we proceed to record our conclusions:*

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- A      *59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years.*
- B      *In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
- C      *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component. ... ”*
- D      (emphasis supplied)

**(e) Three Conventional Heads**

- E      In *Pranay Sethi (supra)*, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses.

- F      The Court held that the conventional and traditional heads, cannot be determined on percentage basis, because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads.
- G      a) **Loss of Estate – Rs. 15,000 to be awarded**  
       b) **Loss of Consortium**

Loss of Consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

In *Magma General Insurance Co. Ltd. v. Nanu Ram & Ors.*,<sup>12</sup> this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

Modern jurisdictions world-over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

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<sup>12</sup> (2018) 18 SCC 130.

- A        The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.
- B        Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.
- The amount to be awarded for loss consortium will be as per the amount fixed in *Pranay Sethi (supra)*.
- C        At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in *Pranay Sethi (supra)*, has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

- D        In *Magma General (supra)*, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.
- E        The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

**c) Funeral Expenses – Rs. 15,000 to be awarded**

- F        The aforesaid conventional heads are to be revised every three years @10%.
- G        9. We will now apply the law laid down by this Court in the aforesaid judgments, to compute the compensation payable to the dependants of the deceased Satpal Singh in the present case.
- 9.1. We will first deal with the issue of assessing the income of the deceased. The MACT assumed that the deceased was a skilled worker, and fixed his income at Rs. 4,000 p.m.
- H        It is pertinent to note that the income of the deceased in 1984 as per his Employment Contract Form dated

21.08.1984, was 750 Qatari Riyal p.m. This document was A  
duly certified by the Indian Embassy at Doha.

The accident occurred on 18.11.1998, which is 15 years B  
after he shifted to Doha. The MACT could not have  
assumed the income of the deceased to have remained at  
Rs. 4,000 p.m. after having worked for over 14 years in  
Doha.

The High Court has also erroneously awarded C  
compensation on the basis of the letter dated 27.06.1997  
purported to have been written by the High Speed Group to  
the Counselor, New Zealand Consulate for issuance of a  
visa to the deceased Satpal Singh who was engaged by  
their organization since 1984, and was drawing a salary of  
\$ 6,700 p.m.

The Insurance Company has seriously disputed the D  
authenticity of this letter.

We have perused the said letter, and are inclined to E  
accept the submission made on behalf of the Insurance  
Company, that the said document was not attested by the  
Indian Embassy at Doha, as per the Diplomatic & Consular  
Offices Oaths and Fees Act, 1948.

The said document was not proved by the Claimants, F  
and cannot form the basis of computing the income of the  
deceased.

The letter dated 27.06.1997 seems to be suspicious for G  
two other grounds. One, as per the Employment Contract  
Form dated 21.08.1984 certified by the Indian Embassy at  
Doha, the deceased was engaged by the firm Ali Al Fayyad  
Trading Contracting Est., Doha in 1984. The letter dated  
27.06.1997 issued by the High Speed Group, stated that the  
deceased was employed with them since 1984. This leads  
to a serious doubt about the authenticity of the letter.  
Furthermore, the salary is mentioned in U.S. Dollars, rather  
than Qatari Riyal, even though the High Speed Group is a  
local company in Qatar.

Second, the letter dated 27.06.1997 was addressed to H  
the Counselor, New Zealand Consulate for a visa to be

- A issued to the deceased for his annual vacation to New Zealand during the period June – August, 1997. The passport entries however, do not show that the deceased travelled to New Zealand.
- B Consequently, we have serious doubts about the authenticity and veracity of the letter dated 27.06.1997, and decline to make it the basis for computing the income of the deceased at the time of his death.
- C The High Court by relying on the letter dated 27.06.1997, awarded an amount of Rs. 1,93,56,000 to the Claimants, which after reducing by 50% on account of contributory negligence, worked out to Rs. 96,78,000. It is pertinent to note that the Claimants had prayed for an amount of Rs. 50 lacs as compensation in their claim petition before the MACT. The High Court has committed an error in awarding such an exorbitant amount on the basis of an unverified document, the authenticity of which was seriously disputed.
- E In the absence of any other evidence being produced by the Claimants, the income of the deceased would be required to be computed by taking his base salary at 750 Qatari Riyal p.m. in 1984 as a skilled labourer, as reflected in his Employment Contract Form.
- F A perusal of the passport entries of the deceased reveal that he had continued to remain in employment for a period of over 14 years in Qatar till he passed away in 1998. He was evidently doing fairly well, since there are numerous entries of foreign travel in his passport during the 14 years of his stay in Doha. By taking an increment of 10% per annum from 1984 till 1998, the notional income of the deceased could be fixed at 2590 Qatari Riyal p.m., which can be rounded off to 2600 Qatari Riyal p.m. As per the exchange rate prevailing in 1998, 1 Qatari Riyal was equivalent to 12.41 INR. Accordingly, the income of the deceased would work out to  $2600 \times 12.41 =$  Rs. 32,266 p.m. i.e. Rs. 3,87,192 p.a.
- G 9.2. Even though in *Sarla Verma (supra)*, it was held that the deduction towards personal and living expenses should be
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1/4<sup>th</sup>, if the number of defendant family members is four, in the present case, we feel that 50% of the income of the deceased would be required to be deducted, since he was living in a foreign country. A

The deceased had to maintain an establishment there, and incur expenditure for the same in commensurate with the high cost of living in a foreign country. Therefore, we are of the view that the High Court rightly deducted 50% of his income towards personal and living expenses. B

9.3. In the present case, the courts below failed to award any amount towards future prospects. The deceased Satpal Singh was just over 40 years of age at the time of his death. As per the judgment of the Constitution Bench in *Pranay Sethi (supra)*, future prospects @30% are to be awarded for computing the compensation payable to the Claimants. C

9.4. The multiplicand for computing the compensation would therefore, work out to Rs. 3,87,192 – 50% + 30% = Rs. 2,51,675. D

9.5. The deceased Satpal Singh was 40 years of age at the time of his death. Accordingly, the multiplier of 15 would be the appropriate multiplier as per the table set out in *Sarla Verma (supra)*. E

9.6. Multiplying the multiplicand of Rs. 2,51,675 by the multiplier of 15, the loss of dependency payable to the Claimants would work out to Rs. 37,75,125.

9.7. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependents. On the basis of the judgments in *Pranay Sethi (supra)* and *Magma General (supra)*, the following amounts are awarded under the conventional heads :- F

i) Loss of Estate: Rs. 15,000 G

ii) Loss of Consortium:

a) Spousal Consortium: Rs. 40,000

b) Parental Consortium:  $40,000 \times 3 = \text{Rs. } 1,20,000$

iii) Funeral Expenses : Rs. 15,000 H

A            9.8. We affirm the deduction of 50% made by the MACT and the High Court towards contributory negligence.

10. In light of the aforesaid discussion, the Claimants are awarded compensation as follows :

B	i) Income :	Rs. 3,87,192 p.a.
	ii) Deduction towards Personal Expenses :	50%
	iii) Future Prospects :	30%
C	iv) Multiplicand:	Rs. 2,51,675 (3,87,192-50%+30%)
	v) Multiplier :	15
	vi) Loss of Dependency :	Rs. 37,75,125 (2,51,675 x 15)
D	vii) Funeral Expenses :	Rs. 15,000
	viii) Loss of Estate :	Rs. 15,000
	ix) Loss of Spousal Consortium :	Rs. 40,000
E	x) Loss of Parental Consortium to each of the 3 children :	Rs. 1,20,000
	xi) Total compensation :	Rs. 39,65,125
	xii) Deduction on account of contributory negligence :	50%
F	<b>Total compensation to be paid :</b>	<b>Rs. 19,82,563</b>

G            11. This Court *vide* Order dated 13.10.2014 had stayed the operation of the impugned judgment subject to the Appellant – Insurance Company depositing a sum of Rs. 10 lacs before the Trial Court. The Claimants were granted liberty to withdraw the same.

H            12. The Appellant – Insurance Company is directed to pay the balance amount of compensation within a period of twelve weeks' from the date of this judgment.

13. The deceased Satpal Singh had died on 18.11.1998. His dependants have been pursuing legal proceedings for grant of compensation since the past 22 years. As a consequence, we deem it appropriate to direct that Interest @12% p.a. be paid on the total compensation awarded, from the date of filing the claim petition, till realization. A

14. The Claimant No. 1 i.e. widow of the deceased has suffered permanent disability of 25% in this accident. She has single-handedly raised her three minor children, and eked out her livelihood through agricultural activity. B

We direct that 50% of the total compensation (inclusive of interest) be given to the Claimant No. 1 i.e. widow of the deceased, and the balance 50% be divided equally between the three children. C

15. The Civil Appeals are disposed of in the aforesaid terms.

Divya Pandey

Appeals disposed of.