

A THE NEW INDIA ASSURANCE COMPANY LIMITED

v.

SMT. SOMWATI AND OTHERS

(Civil Appeal No. 3093 of 2020)

B SEPTEMBER 07, 2020

[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

- Motor Vehicles – Accident – Claims – Compensation – Consortium – Appeals filed by Insurance Companies questioning the judgments of the High Courts arising out of the award by MACT*
- C with regard to the compensation awarded in favour of the claimants under two heads, i.e. ‘loss of consortium’ and ‘loss of love and affection’ – The appellants submitted that the amount granted under the head ‘loss of love and affection’ is wholly without jurisdiction and that National Insurance Company Ltd. v. Pranay Sethi and Ors.
- D has only referred to spousal consortium and no other consortium, hence, there is no justification for allowing the parental consortium and filial consortium – Held: The Constitution Bench in Pranay Sethi has referred to amount of Rs. 40,000/- to the ‘loss of Consortium’ but the Constitution Bench had not addressed the issue as to whether Consortium of Rs. 40,000/- is only payable as a spousal consortium
- E – The judgment of Pranay Sethi cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife – Further, the Three Judges Bench in United India Insurance Company Ltd. has categorically laid down that apart from spousal consortium, parental and filial consortium is payable – It was further laid down that ‘loss of love and affection’ is comprehended in ‘loss of consortium’, hence, there is no justification to award compensation towards ‘loss of love and affection’ as a separate lead – Thus, the impugned judgments of the High Courts awarding consortium to each of the claimants in accordance with law which does not warrant any interference – However, the submission of the
- F appellant that there is no justification for award of compensation under separate head ‘loss of love and affection’ is accepted.

Partly allowing the appeals, the Court

HELD: 1. A three-Judge Bench in *United India Insurance Company Ltd. versus Satinder Kaur alias Satvinder Kaur and others*, (2020) SCC Online 410, had reaffirmed the view of two-Judge

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Bench in *Magma General Insurance Company Ltd.*. The Three-Judge Bench in the above case approved the comprehensive interpretation given to the expression ‘consortium’ to include spousal consortium, parental consortium as well as filial consortium. Three-Judge Bench however further laid down that ‘loss of love and affection’ is comprehended in ‘loss of consortium’, hence, there is no justification to award compensation towards ‘loss of love and affection’ as a separate head. [Paras 33 and 34][1044-H; 1047-C-D] A

2. The Constitution Bench in Pranay Sethi has also not under conventional head included any compensation towards ‘loss of love and affection’ which have been now further reiterated by three-Judge Bench in *United India Insurance Company Ltd.*. It is thus now authoritatively well settled that no compensation can be awarded under the head ‘loss of love and affection’. [Para 35] [1047-D-E] C

3. The counsel for the appellant has submitted that Pranay Sethi has only referred to spousal consortium and no other consortium was referred to in the judgment of Pranay Sethi, hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in Pranay Sethi has referred to amount of Rs.40,000/- to the ‘loss of consortium’ but the Constitution Bench had not addressed the issue as to whether consortium of Rs.40,000/- is only payable as spousal consortium. The judgment of Pranay Sethi cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife. [Para 38][1148-E-F] D

4. The Three-Judge Bench in *United India Insurance Company Ltd.* has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. This Court feel itself bound by the above judgment of Three Judge Bench. This Court, thus, cannot accept the submission of the appellant that the amount of consortium awarded to each of the claimants is not sustainable. [Para 39][1148-G] F G

5. This Court thus, found the impugned judgments of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. This Court, however, accept the submissions of the H

- A **appellant that there is no justification for award of compensation under separate head ‘loss of love and affection’. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head ‘loss of love and affection’.**
[Para 40][1148-H; 1149-A]
- B *General Manager Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs) and Others (1994) 2 SCC 176; Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another (2009) 6 SCC 121 : [2009] 5 SCR 1098; United India Insurance Company Ltd. v. Satinder Kaur alias Satvinder Kaur and Others (2020) SCC Online SC 410 – relied on.*
- C *Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram and Ors. (2018) 18 SCC 130; National Insurance Company Ltd. v. Pranay Sethi and Others, (2017) 16 SCC 680 : [2017] 13 SCR 100; Sangita Arya and Others v. Oriental Insurance Company Ltd. and Others (2020) SCC Online SC 513; M.H.Uma Maheshwari and Others v. United India Insurance Company Ltd. (2020) 6 SCC 400 – referred to.*
- D *Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram and Ors. (2018) 18 SCC 130; National Insurance Company Ltd. v. Pranay Sethi and Others, (2017) 16 SCC 680 : [2017] 13 SCR 100; Sangita Arya and Others v. Oriental Insurance Company Ltd. and Others (2020) SCC Online SC 513; M.H.Uma Maheshwari and Others v. United India Insurance Company Ltd. (2020) 6 SCC 400 – referred to.*

<u>Case Law Reference</u>		
(2018) 18 SCC 130	referred to	Para 7
[2017] 13 SCR 100	referred to	Para 15
(1994) 2 SCC 176	relied on	Para 24
[2009] 5 SCR 1098	relied on	Para 26
F (2020) 6 SCC 400	referred to	Para 44

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3093 Of 2020.

G From the Judgment and Order dated 25.02.2019 of the High Court of Judicature at Allahabad, in First Appeal from order No. 1894 of 2003.
 WITH

Civil Appeal Nos. 3094, 3095, 3096, 3097, 3098, 3099 Of 2020.

Pankaj Seth, Ms. Manjeet Chawla, Sudhir Naagar, Rohit Kumar Sinha, T. Mahipal, Nishant Singh, Abhishek Kumar Singh, Sunil Kumar

H Verma, V. N. Raghupathy, Advs. for the appearing parties.

The Judgment of the Court was delivered by

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ASHOK BHUSHAN, J.

1. Leave granted.

2. These appeals raising common questions of law have been heard together and are being decided by this common judgment. For deciding these appeals, it is sufficient to notice the facts in detail in **Civil Appeal No. 3093/2020(arising out of SLP(C) No.23478 of 2019), New India Assurance Company Limited Versus Smt. Somwati and Others** and brief facts in other appeals.

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3. All these appeals have been filed by three Insurance Companies, i.e., New India Assurance Company Limited, Cholamandalam MS General Insurance Company Ltd. and The Oriental Insurance Company Ltd. questioning the judgments of the High Courts arising out of the award by Motor Accident Claims Tribunal (MACT) with regard to the compensation awarded in favour of the claimants under two heads, i.e., "Loss of Consortium" and "loss of love and affection."

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Civil Appeal NO. 3093/2020(arising out of SLP(C)No.23478 of 2019), New India Assurance Company Limited versus Smt. Somwati and Others

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4. Ram Jiyawan, the husband of Smt. Somwati died in a Motor Vehicle accident on 06.12.2001 leaving behind his widow Smt. Somwati and seven minor children. Claim petition No.7 of 2002 was filed under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.15,25,000/- . The MACT by award dated 22.03.2003 allowed a claim of Rs. 1,67,000/- with 9% interest. An appeal was filed by Smt. Somwati Devi and others in the High Court being F.A.F.O.No.1894 of 2003. The High Court allowed the appeal of the claimants and awarded a compensation of Rs.12,54,000/- . Against the judgment of the High Court dated 25.02.2019, this appeal has been filed by the Insurance Company. The grant of compensation under two heads has been challenged in this appeal, i.e., item No. (vi) and (viii), which are to the following effect:-

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"(vi)Loss of love and affection= Rs.4,00,000/-(Rs.50,000/- to each of the eight claimants).

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(viii) Loss of Parental Consortium to claimant/appellant nos.2 to 8= Rs.2,80,000/-(Rs.40,000/- to each of the claimants)."

5. This Court while issuing notice on 24.04.2019 passed following order:-

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Delay condoned.

Issue notice returnable in four weeks limited to the issue whether both consortium and loss of love and affection could have been awarded by the High Court in this case.

B Dasti service, in addition, is permitted.

Until further orders, there shall be stay of 2 payment of the compensation amount payable to the claimants towards clause (vi) of the impugned judgment which reads as under :

C "Loss of love and affection=Rs. 4,00,000/- (Rs. 50,000/- to each of the eight claimants)"

6. In pursuance of notice issued by this Court, the respondents have appeared and filed reply as well as written submissions.

Civil Appeal No. 3094/2020(arising out of SLP(C)No.4801 of 2020), New India Assurance Company Limited Versus Sangita Devi and Others

7. Sanjay Kumar, husband of the respondent Sangeeta Devi died of Motor Vehicle accident on 12.01.2015. Claim Petition bearing MACP No.862 of 2016 was filed by the respondents, which claim petition was allowed by Motor Accident Claims Tribunal, granting a compensation of

E Rs.17,71,000/- with interest of 9%. Claimants filed an appeal in the High Court. The High Court following the judgment of this Court in ***Magma General Insurance Company Ltd. Versus Nanu Ram @ Chuhru Ram and Ors., (2018) 18 SCC 130***, granted compensation for 'loss of love and affection' at the rate of Rs.50,000/- to each of eight claimants and

F similarly, under the head 'Loss of consortium' at the rate of Rs.40,000/- to all the eight claimants. Aggrieved by the judgment of the Delhi High Court, Insurance Company has filed appeal challenging the order of the High Court.

Civil Appeal No. 3095/2020(arising out of SLP(C)No.4643 of 2020), New India Assurance Company Limited Versus Azmati Khatoon and Others

8. Mohd. Hasibul Bassan, died in a Motor Vehicle accident on 29.10.2007. Claim Petition was filed by respondents which has been allowed by Motor Accident Claims Tribunal granting a compensation of Rs.17,32,776/- with interest. The appellant filed an appeal in the High

H Court. The High Court granted compensation under the head 'loss of

love and affection' at the rate of Rs.50,000/- to each seven claimants A and Rs.40,000/- each to seven claimants under the head 'loss of consortium'. Aggrieved by the judgment of the Delhi High Court, Insurance Company is in appeal.

Civil Appeal No. 3096/2020 (arising out of SLP(C)No.5441 of 2020), Cholamandalam Ms General Insurance Company Limited Versus Umarani and Others B

9. The deceased Krishnasamy met with a vehicular accident on 07.09.2014 who subsequently died. Claim petition was filed by the respondents which has been allowed by Motor Vehicle Accident Compensation Tribunal granting compensation of Rs.13,60,000/-. Appeal was filed by the Insurance Company. The award under the head 'loss of consortium', an amount of Rs.One Lakh and award under the head 'loss of love and affection' an amount of Rs. Three Lakhs was confirmed by the High Court, which is challenged by Insurance Company in this appeal. C

Civil Appeal No. 3097/2020(arising out of SLP(C)No.6381 of 2020), New India Assurance Company Limited Versus Smt. Pinki and Others D

10. One Dinesh Kumar met with a motor vehicle accident on 11.06.2014 and died. Claim Petition filed by the respondents was allowed by the Motor Accident Claims Tribunal granting an amount of Rs.13,01,776/-. Claimants filed an appeal before the High Court which enhanced the compensation. The High Court granted compensation under the head 'loss of love and affection' Rs.50,000/- each to four claimants and under the head 'loss of consortium' at the rate of Rs.40,000/- each to four claimants. Aggrieved by the judgment of the High Court, Insurance Company is in this appeal. E F

Civil Appeal No. 3098/2020(arising out of SLP(C)No.7556 of 2020), New India Assurance Company Limited Versus Nanak Chand and Others

11. Gaurav died in a motor vehicle accident on 23.09.2010. Claim petition was filed by the parents of the deceased, which was allowed granting compensation of Rs.4,83,348/-. Claimants filed an appeal in the High Court which was allowed. The High Court granted compensation of Rs.50,000/- each to both the claimants under the head 'loss of love and affection' and Rs.40,000/- each to both the claimants under the G

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- A head 'loss of consortium'. Aggrieved by the judgment of the High Court, this appeal has been filed.

**Civil Appeal No. 3099/2020(arising out of SLP(C)No.8250
of 2020),The Oriental Insurance Company Limited Versus Smt.
Rinku Devi and Others**

- B 12. Birbal Kumar met with an accident on 27.07.2008 resulting in his death. Claim petition filed by the respondents claiming Rs.Twenty lakhs was allowed by the Motor Accident Claims Tribunal granting compensation of Rs.5,80,000/- . Insurance company filed an appeal. The Tribunal has awarded filial consortium at the rate of Rs.40,000/- to each C of the claimants, i.e., wife, two children and father totaling Rs.1,60,000/- . The High Court in the appeal filed by the Insurance Company further enhanced the compensation under the head 'loss of love and affection' at the rate of Rs.50,000/- to each of four claimants, i.e., enhancing total amount by Rs. Two Lakhs. Insurance Company aggrieved by the judgment of the High Court has come up with this D appeal.

13. We have heard learned counsel for the appellant as well as learned counsel for the claimants.

- E 14. In all the appeals, only issue to be considered is with regard to award of compensation to the claimant under two heads, i.e., (a)loss of consortium and (b) loss of love and affection. With regard to 'consortium', the question is as to whether it is only the wife who is entitled for consortium or the consortium can be awarded to children and parents also.

- F 15. Learned counsel for the appellants contends that the Constitution Bench of this Court in ***National Insurance Company Ltd. Versus Pranay Sethi and Others, (2017) 16 SCC 680***, has laid down that there are only three conventional heads namely (i)'loss of estate', (ii)'loss of consortium' and (iii)'funeral expenses', for which the amount determined by the Constitution Bench is Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Thus, the total amount under conventional head G was Rs.70,000/- and the amount under conventional heads could not exceed Rs.70,000/-.

H 16. It is submitted that the amount granted under the head 'loss of love and affection' is wholly without jurisdiction and further amount granted under the head 'consortium' could not be more than

Rs.40,000/- and the amount of ‘consortium’ is only payable to wife who is entitled to Rs.40,000/- and the Tribunals and the High Courts committed error in awarding amount of consortium to each of the claimant, i.e., wife, children and parents.

17. It is submitted that even after the Constitution Bench Judgment, this Court has allowed amounts under conventional heads as ‘loss of state’ Rs.15,000/-, ‘consortium’ Rs.40,000/- and ‘funeral expenses’ Rs.15,000/-. It is submitted that after the judgment of *Pranay Sethi*, this Court had confined the payment under conventional heads as per judgment of *Pranay Sethi*, the impugned judgment of the High Court awarding compensation under the head ‘loss of love and affection’ as well as ‘consortium’ to each of the claimant is contrary to the law laid down by this Court and has to be set aside.

18. An additional submission has been made by learned counsel appearing for the appellant in **The Oriental Insurance Company Ltd. Versus Smt. Rinku Devi and others**. Learned counsel submits that although MACT has erred in allowing consortium to four claimants at the rate of Rs.40,000/- but the High Court in the appeal filed by the Insurance Company further enhanced the compensation under the head ‘loss of love and affection’. The compensation could not have been enhanced on the appeal filed by the insurance company when the claimants have not filed an appeal. Learned counsel further submits that the High Court further committed an error in directing the statutory amount deposited by the appellant along with the appeal to be deposited in AASRA fund opened in Delhi High Court which ought not to have been directed since the appellant has raised substantial questions of law and the appeal deserves to be allowed.

19. Learned counsel appearing for the claimants refuting the submissions of counsel for the appellant contends that the award to each of the claimants at the rate of Rs.40,000/- under the head ‘consortium’ is in accordance with law laid down by this Court. It is submitted that the award of compensation under the head ‘consortium’ cannot be given a narrow interpretation. The amount under the head ‘consortium’ has rightly been given not only to wife but children and parents. Learned counsel for the claimant has supported the judgments of the High Court.

20. Learned counsel for the parties have also placed reliance on various judgments of this Court, which shall be referred to while considering the submissions in detail.

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- A 21. We have considered the submission of the learned counsel for the parties and have perused the record.
22. The expression ‘compensation’ is a comprehensive term which includes a claim for the damages. Compensation is by way of atonement for the injury caused.
- B 23. The claimant in a claim for award of compensation under Section 166 of Motor Vehicles Act, 1988, is entitled for just compensation. The just compensation has to be equitable and fair. The loss of life and limb can never be compensated in an equal measure but the statutory provisions under Motor Vehicles Act is a social piece of legislation which
- C has been enacted with intent and object to facilitate the claimants to get redress for the loss of the member of family, compensate the loss in some measure and to compensate the claimant to a reasonable extent.
24. We may refer to the judgment of this Court in ***General Manager Kerala State Road Transport Corporation, Trivandrum Versus Susamma Thomas(Mrs) and others, (1994) 2 SCC 176***. This court considering the concept of compensation under Motor Vehicle Act, 1939, laid down following in paragraph 5:-
- “5....The determination of the quantum must answer what contemporary society “would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his among his
- E neighbours and say with their approval that he has done the fair thing”. The amount awarded must not be niggardly since the “law values life and limb in a free society in generous scales”. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”
- F 25. In the above case also, this Court awarded the amount under the conventional head of ‘loss of consortium’.
26. Another judgment which needs to be noted is the judgment of this Court in ***Sarla Verma (Smt) and Others Versus Delhi Transport Corporation and Another, (2009) 6 SCC 121***, in which judgment in paragraph 16, this Court while elaborating the “just compensation” laid down following: -
- “5....”Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating
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to award of compensation. It is not intended to be a bonanza, A largesse or source of profit.”

27. This court also awarded an amount under the head ‘loss of consortium’ to the wife.

28. We need to notice the Constitution Bench judgment in *National Insurance Company Ltd.(supra)* which case notices the earlier judgments of this Court where compensation was awarded towards loss of consortium. In paragraph 46, the following was laid down: - B

“46. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi, the two-Judge Bench followed the traditional method and granted Rs.5000/- for transportation of the body, Rs.10,000/- as funeral expenses and Rs.10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs.5000/- under the head of loss of estate, Rs.5000/- towards funeral expenses and Rs.10,000/- towards loss of consortium. In Rajesh (2013) 9 SCC 54, the Court granted Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. It also granted Rs.1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (2012) 6 SCC 421. On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote: (Rajesh case):- C D E F

“17...In legal parlance, “consortium” is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. 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 of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. G H

- A English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.””
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29. In paragraph 52, the Constitution Bench opined that reasonable figures on conventional head namely ‘loss of estate’, ‘loss of consortium’ and ‘funeral expenses’ should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. In paragraph 52, following has been laid down:-
- D “52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, 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. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-,
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Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.” A B

30. In paragraph 59.8, the Court further held that the amount of conventional head should be enhanced at the rate of 10% every three year. In paragraph 59.8, following was held:- C

“**59.8.** 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 aforesaid amounts should be enhanced at the rate of 10% in every three years.”

31. The next judgment which needs to be noted is *Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130*, the concept of consortium was explained in paragraphs 21,22 and 23 which are as follows: - D

“21. 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’. 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. E F

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation.” G

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

- A 21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.
- B 22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. 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 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.
- C 23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a 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. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium."
- D 32. A two-Judge Bench in **Magma General Insurance Company Limited** awarded the amount of Rs.40,000/- to father and sister of the deceased. Paragraph 24 is as follows: -
- E "24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (*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."
- F 33. A three-Judge Bench in **United India Insurance Company Ltd. versus Satinder Kaur alias Satvinder Kaur and others, (2020) SCC Online 410**, had reaffirmed the view of two-Judge Bench in
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Magma General insurance Company Ltd. Three-Judge Bench from paragraph 53 to 65, dealt with three conventional heads. The entire discussion on three conventional heads of three-Judge Bench is as follows:- A

“53. 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. B

54. 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. C

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. D

a) **Loss of Estate – Rs. 15,000 to be awarded** E

b) **Loss of Consortium**

55. 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 nonpecuniary 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. F G

56. In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., 12 this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as H

- A 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.
- B 57. 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.
- C 58. 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.
- D 59. 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.
- E 60. 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.
- F 61. Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.
- G 62. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (*supra*).
- H 63. 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.

64. 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.

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65. 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.

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

34. The Three-Judge Bench in the above case approved the comprehensive interpretation given to the expression ‘consortium’ to include spousal consortium, parental consortium as well as filial consortium. Three-Judge Bench however further laid down that ‘loss of love and affection’ is comprehended in ‘loss of consortium’, hence, there is no justification to award compensation towards ‘loss of love and affection’ as a separate head.

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35. The Constitution Bench in **Pranay Sethi** has also not under conventional head included any compensation towards ‘loss of love and affection’ which have been now further reiterated by three-Judge Bench in **United India Insurance Company Ltd.(supra)**. It is thus now authoritatively well settled that no compensation can be awarded under the head ‘loss of love and affection’.

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36. The word ‘consortium’ has been defined in Black’s law Dictionary, 10th edition. The Black’s law dictionary also simultaneously notices the filial consortium, parental consortium and spousal consortium in following manner:-

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“Consortium 1. The benefits that one person, esp. A spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium.

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- **Filial consortium** A child’s society, affection, and companionship given to a parent.
- **Parental consortium** A parent’s society, affection and companionship given to a child.
- **Spousal consortium** A spouse’s society, affection and companionship given to the other spouse.”

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- A 37. The *Magma General Insurance Company Ltd.(Supra)* as well as *United India Insurance Company Ltd.(Supra)*, Three-Judge Bench laid down that the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In paragraph 87 of **United India Insurance Company Ltd. (supra)**, ‘consortium’ to all the three claimants was thus awarded. Paragraph 87 is quoted below:-
- “**87.** 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* (*supra*) and *Magma General* (*supra*), 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: $40,000 \times 3 = \text{Rs. } 1,20,000$
- iii) Funeral Expenses: Rs. 15,000”
- B 38. Learned counsel for the appellant has submitted that **Pranay Sethi** has only referred to spousal consortium and no other consortium was referred to in the judgment of **Pranay Sethi**, hence, there is no justification for allowing the parental consortium and filial consortium.
- C The Constitution Bench in **Pranay Sethi** has referred to amount of Rs.40,000/- to the ‘loss of consortium’ but the Constitution Bench had not addressed the issue as to whether consortium of Rs.40,000/- is only payable as spousal consortium. The judgment of **Pranay Sethi** cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.
- D 39. The Three-Judge Bench in *United India Insurance Company Ltd. (Supra)* has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.
- E 40. We, thus, found the impugned judgments of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. We, however,
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accept the submissions of learned counsel for the appellant that there is no justification for award of compensation under separate head 'loss of love and affection'. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head 'loss of love and affection'.

41. We may also notice Three-Judge Bench judgment of this Court relied by learned counsel for the appellant i.e. *Sangita Arya and others versus Oriental Insurance Company Ltd. and others, (2020) SCC Online 513*. Counsel for the appellant submits that this Court has granted only Rs.40,000/- towards 'loss of consortium' which is an indication that 'consortium' cannot be granted to children. In the above case, Motor Accident Claims Tribunal has awarded Rs.20,000/- to the widow towards loss of consortium and Rs.10,000/- to the minor daughter towards 'loss of love and affection'. The High Court has reduced the amount of consortium from Rs.20,000/- to Rs.10,000/-. Paragraph 16 of the judgment is to the following effect: -

"16. The consortium payable to the widow was reduced by the High Court from Rs. 20,000 (as awarded by the MACT) to Rs.10,000; the amount awarded towards loss of love and affection to the minor daughters was reduced from Rs.10,000 to Rs. 5,000. However, the amount of Rs. 5,000 awarded by the MACT towards funeral expenses was maintained."

42. This Court in the above case confined its consideration towards the income of the deceased and there was neither any claim nor any consideration that the consortium should have been paid to other legal heirs also. There being no claim for payment of consortium to other legal heirs, this Court awarded Rs.40,000/- towards consortium. No such ratio can be deciphered from the above judgment that this Court held that consortium is only payable as a spousal consortium and consortium is not payable to children and parents.

43. It is relevant to notice the judgment of this Court in *United India Insurance Ltd.* which was delivered shortly after the above Three-Judge Bench judgment of *Sangeeta Arya* specifically laid down that both spousal and parental consortium are payable which judgment we have already noticed above.

44. We may also notice one more Three-Judge Bench judgment of this Court in Civil Appeal No.2885 of 2020, *M.H.Uma Maheshwari and others versus United India Insurance Company Ltd.* decided on

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- A 12.06.2020. In the above case, the Tribunal had granted the amount of Rs.One Lakh towards loss of consortium to the wife and Rs.Three Lakhs for all the appellants towards loss of love and affection. The High Court in the above case had reduced the amount of compensation in the appeal filed by the Insurance Company. The High Court held that by awarding the amount of Rs. One Lakh towards loss of consortium to the wife,
- B Tribunal had committed error while awarding Rs.One Lakh to the first appellant towards the head of ‘loss of love and affection’. Allowing the appeal filed by the claimant, this Court maintained the order of MACT.

- C 45. In the above judgment although rendered by Three-Judge Bench, there was no challenge to award of compensation of Rs.One Lakh towards the consortium and Rs.Three Lakhs towards the loss of love and affection. The appeal was filed only by the claimants and not by the Insurance Company. The Court did not pronounce on the correctness of the amount awarded under the head ‘loss of love and affection’.
- D 46. We may also notice the additional submission advanced in **Civil Appeal No. 3099/2020 (arising out of SLP (C) No. 8250 of 2020), Oriental Insurance Company Ltd. versus Smt.Rinku Devi & Ors.** As noted above, we have taken the view that the order of the High Court awarding compensation towards ‘loss of love and affection’ at the rate of Rs.50,000/- to each of the claimants is unjustified which is being set aside in this appeal. We, further, in the above appeal also set aside the directions of the High Court in paragraph 9 by which statutory amount along with interest accrued thereon was directed to be deposited in AASRA fund.
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- F 47. In result, all the appeals are partly allowed. The award of compensation under the conventional head ‘loss of love and affection’ is set aside. The Motor Accident Claims Tribunals shall recompute the amount payable and take further steps in accordance with law.

48. All the appeals are partly allowed accordingly. No costs.