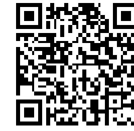


*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   ***Reserved on : 28th April 2026***
Pronounced on: 26th May 2026
Uploaded on : 29th May 2026

\+   **MAC.APP. 1181/2014 & CM APPL. 21214/2014**

RELIANCE GENERAL INSURANCE CO LTD .....Appellant
Through: Mr. A.K. Soni, Advocate. (through VC)

versus

G C AGGARWAL & ORS .....Respondents
Through: Mr. S.N. Parashar, Mr. Ritik Singh, Advocates.

\+   **MAC.APP. 535/2016**

G C AGGARWAL & ORS .....Appellants
Through: Mr. S.N. Parashar, Mr. Ritik Singh, Advocates.

versus

SOMVEER PAL & ORS (RELIANCE GENERAI. INSURANCE CO LTD). .....Respondents
Through: Mr. A.K. Soni, Advocates. (through VC) for Respondent no.3

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J

1. These are cross appeals- ***MAC APP. 1181/2014*** filed by Insurance Company and ***MAC APP. 535/2016*** filed by claimants in respect of the

impugned award dated 18th October 2014 passed by Motor Accidents Claims Tribunal ['***MACT/Tribunal***'], Dwarka Courts, New Delhi, whereby, Rs. 1,04,09,103/- alongwith interest at the rate of 7.5% per annum was awarded to the legal representative ('***LRs***') of deceased/claimants. While the Insurance Company seeks reduction of compensation, claimants seek enhancement.

The Incident

2. On 17th June 2011, at about 12 a.m., *Ms. Iti Aggarwal* (hereinafter, '***deceased***') was travelling near Naraina flyover in a Tata Swift car bearing registration no. DL-8CQ-4307. She was allegedly hit by a Tata Ace car bearing registration no. DL-1LP-1310 (hereinafter, '***offending vehicle***'), being driven in a rash and negligent manner at a high speed. The deceased was taken to Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi, where she was declared as '*brought dead*'. FIR No. 111/11 was registered at P.S. Naraina. At the time of the accident, deceased was 27 years of age and was working as a consultant with *M/s. Xebia IT Architects India Pvt. Ltd*.

3. Claim petition was filed by parents of deceased (hereinafter, ***claimants***') seeking compensation. The offending vehicle was being driven by *Mr. Somveer Pal* ('***driver***'), owned by *Mr. Dharam Pal* ('***owner***') and insured with Reliance General Insurance Company Ltd. ('***Insurance Company***').

Impugned Award

4. *G.C. Agarwal*/father of deceased examined himself as ***PW-1,*** *Om Prakash*, Income Tax Officer was examined as ***PW-2***, *Pawan Kohli*, Assistant Manager, Administration, *M/s Xebia IT Architects India Pvt. Ltd.*, Gurgaon was examined as ***PW-3***, *Jayant Yadav*, Accountant was examined as ***PW-4.*** No eyewitnesses were examined.

5. On the issue of negligence, reliance was placed upon chargesheet (***Ex. PW 1/5)*** FIR No. 111/11 (***Ex. PW 1/6)***, site plan (***Ex. PW 1/7***), arrest memo (***Ex. PW 1/8***), *postmortem* report (***Ex. PW 1/9***), mechanical inspection report (***Ex. PW 1/10***), which formed a part of the Detailed Accident Report ('***DAR***').

6. Mechanical Inspection Reports showed that the left side of deceased's vehicle and right side of the offending vehicle was damaged. Therefore, on the principle of preponderance of probabilities, the Tribunal held that the accident was caused due to the negligence of the driver and no contributory negligence was made out on the part of deceased.

7. As regards the quantum of compensation, the Tribunal relied upon the statements of ***PW-3*** and ***PW-4*** to conclude that the deceased was working as a Consultant with *M/s Xebia IT Architects India Pvt. Ltd.* and drawing a monthly salary of Rs. 80,829/-. After deducting tax deducted at source ('***TDS***') and transport allowance, her monthly income was determined to be Rs. 67,151/-. Multiplier was taken as 17, considering that she was 27 years old at the time of accident. Future prospects were

calculated at 50% and ½ was deducted towards personal and living expenses.

8. Compensation awarded by the Tribunal is tabulated as under:

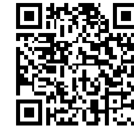
1) Loss Of Dependency	=	Rs. 1,02,74,103/-
2) Loss Of Love and Affection	=	Rs. 1,00,000/-
3) Funeral Expenses	=	Rs. 25,000/-
4) Loss Of Estate	=	Rs. 10,000/-
TOTAL		Rs.1,04,09,103/-

<u>Submissions on behalf of Insurance Company</u>

9. *Mr. A.K. Soni*, counsel appearing on behalf of Insurance Company, has challenged the impugned award on four counts.

10. ***First***, the Tribunal has wrongly assessed the issue of negligence by solely relying upon the FIR and chargesheet. No eyewitnesses were examined by the claimants. Further, the offending vehicle had been found 60 feet away from the place of accident. Therefore, the inquiry under Section 166 of Motor Vehicles Act, 1988 ('***MV Act***') had not been conducted appropriately.

11. ***Second***, on the quantum of compensation, counsel for Insurance Company contended that the claimants had already received Rs. 20 lakhs on account of Group Accident Insurance Company Scheme provided by the employer of deceased and this amount should have been deducted from the final amount of compensation. Reliance was placed upon the



decision of this Court in ***Noorjadi Khatoon and Another v. Pinku Yadav & Others,*** 2015 SCC Online Del 9949 to contend that amount paid under the group accident scheme is liable to be deducted from the amount of compensation.

12. ***Third***, income tax payable as per the applicable slab has not been deducted by the Tribunal and only TDS has been deducted while calculating monthly income of deceased. Therefore, the income tax applicable would have been 30% and ought to be deducted.

13. ***Fourth***, future prospects have been wrongly awarded at 50%, considering that the deceased was working in a private job and not a permanent job. Therefore, future prospects should be calculated at 40%.

<u>Submissions on behalf of claimants</u>

14. *Mr. S.N. Parashar*, counsel for claimants, has primarily raised two grounds for enhancement of compensation.

15. ***First,*** transport allowance has been wrongly deducted by the Tribunal and forms a part of the benchmark income. Only income tax paid is liable to be deducted from the total income. Allowances are fixed in nature and are not liable to be deducted.

16. ***Second***, interest has been awarded at 7.5% and should be increased to 9%.

17. In response to the issue of deduction towards group accident scheme, *Mr. S.N. Parashar*, counsel for claimants, stated that the benefits received from insurance policy cannot be deducted from the compensation awarded. Reliance in this regard was placed on the order

of Supreme Court passed on 8th April 2025 in ***Pramod Kumar Tiwari v Premlal Gautam & Ors.*** SLP(C) No. 26620/2023 and ***KSRTC v. P. Chandramouli***, 2026 SCC OnLine SC 375 to contend that amounts received by dependents of deceased under group insurance scheme are not liable to deducted from compensation awarded under the MV Act.

Analysis

Negligence

18. In order to assess the claim of negligence, it is imperative to examine the Mechanical Inspection Report ('***MIR***') prepared for both the vehicles. MIR of the offending vehicle recorded damage on the front right side, along with dents on the front left side door. MIR of the Swift car on the other hand, recorded that left side of the body of the car was damaged, along with damages on the front left side and dent on the rear right side. MIR also records that, considering the height of offending vehicle from the ground, it is possible that the dents on the right side of the Swift car, driven by deceased, were caused by left side of the offending vehicle.

19. This fact is also corroborated by the positioning of the Swift car after the accident, which has been recorded in the FIR and charge sheet prepared after receiving the PCR call. After reaching the spot of accident, photographs of the accident site were taken by *SI Sandeep Yadav* and no eyewitnesses were found on the spot.

20. The DD Entry records that the offending vehicle was found to be parked near the situs of the accident and upon inspection, damage on the

right side light and dents/scratches on the left side portion of the car were found. Driver of the vehicle was not present and the vehicle was taken into police possession for further investigation.

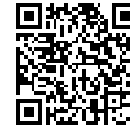
21. MACT recorded its finding on negligence by placing reliance on the MIRs, as well as, the filing of FIR and chargesheet and recorded as under:

> *"12. From two reports it could be seen that left side of the car has been heavily damaged and the right side of the offending vehicle was damaged. The photographs placed on record also supports this fact. The logical inference is that the offending vehicle must have hit the left side of the car with its right side and the impact was so heavy that the car was heavily damaged and the occupants of the car Iti Agarwal received fatal injuries. Therefore, it is believable that the accident was caused due to rash and negligent driving of the offending vehicle by Somveer. There appears to be no contributory negligence on the part of Iti Agarwal as nothing on record has come which could suggest so.*
>
> *13. As far as present case is concerned it is evident that respondent no. 1 was arrested by the Police and he had to face criminal proceedings. This supports and corroborates the case of claimants."*
>
> (emphasis added)

22. In this regard, reliance may be placed upon decision of this Court in ***National Insurance Company Ltd. v. Shehnaj Begum & Ors.*** 2026:DHC:3169 which applied the doctrine of *res ipsa loquitor* which states that the burden to rebut the inference of negligence shifts on the defendant. Proceedings before the Tribunal are in the nature of an inquiry, therefore, strict rules of procedure or evidence do not apply. The

assessment of negligence has to be conducted on the test of preponderance of probabilities. Relevant observations of the Court are extracted as under:

> "***Summarizing***
>
> *38. From the above discussion relating to the nature of inquiry before the Tribunal, the operation of the doctrine of res ipsa loquitur, and the applicable standard of proof, three aspects emerge clearly.*
>
> *39. First, that the proceedings before the Motor Accident Claims Tribunal are in nature of an inquiry and are not hemmed in by rules of procedure or evidence. The Supreme Court in Shila Datta (supra) [passages extracted in paragraph 20 (a) above], has elaborated on this aspect. Essentially, a claim under Section 165 of the MV Act, is neither a suit nor an adversarial lis.*
>
> *40. Tribunal holds an inquiry and makes an award to determine compensation, which ought to be just and reasonable. The procedure to be followed is summarised in the best discretion of the Tribunal. It has the power under Section 169 of MV Act to summon persons possessing special knowledge of the matters relevant to the inquiry.*
>
> *41. In Anita Sharma (supra), the Supreme Court emphasised that fault may not be found merely because Tribunals do not examine some of the best eyewitnesses, as in a criminal trial, but should do their best to analyse the material placed on record by the parties.*
>
> *42. Having clearly sketched the contours of the procedure undertaken by a Tribunal, it brings us to the second issue, which is determination of negligence. The nature of the accident and the basic facts surrounding the same are presented before the Tribunal in the form of a DAR (Detailed Accident*



Report), or through an FIR, or a recording in a police diary, along with the claim for compensation. In order to arrive at an assessment of negligence and, therefore, consequential liability in tort law, the principle of res ipsa loquitur, particularly in accident cases, is often brought into play.

43. Doctrine of res ipsa loquitur constitutes an exception to the general rule that the burden of proving negligence lies upon the claimant. The facts, "tell its own story" and "speak for itself". The fact of the accident itself sometimes constitutes evidence of negligence. The principal function of the maxim is to prevent injustice, that would be caused to a plaintiff who would otherwise be compelled to prove the precise cause of the accident and responsibility of the defendant, when the facts are unknown to plaintiff but lie only within the knowledge of defendant. The burden then shifts to the defendant, who can, by leading evidence, rebut the inference drawn by the Court based on the doctrine.

…

45. Therefore, for application of the principle, it must be shown that the offending vehicle was under the management of the defendant and that the accident was such that, in the ordinary course of things, it would not have happened if those who were in management had used proper care. Having reached a reasonable inference based on the facts of the accident and being presented with a defence raised by defendants that they exercised care to avert foreseeable harm, the issue before the Tribunal would be how to balance the two aspects and what parameter is to be applied in measuring this balance, or in assessing which side the scales tilt.

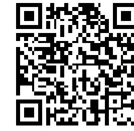
46. This brings us to the third aspect, which is the test to be applied. It is well settled that the test or the

> *burden of proof which applies is not that of beyond a reasonable doubt (as in criminal cases), but on the test of preponderance of probabilities.*"
>
> (emphasis added)

23. As regards reliance placed by the Tribunal on criminal proceedings to arrive at the finding of negligence, this Court in ***Oriental Insurance Co. v. Sunita Singh*** 2026:DHC:3190 relied upon the decision of Supreme Court in ***Ranjeet v. Abdul Kayam Neb****,* 2025 SCC OnLine SC 497 and ***Meera Bai & Ors. v. ICICI Lombard General Insurance Co. Ltd. & Anr***. 2025 INSC 600 where the Supreme Court held that in cases where there are no eye-witness and FIR having been lodged and chargesheet filed, there cannot be a finding that negligence was not established. Relevant finding of the Court in ***Sunita*** (*supra*) is extracted as under:

> "*49. Therefore, the Court is of the opinion that, in this process, the Tribunal can rely upon testimonies made in a Criminal Proceeding, which has led to filing of a charge sheet, which has not been set aside or protested, to be persuasive data to apply the test of preponderance of probabilities.*"
>
> (emphasis added)

24. Moreover, upon perusal of the order of the Metropolitan Magistrate, Dwarka which forms a part of the TCR, it is apparent that the driver admitted his guilt for offence under Section 279/304-A of Indian Penal Code, 1860 ('***IPC***'), therefore, leading to a sentence of plea bargaining at the request of the driver (*accused therein)*.



25. Accordingly, on the basis of the above discussion, the Tribunal's finding on holding the driver of offending vehicle liable for negligence does not warrant interference and is upheld.

Deductions

26. *Mr. A.K. Soni*, counsel for Insurance Company, contended that the claimants had received Rs. 20 lakhs on account of Group Accident Insurance Scheme which ought to have been deducted by the Tribunal while computing the compensation amount. Reliance was placed on the decision of this Court in ***Noorjadi Khatoon*** *(supra)* wherein it was held that compensation payable under Group Personal Accident Policy is liable to be deducted from the amount of compensation payable.

27. On the other hand, *Mr. S.N. Parashar*, counsel for claimants, has drawn attention of this Court to order of Supreme Court passed on 8th April 2025 in ***Pramod Kumar Tiwari*** *(supra)* and ***P. Chandramouli*** *(supra)* to contend that benefits received under Group Accident Insurance Scheme shall not be deducted while computing compensation.

28. Considering that the issue of Group Accident Insurance Scheme has been discussed by the Supreme Court recently, it would be apposite to draw reference to these decisions.

29. The Supreme Court in ***Pramod Kumar Tiwari*** *(supra)* was dealing with the issue of deduction of pension amount. Placing reliance upon the decision of Supreme Court in ***Sebastiani Lakra & Ors. v. National Insurance Company Limited & Anr.*** (2019) 17 SCC 465, wherein,

deductions on account of insurance or pensionary benefits were not deducted, the Court held as under:

> *"6. Later, in a recent judgment in the case of 'Sebastiani Lakra and others Vs. National Insurance Company Limited and Another, (2019) 17 SCC 465', this Court observed that deductions cannot not be allowed from amount of compensation either on account of insurance or pensionary benefits or gratuity or grant of employment to kith and kin of the deceased. The Court in para 12 noted as thus –*
>
> > *"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to "just compensation" under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death."*
>
> *7. In view of the settled proposition of law, the question posed above is answered in negative. Hence, order*

> *impugned passed by High Court affirming the findings recorded by the MACT is hereby set-aside."*
>
> (emphasis added)

30. The Supreme Court in ***P. Chandramouli*** *(supra)* was addressing the issue of deductions under employee group insurance. While the Tribunal had deducted amount towards group insurance, same had been modified by the High Court to not be deducted. In adjudicating the appeal, the Supreme Court relied upon decisions in ***Helen C. Rebello v. Maharashtra State Road Transport Corporation*** (1999) 1 SCC 90 and ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan*** (2002) 6 SCC 281 whereby, the Court held that, any amount received or receivable not only on account of the accidental death, which would have accrued to the claimant even otherwise, could not be construed as "*pecuniary advantage*", liable for deduction. Reliance was also placed upon ***Sebastiani Lakra*** *(supra)* and conclusions of the Court are extracted as under:

> "*16. In view of the foregoing discussion, and in light of the settled principles laid down by this Court in Helen C. Rebello (Supra), United India Insurance Co. Ltd. (supra) and Sebastiani Lakra (Supra), <u>It is clear that amounts received by the dependents of the deceased under employer-provided group insurance or other contractual or social security benefits cannot be treated as "pecuniary advantages" liable to be deducted from compensation awarded under the Motor Vehicles Act, 1988. Such benefits arise out of an independent contractual relationship and lack the requisite nexus with the statutory compensation</u>*

> *payable for death in a motor vehicle accident. The principle of balancing loss and gain cannot therefore be invoked to diminish the statutory entitlement of the claimants to just compensation."*
>
> (emphasis added)

31. In order to canvass the issue of deduction under Group Insurance Policy, reliance may be placed upon the decision of Madras High Court in ***R. Suganya v. B. Suresh***, 2021 SCC OnLine Mad 17980 where the Court has comprehensively discussed the difference between the statutory nature of compensation under the Motor Vehicles Act, 1988 ('***MV Act***') and the contractual liability under insurance schemes. The Court traversed through a line of judgments following ***Helen C. Rebello*** *(supra)* and ***Patricia*** *(supra)*. Relevant observations of the Court are extracted as under:

> *"9. In Vimal Kanwar v. Kishore Dan, (2013) 7 SCC 476 : (2013) 3 SCC (Civ) 564 : (2013) 3 SCC (Cri) 583 : (2013) 354 ITR 95 : (2013) 1 TN MAC 641 (SC), the Honourable Supreme Court observed as under:*
>
> > *"21. "Compassionate appointment" can be one of the conditions of service of an employee, if a Scheme to that effect is framed by the Employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for Compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with*

<u>the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death</u>. <u>An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for Compassionate appointment but that cannot be termed as "Pecuniary advantage" that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of Compensation under the Motor Vehicles Act</u>."

...

12. In the present case, there was only a Personal Accident Policy (Group). The aforesaid Policy cannot be compared with the Rules framed under Article 309 of the Constitution of India Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713 : (2016) 2 TN MAC 721 (SC). <u>It was a Private Contract between the deceased who was the insured person and the beneficiaries were his dependents. In the case of Group Insurance, there is the payment of Premium and the Compensation is not automatic. Merely because the deceased may have had such a Policy covering the risk by itself will not been that the amount payable under the provisions of the Motor Vehicles Act, 1988 has to be deducted. A deceased may insure to protect himself and his family from uncertainties of life to save his family from penury by taking different Insurance Policies. However, Compensation under such Policies, which liabilities subsist as long as the deceased paid Premium and under a private arrangement/Contract with the Insurer cannot be deducted</u>. The Hon'ble Supreme Court in Helen C. Rebello (Mrs.) v. Maharashtra State Road Transport Corporation,

(1999) 1 SCC 90 : 1999 SCC (Cri) 197 : (1999) 95 Comp Cas 509 : AIR 1999 SC 3191 recognised this in Para 35 which has been extracted above. The insured (the deceased) contributes his own money for which he receives the amount which has no correlation to the Compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as Compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the Compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the Life Insurance Policy is contractual.

13. Therefore, there cannot be any comparison. As mentioned earlier, if an Insurance Company is allowed to make such deductions from the Compensation payable, the very purpose of providing Insurance under Section 147 of the Motor Vehicles Act, 1988 would be defeated/rendered otiose. Section 168 of the Motor Vehicles Act, 1988 has also not provided for such deductions. Therefore, I am inclined to allow this appeal as prayed for."

(emphasis added)

32. Accordingly, in view of the above discussion, considering the binding precedent of the Supreme Court, this Court is not inclined to deduct Rs. 20 lakhs towards Group Accident Insurance Policy as received by the claimants.

33. MACT has dealt with the issue of deductions in *paragraph 20* of the impugned award. Relying upon the statement of ***PW-3***, *Sh. Pawan Kumar*, Assistant Manager and ***PW-4***, *Jayant Yadav*, Accountant, along with ***Ex. PW3/A***, which is an offer of employment given by *Xebia IT Architects India Private Limited* whereby, the annual package of Rs. 10,50,600/- was offered to deceased. Reliance was also placed upon ***Ex. PW3/B,*** which is the last salary slip drawn by deceased, certified by Senior Manager- HR, whereby, her net salary, after deduction is noted as Rs. 69,350/-. The MACT assessed her monthly income at Rs. 67,151/- after deducting Rs. 7,297/- towards tax deductible source ('***TDS***') and Rs. 6,381/- towards transport allowance.

34. *Mr. S.N. Parashar*, counsel for claimants, contended that transport allowance of Rs. 6,381/- has been wrongly deducted by the Tribunal while ascertaining the monthly income of deceased. In this regard, it would be apposite to consider decisions of the Supreme Court on deduction of allowances from the monthly income.

35. The connotation of '*income*' for different purposes has been discussed by the Supreme Court in ***National Insurance Co. Ltd. v. Indira Srivastava and Others*** (2008) 2 SCC 763, where the Court held that income is not limited to the pay packet carried home by an employee but also other perks beneficial to the members of the entire family. Conveyance allowance forms a part of income. Relevant paragraphs are extracted as under:

> *"**9.** The term "income" has different connotations for different purposes. A court of law, having regard to the*

change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

...

***17**. This Court in Asha [(2008) 2 SCC 774] did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term "just compensation" was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be "just compensation" must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.*

...

***19.** The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."*

(emphasis added)

36. On the issue of *transport allowance*, reliance may be placed upon ***Meenakshi v Oriental Insurance Company***, (2024) SCC OnLine SC

1872, where allowances under head of transport allowance, house rent allowance, provident fund, special allowances were to be added by considering benchmark income. While considering addition of house rent allowance to the income of deceased, the Supreme Court observed as under:

> *"**7.** As per the service conditions and pay scales of the Government officials, the house rent allowance is payable between 8% and 30% of the basic salary. Therefore, the house rent allowance is paid in a fixed ratio proportionate to the basic salary. With the increase in basic salary, the quantum of house rent allowance also increases proportionately. The flexible benefit plan and Company contribution admissible to a person employed in private service would also not remain static and are bound to increase with the length of service. The only bone of contention in this appeal is whether perquisites/allowances referred to above should also be taken into account while applying the future prospects. Therefore, entirely excluding these components from the salary of the employee for applying the principle of future prospects would be unjustified. Consequently, we have no hesitation in holding that these allowances cannot be ignored and have to be added to the salary when assessing the rise in income due to future prospects of a person employed in private service. This Court has carved out a rational formula to fix the percentage of rise of income by future prospects. In the case at hand, the said percentage has been fixed at 50% by both, the Accident Claims Tribunal as well as the Division Bench of the High Court. In view of the discussion made supra, the perquisites/allowances have to be added to the basic*

> *<u>salary of the deceased before applying the rise by future prospects</u>.*

(emphasis added)

37. The Supreme Court in ***National Insurance Company Ltd. v. Nalini*** 2024 SCC OnLine SC 2252 relying upon the decision of the Court in ***Vijay Kumar Rastogi v. U.P. SRTC***, 2018 SCC OnLine SC 193 considered the issue of allowances and held that allowances under the heads of transport allowance, house rent allowance, provident fund loan, provident fund and special allowance ought to be added while considering the basic salary. Relevant finding of the Court is extracted as under:

> *"**3.** It is apparent from the observations made in the aforesaid decision that <u>the emoluments and the benefits accruing to the deceased under various heads for the purposes of computation of loss of income, which are described by learned counsel for the petitioner-Insurance Company as personal to him to arrive at the dependency factor, ought to be included irrespective of whether they are taxable or not.</u>"*

(emphasis added)

38. Therefore, in view of the above decisions, transport allowance shall be included while computing the monthly income of deceased.

39. Another issue regarding deduction of income tax applicable in the relevant assessment year was raised by counsel for Insurance Company.

40. The issue of deduction towards income tax has been discussed by the Supreme Court in ***Manorma Sinha & Anr. v. The Divisional Manager, Oriental Insurance Company Ltd & Anr.*** 2025 SCC OnLine

SC 2241 whereby the Court held that deduction towards income tax should be at such rate which the annual income may be subjected to in the relevant year. Relevant observations of the Court are extracted as under:

> *"13. As regards deduction towards income tax is concerned, same is permissible in view of the decision of this Court in Ranjana Prakash (supra). However, in our view, deduction towards income tax should be at such rate which the annual income may be subjected to in the relevant year. It is not demonstrated that the allowances received were exempt from income tax. Even the nature of allowances has not been disclosed to enable us to determine whether they are exempt from tax. Therefore, we include them in the annual income and compute the annual income as Rs. 6,40,400 (approximately) for the purposes of tax. The tax payable in the relevant year (i.e., with reference to the date of death) would be Rs. 62,080 (Tax: Nil up to Rs. 1.60 lacs; Rs. 34,000 @ 10% up to Rs. 5.00 lacs; and Rs. 28,080 @ 20% up to Rs. 6,40,400). Thus, net annual income from salary after deduction of income tax, with the allowances, would be Rs. 5,78,324."*
>
> (emphasis added)

41. It is to be noted that in the case before us, the Tribunal had deducted Rs. 7,297/- in the form of TDS. In this regard, reliance may be placed upon ***Vimal Kanwar and Ors. v. Kishore Den and Ors***, (2013) 7 SCC 476 where reliance was placed upon ***Sarla Verma v. DTC***, (2009) 6 SCC 121 and the Court observed as under:

> "*23. In Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002] this Court held: (SCC p. 133, para 20)*

> *"20. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation."*

This Court further observed that: (SCC p. 134, para 24)

> *"24. … Where the annual income is in taxable range, the words 'actual salary' should be read as 'actual salary less tax'."*

Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under Section 192(1) of the Income Tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ("TDS", for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS

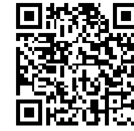
> *from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income."*
>
> (emphasis added)

42. The Tribunal arrived at the benchmark income after deduction of TDS, subsequently, any further deduction towards income tax would result in double taxation of the same income. Therefore, the argument raised by counsel for Insurance Company is hereby, rejected.

<u>Future Prospects</u>

43. *Mr. A.K. Soni*, counsel for Insurance Company, contended that future prospects ought to have been awarded at 40%, instead of 50% considering that the deceased was working in a private job.

44. *Mr. Parashar*, counsel for claimants, in support of the award of 50% towards future prospects, relied upon decision of this Court in ***National Insurance Co. Ltd. v. Laxmi Bisht & Ors.*** 2026:DHC:2238 where the Court considered the issue of inclusion of increment in the benchmark income. In that case, the deceased was employed as a lecturer with *Lovely Professional University* (*LPU*) and the Tribunal had considered his benchmark income after including increments. Upholding the finding on benchmark income and award of future prospects, this Court relied upon documents proved by witness from the employer



institution, which proved that that the deceased was receiving increments in his salary.

45. Reliance on the above decision, however, may not come to the aid of claimants, considering that the deceased was employed as a 'Consultant' and had only begun working from 12th April onwards, as stated in her employment letter dated 19th February, issued by her employer.

46. While her compensation was revised in May 2011 and her gross annual salary was increased to Rs. 11,00,000/-, with further information that her next appraisal will be due on 31st March 2012, the same shall not accrue to be promotion or an increment as discussed in ***Sarla Verma*** (*supra*) and ***National Insurance Co. Ltd. v. Pranay Sethi***, (2017) 16 SCC 680.

47. Therefore, future prospects shall be considered at 40% and the submission made by counsel for claimants is rejected.

Rate of interest

48. *Mr. S.N. Parashar*, counsel for claimants, raised an additional ground that the rate of interest should be enhanced from 7.5% to 9%, since it was highly inadequate.

49. The Supreme Court in ***Kaushnuma Begum & Ors. v. New India Assurance Co. Ltd.*** (2001) 2 SCC 9, stated that the standard rates of fixed deposit interest provided by the nationalized banks as per Reserve Bank of India ('***RBI***') policy have to be followed. In this regard, reliance may be placed upon the fixed deposit rates as per published by RBI,

which states that the interest rate for 2011 was 8.5%. Therefore, the Court is inclined to increase the interest rate to 8.5%.

Alignment as per Pranay Sethi

50. As regards, compensation awarded under other heads, alignment will have to be made as per ***Pranay Sethi*** (*supra*).

51. Rs. 1,00,000/- has been awarded on account of *loss of love and affection* which shall stand deleted in view of the decision in ***United India Insurance Co. Ltd. v. Satinder Kaur*** (2021) 11 SCC 780, since the same has been subsumed under the head of loss of consortium.

52. The Tribunal has not awarded compensation under the head of *loss of consortium*, therefore, in view of the principles enunciated in ***Pranay Sethi*** (*supra*), same shall be awarded at Rs. 80,000/- (Rs. 40,000 x 2), considering there were two dependents.

53. *Loss of estate* and *funeral expenses* shall be awarded at Rs. 15,000/- each, instead of Rs. 10,000/- and Rs. 25,000/-, respectively.

54. Therefore, the revised computation is as under:

S. No.	Heads	Awarded by the Tribunal	Awarded by this Court
1	Income of deceased (A)	Rs. 8,05,812/-	Rs. 8,82,384/-
2	Add: Future Prospects (B)	Rs. 4,02,906/-	Rs. 3,52,954/-
3	Less: Personal expenses of deceased (C)	Rs. 6,04,359/-	Rs. 6,17,669/-
4	Loss of dependency (A+B)-C=D	Rs. 6,04,359/-	Rs. 6,17,669/-

5	Multiplier (E)	17	17
6	Total loss of dependency (D x E) = (F)	Rs. 1,02,74,103/-	Rs. 1,05,00,373/-
7	Compensation for loss of consortium (G)	Nil	Rs. 1,20,000/-
8	Compensation for loss of love and affection (H)	Rs. 1,00,000/-	Nil
9	Compensation for loss of estate (I)	Rs. 10,000/-	Rs. 15,000/-
10	Compensation towards funeral expenses (J)	Rs. 25,000/-	Rs. 15,000/-
11	Total compensation (F+G+H+I+J)= K	**Rs. 1,04,09,103/-**	**Rs. 1,06,50,373/-**
12	Rate of Interest Awarded	7.5%	8.5%

Directions

55. For the aforesaid reasons, compensation has been enhanced by Rs.2,41,270/- ("***enhanced amount***").

56. It is therefore directed as under:

i. Enhanced amount along with 8.5% interest per annum from the date of filing the petition shall be deposited before the Registrar General of this Court within a period of six weeks. This amount shall be released to the claimants as lumpsum.

ii. By order dated 23rd December 2014, this Court had directed the Insurance Company to deposit 40% of the originally awarded

amount before the Registrar General, which was to be released as per the directions of the Tribunal. Needless to clarify, interest at the rate of 8.5% per annum as awarded by this Court, shall be applicable from the date of filing of the petition. Accordingly, it is directed, that Insurance Company shall deposit the balance compensation amount, along with accrued interest at the rate of 8.5% per annum on the entire compensation as awarded by the Tribunal, before the Registrar General of this Court within six weeks, which shall be disbursed as per the directions of Tribunal.

57. Accordingly, the appeals stand disposed of with above directions.

58. Pending applications, if any, are rendered infructuous.

59. Statutory deposit, if any, shall be refunded to Insurance Company, only if the order of deposit has been complied with.

60. Judgment be uploaded on the website of this Court.

ANISH DAYAL
(JUDGE)

MAY 26, 2026/*sp*