



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 4804/2018

1. Kumari Hansa D/o Late Jainarayan Meena, aged about 8 Years, Appellant No. 1 is Minor Through Her Grandfather And Natural Guardian Sitaram Meena S/o Late Laxmi Narayan Meena R/o Meda Ki Dhani Village and Post Lalgah Tehsil Bassi District Jaipur
2. Sitaram Meena S/o Late Laxmi Narayan Meena, aged about 67 Years, R/o Meda Ki Dhani Village and Post Lalgah Tehsil Bassi District Jaipur
3. Smt Bhonri Devi W/o Shri Sitaram Meena, aged about 62 Years, R/o Meda Ki Dhani Village And Post Lalgah Tehsil Bassi District Jaipur

----Appellants

Versus

1. Kailash Chand Sharma S/o Rameshwar Sharma, R/o Village Kanwarpura Tehsil Bassi District Jaipur (Driver And Registered Owner Pickup No. RJ-14-GC-1727)
2. Oriental Insurance Company Limited, Having its Regional Office At 3rd Floor Anand Bhawan Sansar Chandra Road Jaipur Through Its Regional Manager (Insurer Pickup No. RJ-14-GC-1727)
3. Smt Lalli Devi W/o Late Jainarayan Meena, aged about 27 Years, R/o Meda Ki Dhani Village And Post Lalgah Tehsil Bassi District Jaipur Now At C/o Kajod Meena R/o Village Dhinala Tehsil Bassi District Jaipur

----Respondents

Connected With

S.B. Civil Miscellaneous Appeal No. 4843/2018

1. Gulab Devi W/o Late Jagdish Prasad Meena, aged about 33 Years, Appellant No. 2 To 4 Are Minor Through Their Mother And Natural Guardian Smt. Gulab Devi W/o Late Jagdish Prasad Meena R/o Village Lalgah Tehsil Bassi District Jaipur
2. Sunita Kumari D/o Late Jagdish Prasad Meena, Aged About 15 Years, R/o Village Lalgah Tehsil Bassi District Jaipur
3. Giriraj Prasad S/o Late Jagdish Prasad Meena, aged about





13 Years, R/o Village Lalgarh Tehsil Bassi District Jaipur

4. Chiranji Lal S/o Late Jagdish Prasad Meena, aged about 11 Years, R/o Village Lalgarh Tehsil Bassi District Jaipur

----Appellants

Versus

1. Kailash Chand Sharma S/o Rameshwar Sharma, R/o Village Kanwarpura Tehsil Bassi District Jaipur (Driver And Registered Owner Pickup No. RJ-14-GC-1727)
2. Oriental Insurance Company Limited, Having Its Regional Office At 3Rd Floor Anand Bhawan Sansar Chandra Road Jaipur Through its Regional Manager (Insurer Pickup No. RJ-14-GC-1727)
3. Ramnath Meena S/o Late Mahadev Meena, R/o Village Lalgarh Tehsil Bassi District Jaipur

----Respondents

S.B. Civil Miscellaneous Appeal No. 4902/2018

The Oriental Insurance Company Ltd., Having its Regional Office At Third Floor, Anand Bhawan, Sansar Chandra Road, Jaipur (Raj.) Through Its Constituted Attorney.

----Appellant

Versus

1. Smt. Lalli Devi W/o Late Sh. Jaynarayan Meena, aged about 27 Years, R/o Meda Ki Dhani, Village And Post Lalgarh, Tehsil- Bassi, District- Jaipur (Raj.)
2. Miss Hansa D/o Late Sh. Jaynarayan Meena, aged about 8 Years, R/o Meda Ki Dhani, Village And Post Lalgarh, Tehsil- Bassi, District- Jaipur (Raj.)
3. Sh. Sita Ram Meena S/o Late Sh. Laxmi Narayan Meena, Aged About 67 Years, R/o Meda Ki Dhani, Village and Post Lalgarh, Tehsil- Bassi, District- Jaipur (Raj.)
4. Smt. Bhonri Devi W/o Sh. Sita Ram Meena, aged about 62 Years, R/o Meda Ki Dhani, Village And Post Lalgarh, Tehsil- Bassi, District- Jaipur (Raj.)
5. Kailash Chand Sharma S/o Sh. Rameshwar Sharma, R/o Village - Kanwarpura, Tehsil - Bassi, Dist - Jaipur (Raj.) (Driver And Owner Of Vehicle).

----Respondents





S.B. Civil Miscellaneous Appeal No. 4903/2018

The Oriental Insurance Company Ltd., Having Its Regional Office
At Third Floor, Anand Bhawan, Sansar Chandra Road, Jaipur
(Raj.) Through Its Constituted Attorney.

----Appellant

Versus

1. Smt. Gulab Devi W/o Late Sh. Jagdish Prasad Meena, aged about 33 Years, R/o Village - Lalgarh, Tehsil - Bassi, District - Jaipur (Raj.)
2. Sunita Kumari D/o Late Sh. Jagdish Prasad Meena, aged About 15 Years, R/o Village - Lalgarh, Tehsil - Bassi, District - Jaipur (Raj.)
3. Giriraj Prasad S/o Late Sh. Jagdish Prasad Meena, aged about 13 Years, R/o Village-Lalgarh, Tehsil - Bassi, District - Jaipur (Raj.)
4. Chiranji Lal S/o Late Sh. Jagdish Prasad Meena, aged about 11 Years, R/o Village-Lalgarh, Tehsil-Bassi, District - Jaipur (Raj.)
5. Ramnath Meena S/o Late Mahadev Meena, aged about 77 Years, R/o Village -Lalgarh, Tehsil -Bassi, District-Jaipur (Raj.)
6. Kailash Chand Sharma S/o Sh. Rameshwar Sharma, R/o Village- Kanwarpura, Tehsil - Bassi, Dist-Jaipur (Raj.) (Driver And Owner of Vehicle).

----Respondents

For Appellant(s)	:	Mr. Vinay Mathur with Mr. Ashish Mittal
For Respondent(s)	:	Mr. Ayush Gupta
For Insurance Company(s)	:	Mr. Ajay Kumar Tanenia

JUSTICE ANOOP KUMAR DHAND**Order****06/02/2026**

Reportable

1. All these appeals are arising out of the common impugned award dated 29.06.2018 passed by the Motor Accident Claims



Tribunal (Special Court, Communal Riots), Jaipur (for short, 'the Tribunal'). Hence, these appeals are heard together and are being decided by this common order, at the joint request of the counsel for the parties.

2. Two appeals i.e. S.B. Civil Misc. Appeal Nos. 4902/2018 & 4903/2018 have been preferred by the Insurance Company against the impugned award and other two appeals i.e. S.B. Civil Misc. Appeal Nos. 4804/2018 & 4843/2018 have been submitted by the claimants seeking enhancement of the compensation amount, awarded by the Tribunal.

In S.B. Civil Misc. Appeal Nos. 4902/2018 & 4903/2018

3. Counsel appearing on behalf of the Insurance Company submits that the vehicle in question was a goods transport vehicle and the same was insured with the Insurance Company and premium for three persons i.e. driver, owner and khalasi was paid by the registered owner and the same was accepted by the Insurance Company. Counsel submits that at the time of the accident, the vehicle was carrying more than fifteen passengers and no premium for these passengers was paid by the registered owner of the vehicle. Counsel submits that under these circumstances, there was a breach of policy. Hence, the Insurance Company is not liable to pay any sort of compensation to the claimants but ignoring these material facts, the Tribunal has passed the impugned award directing the Insurance Company to pay different compensation amounts to the claimants. Counsel further submits that when the statement of the witnesses were





recorded before the Tribunal, this fact has been established that more than fifteen persons were travelling in the subject vehicle, in the capacity of passengers. Hence, interference of this Court is warranted.

4. Per contra, counsel appearing on behalf of the claimants opposed the arguments raised by counsel for the Insurance Company and submits that the document (Insurance Policy) Exhibit-13 indicates that it was a full package policy i.e Legal Liability To Non Fare Paying Passengers (for short "LLTNFPP") and premium of Rs. 150/- was charged by the Insurance Company for six persons. Counsel submits that under these circumstances, the Insurance Company is legally bound to pay compensation to at least six persons in case, the vehicle meets with any accident. Counsel submits that in the instant case, also two claim petitions have been submitted by the claimants of the deceased. Hence, under these circumstances, the Tribunal has not committed any error in passing the impugned award. In support of his contentions, counsel has placed reliance upon the judgment passed by the Co-ordinate Bench of this Court at the Principal Seat at Jodhpur in a batch of Civil Misc. Appeals with the lead case being **S.B. Civil Misc. Appeal No. 230/2000** titled as **Mahesh Kumar and Anr. V/s Om Prakash and Anr.**, decided on 24.10.2017. Hence under these circumstances, the appeals submitted by the Insurance Company are not having merit and substance and the same are liable to be rejected.

5. Counsel further submits that even the witness NAW1- Arjun Lal, produced by the Insurance Company, has admitted the factual





aspect of the matter with regard to the payment of premium for six persons and he has also admitted in cross-examination that six persons are covered under the policy.

6. Heard and considered the submissions made at Bar and perused the material available on record.

7. Perusal of the record indicates that on 25.07.2011, one Jainaraiyan Meena, after loading vegetables in his vehicle i.e. pickup bearing No. RJ-14GC-1727, was heading to Jaipur for the purpose of selling the vegetables. He was seating in the cabin of the said vehicle and other co-passengers were also there in the said vehicle. When the said vehicle reached Shahid ki Pulia, Near Kanota at Agra Road, the driver of the said vehicle drove the same in a rash and negligent manner due to which the vehicle collided with the divider (median) and on account of the said collision, Jainariyan Meena sustained several injuries on various parts of his body and finally, he passed away on 30.07.2011. Similarly, it has been pleaded that Jagdish Prasad who was also travelling in the said vehicle and was sitting in the cabin, also sustained injuries and died during the course of treatment. The dependents of the both the deceased persons submitted two different claim petitions before the Tribunal seeking compensation. After framing of the issues and recording the evidence of both the sides, the claim petitions were allowed vide judgment and award dated 29.06.2018.

8. Aggrieved by the aforesaid judgment and award, the instant two appeals have been submitted by the Insurance Company on a technical count that the subject vehicle was a goods carrying





vehicle and the same was insured for the said purpose only and the deceased persons and other persons were travelling in the said vehicle in the capacity of passengers. Hence, there was a breach of policy, and under these circumstances, the Insurance Company is not liable to pay any amount of compensation to the claimants.

9. Heard and considered the submissions made by both sides and perused the material available on record.

10. Perusal of the record as well as the insurance policy i.e. Exhibit-13 indicates that the premium was paid by the registered owner of the vehicle under the head of LLTNFPP and premium of Rs.150/-, for six passengers, was also paid when the policy was prepared. Meaning thereby, the Insurance Company is liable to pay compensation to six persons, in case of any untoward accident to the vehicle and here in this case, only two claim petitions have been submitted by the dependents of the two deceased persons to get compensation. Hence, this Court finds no merit and substance in the appeal submitted by the Insurance Company.

11. Considering the overall facts and circumstances of the case, the Tribunal came to a definite conclusion that there was no breach of policy, hence under these circumstances, the Insurance Company is liable to pay the compensation to the claimants, being the dependents of the deceased persons. The issue raised in these appeals are no more res integra and has been decided by the Coordinate Bench of this Court at Principal Seat at Jodhpur in the case of **Mahesh Kumar (Supra)** dealing with the identical





submission made by the Insurance Company and has been held as under:-

“The Tribunal after thoroughly scrutinizing the evidence available on record as well as pleadings of the parties, came to the conclusion that the deceased Kesu Singh as well as Om Prakash were travelling in the vehicle as NFPP / gratuitous passengers and the plea raised regarding carrying the goods in the vehicle or travelling in the vehicle for getting delivery of Buffalo was merely an after thought and was not proved.

Learned counsel for the appellants could not point out any perversity in the said finding and, therefore, the finding in this regard does not call for any interference.

A bare look at the policy produced as Ex.-8 indicates that the Insurance Company charged premium of Rs.50/- for NFPP. This Court in Future General India Ins. Co. Ltd. v. Bhagwan Singh @ Bhanwar Singh & Ors.: S.B. Civil Misc. Appeal No.1155/2013, decided on 01.10.2013, while dealing with the aspect of charging premium for NFPP, while disagreeing with the view in the case of B. Lalrosanga (supra) cited by learned counsel for the respondent-Insurance Company, laid down as under:

“There is no dispute that the appellant-Insurance Company had recovered premium of Rs. 150/- for covering risk of two non-fare paying passengers. It is sought to be disputed by the appellant-Insurance Company that the said premium did not relate to the nature of passengers in whose status, the injured and deceased were travelling in the truck and therefore, the appellant-Insurance Company is not liable.

A bare look at the IMT-37 quoted above would reveal that the said Indian Motor Tariff 37 provided that Company will Indemnify the insured against his legal liability in respect of death of or bodily injury to any employee, who is not a workman not being carried for hire or reward, any other person not being carried for hire or reward provided the person is charterer or representative of the charterer of the truck and any other person directly connected with the journey in one form or other being carried in or upon or entering or mounting or alighting from any Motor Vehicle. The provision contained in (ii)(b) of the said IMT No.37 is quite sweeping in nature and takes into its sweep any other person directly connected with the journey or being carried in, entering,





mounting, alighting from the motor vehicle and the same cannot be restricted in any manner.

Further Section 147(b)(i) of the Act mandates covering liability of death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle w.e.f. 14.11.1994. Therefore, the premium under IMT-37, which indicates covering risk of charterer or representative of the charterer of the truck under clause (ii)(a) is wholly unnecessary and redundant. As such, the only interpretation which can be put to the later half of the above condition i.e. (ii)(b) would be that the appellant-Insurance Company undertook liability of the present nature. There cannot be any doubt that the deceased and the injured were passengers in the vehicle and were permitted to board the vehicle by the driver, who was incharge of the vehicle. Their presence was not unauthorised and they were connected with the journey atleast upto the place of accident.

The very fact that the appellant-Insurance Company decides to charge additional premium for non-fare paying passengers, they cannot get out of their liability with respect to such non-fare paying passengers taking resort to the restriction regarding carriage of persons in goods vehicle.

Learned counsel for the appellant tried to bring in several examples for indicating the persons, who would be covered by said clause (ii) (b) above, but all such examples already stand covered by the earlier part of the IMT-37 and the injured and deceased are very well covered under the said provision."

In view of the judgment of this Court in Bhagwan Singh (supra), the finding of the Tribunal in ignorance of the fact that premium of Rs.50/- was charged for NFPP, cannot be sustained and the same is, therefore, reversed.

There is substance in the submission made by learned counsel for the respondent-Insurance Company that the Insurance Company had charged premium for only one passenger and, therefore, it cannot be saddled with liability of the two passengers. Hon'ble Supreme Court in National Insurance Co. Ltd. v. Anjana Shyam & Ors.: (2007) 7 SCC 445, laid down that in such a situation the Insurance Company would be required to make payment to the claimant, who has been awarded higher compensation and as in the present case





claimant-Ishar Kanwar has been awarded higher compensation, the finding in her case only shall stand set aside and the finding in this regard in the case of Om Prakash would stand upheld.

In view of the above discussion, SBCMA No.229/2000 filed by the appellants is allowed. The finding of the Tribunal exonerating the Insurance Company is set aside and it is held that the Insurance Company would be jointly and severally liable for making payment of amount of compensation to the claimants.

If any amount has been paid/deposited by the appellants to the claimants in terms of the award and/or proviso to Section 173(1) of the Act, the said amount would be paid to the appellant and if any amount is still due to the claimants, the said amount would be paid to the claimants by the respondent-Insurance Company within a period of six weeks from the date of this judgment."

12. Considering the overall facts and circumstances of the case and the law laid down by the Co-ordinate Bench of this Court in the case of **Mahesh Kumar (supra)**, this Court finds no merit and substance in both the appeals filed by the Insurance Company and the same are liable to be and are hereby rejected.

In S.B. Civil Misc. Appeal No. 4804/2018

13. The instant appeal has been preferred by the claimants seeking enhancement of the compensation amount and against the direction of payment of 70% compensation amount to the respondent No. 3 i.e. Lalli Devi who is wife of the deceased-Jainarayan Meena, on the ground of her re-marriage.

14. Counsel appearing on behalf of the claimants submits that after the accident, the wife of the deceased i.e. Lalli Devi has solemnized second marriage with Kajod Meena leaving her minor daughter from the first marriage in the hands of her paternal grand parents. Counsel submits that at the time of accident, the age of the minor girl-Hansa was hardly 13 months old and she is





still a minor. Counsel submits that a meagre amount of compensation i.e. 15% has been awarded to daughter of the deceased and 15% has been awarded to mother of the deceased, while the major portion of compensation i.e. 70% has been awarded in favour of the wife of the deceased who has already solemnized second marriage. Hence, under these circumstances, interference of this Court is warranted and the amount so awarded by the Tribunal in the favour of the wife is liable to be reduced and the same be awarded to the minor daughter of the deceased.

15. Counsel further submits that the deceased was a daily wager, and while determining and assessing his monthly income, 26 days have been counted but inspite of 26 days, compensation ought to have been granted for 30 days for determining the monthly income of the deceased as he was treated as unskilled labour.

16. Counsel further submitted that under the head of consortium, a very meager and lump sum amount of Rs.70,000/- has been awarded, while as per the judgment passed by the Hon'ble Apex Court in the case of **National Insurance Co. Vs. Pranay Sethi**, reported in **2017(16) SCC 680**, each dependent of the deceased is liable to get the compensation amount of Rs.40,000/- under the head of loss of consortium hence, under these circumstances, appropriate amount of compensation be enhanced in favour of the claimants in the above different heads.

17. Per contra, counsel appearing on behalf of the respondents opposed the arguments raised by counsel for the claimants but he is not in a position to controvert the submissions made by counsel for the claimants.





18. None present on behalf of the respondent No. 3 to oppose the arguments raised by counsel for the appellants.

19. Heard and considered the submissions made at Bar and perused the material available on record.

20. Perusal of the record indicates that the deceased has died in a road accident occurred on 25.07.2011 and thereafter his dependents including the wife i.e. respondent No. 3 approached the Tribunal seeking compensation. During pendency of the claim petition before the tribunal, this fact came on record that respondent No. 3 Lalli Devi i.e. wife of the deceased has solemnized second marriage with one Kajod Meena and after considering overall facts and circumstances of the case, the impugned award has been passed and the respondent-Insurance Company has been directed to pay a compensation of Rs.7,79,628/- to the claimants including the wife of the deceased. Before parting with the judgment, the Tribunal has divided the compensation in three parts i.e. (1) 15% of the compensation has been awarded in favour of the daughter-Hansa; (2) 15% has been awarded in favour of the mother of the deceased; and (3) 70 % has been awarded in favour of the respondent No. 3 i.e. wife of the deceased.

21. Now the question which remains for consideration before this Court is whether wife of the deceased is entitled to get 70% of the amount of compensation even after getting re-married. This fact is not in dispute that the claimant-appellant Hansa was 13 months old minor daughter of the deceased at the time of the accident. This fact is also not in dispute that she is residing with her





paternal grand mother i.e. Bhoori Devi, who is mother of the deceased Jainarayan Meena and it has also come on record that the respondent No.3 Lalli Devi, wife of the deceased, has solemnized second marriage with one Kajod Meena.

22. The legal question thus arises for consideration of this Court is whether a widow of the deceased is at all entitled to get compensation even after her re-marriage?

23. This issue is no more res-integra as the same has been decided by several High Courts including this Court that re-marriage of a widow has nothing to do with her rights to claim for compensation for the loss, which accrued to her on account of unfortunate demise of her husband.

24. The judicial opinion is to the effect that simply because a widow has re-married is not to be made a ground for declining her compensation. In **Hariram and other vs. Commissioner for Workmen's Compensation Act**, reported in **1994 ACJ 1094** the view expressed was that, the widow on re-marriage cannot be deprived of her rights of getting compensation.

25. The Co-ordinate Bench of this Court in the case of **Regal Sports vs. Mohd Siddique and Others** reported in **1994 ACJ 294** held that widow cannot be declined compensation on her re-marriage. The amount awarded was Rs.66.420/-. This was reduced in appeal to Rs.50,000/- what is sought to be pointed out is that the widow was held entitled to claim amount of compensation. In **Rajasthan State Road Transport Corporation and other vs Kiran Lata and Other** reported in **1993 ACJ 130** the view expressed was that to deny compensation on the ground of





possibility of re-marriage of the widow would be enforcing a view which is against the public policy and would be violative of section 23 of the Contract Act. It was accordingly observed that the question of possibility of re-marriage would not come in the way at all and compensation is not to be based by taking into consideration the question of marriage or possibility of remarriage.

26. In another decision of this Court **Vimla Devi & Ors vs Chaman & Ors.** reported in **1992 ACJ 1048** it was held that denial of compensation is not to be on account of possibility of remarriage of the widow of the deceased. Some other decision dealing with this aspect of the matter are **Rajinder Kumar and other vs Soma Devi and other** reported in **2001 ACJ 311**; **Chandan vs Kanwarlal** reported in **1989 ACJ 816**; **Khairullah vs Anita** reported in **1994 ACJ 1017**, **Nankuram Sarajdin vs member MACT Thane** reported in **1994 (2) TAC 346** and **Halki Bai vs New Delhi Insurance co Ltd** reported in **1999 ACJ 187**. In the above noted cases it has been consistently held that re-marriage of a widow would not dis-entitle her to claim compensation.

27. Another reason which re-enforces the above conclusion is that on re-marriage of a widow the social stigma which stood imposed earlier is not completely washed of. Some negative factors continue to exist and are taken note of in the case of re-marriage of a widow. She, on remarriage, may not enjoy the same status and frame of mind. This factor has to be taken note of. As such a widow on remarriage cannot be deprived of the compensation.





28. The calculation of loss of dependency was on the basis of her dependency on her deceased husband; her loss is equal to the loss of dependency suffered by her parents-in-law. Her decision to re-marry was entirely her personal choice, over which nobody can have any say. Her right to claim compensation crystallized upon her husband's life being tragically snatched away in the motor accident. Therefore, simply because she has now re-married, her claim does not abate or lessen. Who can judge whether the second marriage was not a compromise because of her personal circumstances and whether it would have the same value emotionally and psychologically as the first marriage. Her entitlement fructified when the dependency was calculated. Therefore, as an aggrieved widow, she would be entitled to a share of compensation apropos "loss of dependency", like her mother-in-law, who had lost her son.

29. In the considered opinion of this Court, the wife of the deceased i.e. respondent No. 3 is still liable to get compensation but in any case, she is not a dependent member anymore after her re-marriage, in the peculiar facts and circumstance of the case, when she performed second marriage leaving her minor daughter of 13 months in the lap of her paternal grand-mother. Since the minor daughter Hansa is still a minor and she is hardly 16 years of age, hence, suitable amount of compensation is required for the purpose of her studies, marriage and future etc. Looking to the fact that minor Hansa has lost her father and her mother (respondent No. 3) has left her at the mercy of her old paternal grand-mother, hence, grant of only 15% amount of





compensation to the minor daughter of the deceased is not justified, while grant of 70% compensation to the respondent No. 3 is quite exorbitant more particularly when she has solemnized second marriage after death of the husband. Hence, in order to make a balance between a minor daughter and re-married mother, the portion of compensation is liable to be divided in the interest of both of them.

30. In the considered opinion of this Court, 100% amount of compensation is required to be divided in the following parts:- the minor daughter Hansa (appellant No.1) would be entitled to get 45%, grand-mother Bhonri Devi (appellant No.3) would be entitled to get 15% and the re-married wife of the deceased Lalli Devi (respondent No.3) would be entitled to get 40% of the amount of compensation.

31. Now, this Court proceeds further to deal with the rest of the arguments raised by counsel for the claimants. This fact is not in dispute that the deceased was a daily wager and an agriculturist and has been treated as unskilled labour and his income has been determined for 26 days in a month.

32. In the considered opinion of this Court, the Tribunal ought to have determined the monthly wages of the deceased towards the head of income for 30 days in the light of the judgment dated 23.02.2022 passed by this Court in the case of **Nandu Devi and Anr. Vs. Sohan Lal and Ors.** while deciding **S.B. Civil Miscellaneous Appeal No. 769/2019** and Co-ordinate bench of this Court in **Jalaur Singh and Ors. Vs. Barkat Singh and Ors.**, reported in **2012 (2) MACT Raj. 692**. Hence, the income of the





deceased is liable to be determined for 30 days instead of 26 days. Furthermore, as per the judgment passed by the Hon'ble Apex Court in the case of **Pranay Sethi** (Supra) all the dependents of the deceased are liable to get a compensation amount of Rs.40,000/- each under the head of loss of consortium. However, in the instant case, a lump sum amount of Rs.70,000/- has been granted in their favour. Hence, under these circumstances, this Court deems it just and proper to grant a sum of Rs. 40,000/- separately in favour of each of the claimants under the head of loss of consortium.

33. Looking to the fact that since the father of the deceased was not treated as dependent upon any earning of the deceased by the Tribunal, hence, under these circumstances there were in all 3 dependents. Therefore, under these circumstances 1/3rd income of the deceased would be deducted while computing the total compensation award-able to the parties. Considering the above factual aspect, the compensation awarded by the Tribunal stands upheld.

34. Considering the overall facts and circumstances of the case, the amount of compensation is enhanced as under:--

Monthly income (along with 40% future prospects)	Rs.135 X 30 = Rs.4,050/- Rs. 4,050/- + Rs. 1,620/- = Rs. 5,670/-
Annual income	Rs. 5,670 X 12 = Rs. 68,040/-
Multiplier to be applied	18 Rs. 68,040 X 18 = Rs.1,224,720/-
Deduction toward personal and living expenses of the deceased (1/3 rd)	1,224,720 - 4,08,240 Rs. 8,16,480/-
Loss of consortium, love and	40,000 X 3





affection	= 120,000/-
Loss of Estate	Rs. 15,000/-
Funeral expense	Rs. 15,000/-
Medical expense	Rs. 17012/-
Total compensation award able	Rs. 9,83,492/-
Less amount awarded by the Tribunal	Rs.7,79,628/-
Enhanced amount of compensation	Rs.2,03,864/-



35. It is accordingly ordered that the minor daughter (Appellant No. 1) Hansa would be entitled to receive 45% of the total compensation amount i.e., a sum of Rs. 4,42,571.40p, grand-mother (Appellant No. 3) Bhonri Devi would be entitled to receive 15% of the total compensation amount i.e., a sum of Rs. 1,47,523.80p and the re-married wife of the deceased Lalli Devi (Respondent No. 3) would be entitled to receive 40% of the total compensation amount i.e., a sum of Rs. 3,93,396.80p.

36. It is further ordered that, out of the total compensation, Rs. 2,00,000/- shall be disbursed to the claimant -Hansa through her Savings Bank Account under the guardianship of her natural guardian/grand-mother-Smt.Bhonri Devi, while the remaining Rs. 2,42,571.40p shall be deposited in a Fixed Deposit Receipt with a nationalized bank for a period of three years. Further, Rs. 1,00,000/- each shall be credited to the Savings Bank Accounts of the appellant No. 3 Smt. Bhonri Devi and the respondent No. 3 Smt. Lalli Devi, and the balance amounts of Rs. 47,523.80p in the case of appellant No. 3 and Rs. 2,93,396.80p in the case of respondent No. 3 respectively shall be deposited in two separate



Fixed Deposit Receipts with a nationalized bank for a period of three years.

In S.B. Civil Miscellaneous Appeal No. 4843/2018

37. The instant appeal has been preferred by the claimants who are the dependents of the deceased Jagdish Prasad Meena, seeking enhancement of the amount of compensation awarded by the Tribunal.

38. Counsel for the claimants submits that the deceased was a daily wager and while determining his income as unskilled labour, his loss of income has been assessed for 26 days in a month which ought to have been calculated for 30 days, in the light of the judgment passed by this Court in the case of **Nandu Devi** (supra).

39. Counsel further submits that even under the head of loss of consortium, a lump sum amount of Rs.70,000/- has been awarded in favour of the dependents of the deceased, while as per the judgment passed by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra) each of the dependents are entitled to get a sum of Rs.40,000/- under the head of loss of consortium separately. Hence, under these circumstances, the impugned award needs suitable enhancement.

40. Per contra, counsel appearing on behalf of the respondent-Insurance Company opposed the arguments raised by counsel for the claimants but he is not in a position to controvert the submissions made by counsel for the claimants.

41. Heard and considered the submissions made at Bar and perused the material available on record.





42. Looking to the fact that the deceased was a daily wager and looking to the prevailing wages at the relevant time, his monthly income has been assessed for 26 days which ought to have been calculated for 30 days in light of the judgment passed by this Court in the case of **Nandu Devi** (supra). Considering the overall facts and circumstances of the case, the amount of compensation is enhanced as under:--

Monthly income (along with 40% future prospects)	Rs.135 X 30 = Rs.4,050/- Rs. 4,050/- + Rs. 1,620/- = Rs. 5,670/-
Annual income	Rs. 5,670 X 12 = Rs. 68,040/-
Multiplier to be applied	17 Rs. 68,040 X 17 = Rs.11,56,680/-
Deduction toward personal and living expenses of the deceased (1/4th)	1,224,720 - 2,89,170 Rs. 8,67,510
Loss of consortium, love and affection	40,000 X 5 = 2,00,000/-
Loss of Estate	Rs. 15,000/-
Funeral expense	Rs. 15,000/-
Total compensation awardable	Rs. 10,97,510
Less amount awarded by the Tribunal	Rs.8,06,842
Enhanced amount of compensation	Rs. 2,90,668/-

43. The appeal stands partly allowed and the impugned award passed by the Tribunal stands modified to the extent that the appellant-claimant is entitled to get a further sum of Rs.2,90,668/- by way of enhanced compensation and the remaining terms and conditions of the award shall remain intact.

44. It is further ordered that out of the enhanced amount a sum of Rs.2,00,000/- be deposited in the Savings Bank Account of the claimants and the remaining amount of enhanced compensation,



i.e. Rs.90,668/- be deposited in a fixed deposit with any Nationalized Bank initially for a period of three years and the interest accrued on the said amount shall be paid to the claimant on monthly basis.

45. The respondents are directed to deposit the enhanced amount within a period of four weeks from today with interest @ 6% per annum from the date of filing of the claim petition.



(ANOOP KUMAR DHAND),J

Ashu/25-28