Reportable

2025 INSC 724

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.....of 2025
(@Special Leave Petition (C) No.12235-12236 of 2019)

New India Assurance Co. Ltd.

.... Appellant

Versus

Kamlesh and Others.

.... Respondents

With

Civil Appeal Nos.....of 2025
(@Special Leave Petition (C) No.12421-12422 of 2023)

O R D E R

1. Leave granted.

2. The claimants are the legal heirs of the deceased who succumbed to the injuries sustained in a motor accident. In the claim petition before the Motor Accident Claims Tribunal, they were awarded a compensation of Rs.37,85,800/-. The Insurance Company filed an appeal, restricted to the quantum, especially on the deduction to be allowed with respect to the financial assistance under the Haryana Compensation Assistance to the Dependents of Deceased Government Employees Rules, 2006[1]; whether the same is liable to be deducted from the total compensation. The appeal by the claimants was for

1 for brevity 'the Rules of 2006'

enhancement of compensation.

3. The loss of dependency granted by the Tribunal at Rs.35,65,800/- was enhanced to Rs.45,14,986/- employing the multiplier system for calculating loss of dependency as has been declared by a Constitution Bench decision in ***National Company Limited v. Pranay Sethi and Other***[2]***.*** However, under conventional heads, the award of Rs.2,20,000/- granted by the Tribunal was reduced to Rs.70,000/-. The total compensation was determined at Rs.45,14,986/- out of which half of the compensation under the Rules of 2006 was directed to be deducted i.e. Rs.21,67,704/- on the basis of the decision of the Punjab and Haryana High Court in ***New India Assurance Company Ltd. v. Ajmero and Others***[3].

4. Dr.Meera Agarwal, learned Counsel for the Insurance Company submits that the deduction as per the Rules of 2006 has to be 100% as has been held by a decision of this Court in ***Reliance General Insurance Company Ltd. v. Shashi Sharma and Others***[4] followed in ***National Insurance Company Ltd. v. Birendra***[5].

2 (2017) 16 SCC 680
3 FAQ No.2648 of 2016 decided on 31.07.2017
4 (2016) 9 SCC 627
5 2020 SCC OnLine SC 28

5. Mr. M.R. Shamshad, learned Senior Counsel appearing for the claimant would however point out that a two Judge Bench of this Court in ***Helen C. Rebello v. Maharashtra State Road Transport Corporation***[6] held that life insurance amounts received by heirs on account of the victim's death was not deductible from the compensation for death in motor accidents. A Coordinate Bench in ***Rajkumar Agrawal v. Vehicle Tata Venture, Commercial Auto Sales Private Limite***[7] considering whether the insurance amounts paid under the Employees' State Insurance Act, 1948[8] is a similar benefit, as the compensation which is claimed in a case where there is a motor accident, has referred the issue to a larger Bench. The reference was made since in ***Western India Plywood Ltd. v. P. Ashokan***[9], ***National Insurance Co. Ltd. v. Hamida Khatoon & Others***[10] and ***Regional Director, E.S.I Corpn. and Anr. v. Francis De Costa and Anr.***[11], there was no authoritative pronouncement on the subject issue. It is also pointed out that even if the issue is found against the claimants, following the decision of this very bench in ***New***

6 (1999) 1 SCC 90
7 Civil Appeal No.4941 of 2022 dt.19.01.2023
8 For brevity 'ESI Act'
9 (1997) 7 SCC 638
10 (2009) 13 SCC 361
11 1993 SCC SUPL. (4) 100

India Assurance Co. Ltd. v. Sunita Sharma[12] there should be no refund ordered as of now.

6. In addition to the aforesaid decisions, we have also been apprised of a decision of another Coordinate Bench in ***Krishna v. Tek Chand***[13]. The two Judge Bench having considered the decision in ***Helen C. Rebello***[6] and ***Shashi Sharma***[4] found that ***Shashi Sharma***[4], a three Judge Bench decision was distinguished by another three Judge Bench in ***Sebastiani Lakra & Ors. v. National Insurance Company Ltd. & Anr.***[14]

7. ***Helen C. Rebello***[6] was a case in which the life insurance amount received by heirs, on account of victim's death was held to be not deductible from the compensation for death in a motor accident. The common law principle of adjusting the pecuniary advantages coming from whatever source, by reason of death, was interpreted as referring to pecuniary advantage on account of accidental death and not coming out of other forms of death. Provident fund, family pension, cash balance, shares, fixed deposits etc. cannot be termed as pecuniary advantages for the purposes of Motor Vehicles Act, especially taking into account the beneficial character of the legislation.

12 C.A.No.5093 of 2025 @ SLP(C) No.9515 of 2020
13 SLP(C) No.5044 of 2019 delivered on 05.02.2024
14 (2019) 17 SCC 465

8. ***Rajkumar Agrawal*** (supra) referred the question as to whether a motor accident claim would lie with respect to an injured employee, in view of the bar contemplated under Section 53 of the ESI Act; not very relevant in the instant case. ***Western India Plywood Ltd.***[9] held that the bar under Section 53 of the ESI Act acted against receiving or recovery of compensation or damages under any other law and is equally applicable to relief under another statute and to a claim in torts. A suit for damages on account of an employment injury was held barred. In ***Hamida Khatoon***[10], the applicability of the bar under Section 53 was held to apply even against receiving the compensation under the M.V. Act. In the two Judge Bench decision of ***Francis De Costa***[11], the two Judges differed on the question whether the accident suffered by an employee on the public road, while he was on his way to join duty, is one arising out of and in the course of employment. The observation made in so far as a remedy under the M.V. Act is inconsequential, in so far as the issue itself was referred to a three Judge Bench. The larger Bench answered the reference in (1996) 6 SCC 1, against the employee, holding that the injury caused to an employee in an accident while he was travelling to his place of employment would not be covered, unless the accident had at

least a causal connection with the work he was doing at the factory. The reference of the specific question need not detain us in the present case where there is an authoritative finding by a three Judge Bench with regard to the Rules of 2006 as is seen from ***Shashi Sharma***[4].

9. In ***Shashi Sharma***[4], ***Helen C. Rebello***[6] and one other decision on the same lines was referred to and distinguished. The principle stated in ***Helen C. Rebello***[6] that any pecuniary advantage "due to the dependents of the deceased" which has no direct nexus with the accident, injury or death, would not be deductible from the compensation amount payable under the M.V. Act, was affirmed. However, the compensation claimed under the M.V. Act takes in the component of loss of income which has a direct reference to the "pay and wages" which otherwise would have been earned by the deceased employee, if he had survived the injury caused to him due to the motor accident. Looking at the Rules of 2006, it was held to be a compassionate assistance by way of ex-gratia financial assistance to the deceased government employee who dies in harness and it would be unfathomable if the dependents can still be permitted to claim the same amount as a possible or

likely loss of income suffered by them; thus maintaining a claim for compensation of loss of dependency in the context of loss of income, again under the M.V. Act. Whether the claimants would be legitimately entitled for the loss of pay and wages, which in effect is the compensation assessed as loss of income by reason of the death of an employee, when the very same benefits of pay and wages is made available to them under the Rules of 2006 was the question posed. It was answered in the negative since the receipt of both would result in a double benefit. Reference was also made to Section 167 of the M.V. Act wherein a person entitled to claim under the M.V. Act and the Workmen's Compensation Act, 1923 is permitted to claim such compensation only under either of the enactments, but not under both; reserving the right of election to the injured employee or his dependants.

10. We cannot but notice that the three Judge Bench in ***Sebastiani Lakra***[14] was again concerned with 'just compensation' and held that amount/advantages accruing to the claimants as a result of some contract or act which the deceased performed in his life time; like on account of insurance, bank deposits, shares, debentures, pensionary benefits, gratuity or grant of

employment to a kin of the deceased, which cannot be said to be the outcome or result of death of deceased in a motor vehicle accident, even though these amounts would go into the hands of the claimants after the death of the deceased. Therein an Employees' Benefit Scheme was held to be not deductible in terms of the judgment in ***Helen C. Rebello***[6]. While accepting the dictum in ***Helen C. Rebello***[6], ***Shashi Sharma***[4] was specifically referred to and distinguished. Though ***Shashi Sharma***[4] did not in principle disagree with the propositions laid down in ***Helen C. Rebello***[6], it all the same permitted deduction of the amounts received under the Rules of 2006 under the head of pay and other allowances. The Coordinate Bench in ***Sebastiani Lakra***[14]***,*** also did not differ from the principles laid down in ***Shashi Sharma***[4] with specific reference to the Rules of 2006. In any event in ***Sebastiani Lakra***[14]***,*** a three Judge Bench could not have differed from the dictum of a coordinate Bench in ***Shashi Sharma***[4].

11. In this context, we notice that the Constitution Bench decision in ***Pranay Sethi***[2] wherein a conflict between two decisions of Coordinate Benches was considered and it was so held in paragraphs No.14, 27 and 28: -

14. *The aforesaid analysis in Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 may prima facie show that the two-Judge Bench has distinguished the observation made in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121] but on a studied scrutiny, it becomes clear that it has really expressed a different view than what has been laid down in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121]. If we permit ourselves to say so, the different view has been expressed in a distinctive tone, for the two-Judge Bench had stated that it was extremely difficult to fathom any rationale for the observations made in para 24 of the judgment in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121] in respect of self-employed or a person on fixed salary without provision for annual increment, etc. This is a clear disagreement with the earlier view, and we have no hesitation in saying that it is absolutely impermissible keeping in view the concept of binding precedents.*

27. *We are compelled to state here that in Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347], the three-Judge Bench should have been guided by the principle stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65] which has concurred with the view expressed in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121] or in case of disagreement, it should have been well advised to refer the case to a larger Bench. We say so, as we have already*

expressed the opinion that the dicta laid down in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65] being earlier in point of time would be a binding precedent and not the decision in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54].

28. *In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54] was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421] . We have no hesitation that it is not a binding precedent on*

the co-equal Bench.

(underlining by us for emphasis)

12. In the teeth of the decision of the Constitution Bench with all the respect at our command, we cannot agree with the two Judge Bench decision in ***Krishna[13].*** Nor can we find ***Sebastiani Lakra[14]*** having clarified ***Shashi Sharma[4]*** and we are hence, bound to follow ***Shashi Sharma[4]*** which has been followed in ***Birendera[5]***, another two Judge Bench and also by this very Division Bench in ***Sunita Sharma[12]***.

13. Now we come to the quantum in the appeal filed by the claimants. The loss of dependency awarded by the High Court is Rs.44,44,986/- reckoning the future prospects and the multiplier applicable to a person between the age of 40 and 45 and deducting income tax and personal expenses, which are in tune with the dictum in ***Pranay Sethi[2]***. However, we have to notice that the compensation under conventional heads has not been restricted to Rs.70,000/- in ***Pranay Sethi[2]*** but has been restricted to Rs.40,000/- for loss of consortium, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. ***Magma General Insurance Company Ltd. v. Nanu***

Ram @ Chuhru Ram[15] and in ***New India Assurance Company v. Somwati***[16] declared the principle that in addition to loss of spousal consortium, loss of parental & filial consortium also have to be considered. This does not go against the judgment of the Constitution Bench and is in tune with the three Judge Bench in ***Sebastiani Lakra***[14] which also emphasise the need for *'just compensation'*.

14. In the above context we notice that here the loss of consortium is entitled to the spouse and the three children of the deceased which will come to Rs.1,60,000/-. This amount cannot be reduced by any amounts received by the claimants under the Rules of 2006. The Rules of 2006 permits the last drawn salary of the deceased to be continued to the family of the employee but for different periods dependent upon the age of the deceased. If the deceased was aged 35 years, then the last drawn pay and allowances would be payable for a period of 15 years and if the employee is between 35 years and 48 years of age, the period would be reduced to 12 years and for an employee who died at the age of 48 years, the payment would be restricted to 7 years. The year-wise restriction made

15 2018 (4) RCR (Civil) 333
16 (2020) 9 SCC 644

applicable in the Rules of 2006 is also on the principle of the normal life expectancy of an employee on which principle, the multiplier system has been introduced and affirmed in ***Sarla Verma's*** case.

15. Hence, the proper method would be for the Tribunal itself considering the death of a Government employee, to whom the Rules of 2006 is applicable, to first consider the loss of income, quantum of compensation with reference to loss of income as would be available from the principles enunciated in ***Sarla Verma*** and ***Pranay Sethi****'s* case and to deduct the pay and allowances payable under the Rules of 2006. If the compensation for loss of income arrived at under the M.V. Act is more, then necessarily the difference has to be paid to the claimants.

16. In the present case, the deceased was aged 43 years and was getting a salary of Rs.28,300/- per month which takes his annual income to Rs.3,39,600/-. The deceased left behind his wife and three children, thus he was earning for a family comprised of five persons, in which context, the deduction for personal expenses has to be 1/4th. The High Court has deducted the income tax to arrive at the annual income of

Rs.3,25,640/- and an addition has been made for future prospects at the rate of 30% which is in accordance with ***Pranay Sethi*[2]*.*** The High Court has also reduced half of the financial assistance payable computed at Rs.43,35,408/- under the Rules of 2006. The High Court also relied on PW-4, an employee in the District Employment Office, Fatehabad who has deposed that the family of the deceased is entitled to a salary of Rs.30,107/- for the month of August 2015 which in accordance with the Rules of 2006 would be continued for 12 years coming to a total of Rs.43,35,408/-. Obviously, this is the last drawn salary of the deceased which should have been reckoned for the purpose of calculating the loss of income under the M.V. Act also. Considering the fact that no deduction for the income tax has been made in the amounts entitled to the family of the deceased for 12 years, which would be deducted only from monthly payments, we are of the view that there could be no deduction made even while computing the loss of income from the last drawn pay; for income tax.

17. Hence, the loss of income, ideally would have to be computed in the following manner. Obviously since the amounts payable under the Rules of 2006 is the last drawn pay in computing the

loss of income under the M.V Act necessarily the future prospects will have to be added and the multiplier applicable would be 14 since the age of the deceased was 43. The computation hence would be 30,107 x 12 x 14 x 130% x 3/4 = Rs.49,31,527/- from which the amounts payable as financial assistance under the Financial Assistance Rules of 2006 will have to be deducted which is Rs. 43,35,408/-. The additional loss of income payable under the M.V. Act would be Rs. 5,96,019/- to which will be added loss of consortium for the widow and three children at Rs. 1,60,000/- and loss of estate and funeral expenses of Rs. 30,000/-. The total compensation would be Rs. 7,86,119/-. The compensation already paid shall not be refunded.

18. The Appeals are disposed of on the afore said terms on the question of law, following ***Shashi Sharma[4].***

19. Pending application(s), if any, shall stand disposed of.

....., J.
[SUDHANSHU DHULIA]

....., J.
[K. VINOD CHANDRAN]

NEW DELHI;
APRIL 28, 2025.

ITEM NO.51A COURT NO.12 SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 12235-12236/2019

[Arising out of impugned final judgment and order dated 24-01-2019 in FAO No. 7415/2016 24-01-2019 in FAO No. 1583/2017 passed by the High Court of Punjab & Haryana at Chandigarh]

THE NEW INDIA ASSURANCE COMPANY LTD. Petitioner(s)

VERSUS

KAMALESH & ORS. Respondent(s)
WITH
SLP(C) No. 12421-12422/2023 (IV-B)

Date : 28-04-2025/17.05.2025

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) : Dr. Meera Agarwal, AOR
Mr. Ramesh Chandra Mishra, Adv.

For Respondent(s) : Mr. M. R. Shamshad, Sr. Adv.
Mr. Shashank Singh, Adv.
Ms. Savita Devi, Adv.
Mr. Gaurav Gupta, Adv.
Mr. Rohit Kumar, Adv.
Mr. Akshay Verma, AOR
(Respondent in SLP (C) 12235-12236/2019)
(Petitioner in SLP (C) 12421-12422/2023)

Mr. Devendra Kumar Saini, Adv.
Mr. Samar Vijay Singh, AOR
Ms. Sabarni Som, Adv.
Mr. Fateh Singh, Adv.
Mr. Aman Dev Sharma, Adv.
Mr. Ayush Gupta, Adv.
Mr. Vaibhav Vikram Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Reasoned order is being uploaded today i.e. on 17.05.2025.

(JAYANT KUMAR ARORA) (RENU BALA GAMBHIR)

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ASTT. REGISTRAR-cum-PS **ASSISTANT REGISTRAR**

(Signed order is placed on the file)

ITEM NO.51 COURT NO.12 SECTION IV-B

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THE NEW INDIA ASSURANCE COMPANY LTD. Petitioner(s)

VERSUS

KAMALESH & ORS. Respondent(s)
WITH
SLP(C) No. 12421-12422/2023 (IV-B)

Date : 28-04-2025 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) : Dr. Meera Agarwal, AOR
Mr. Ramesh Chandra Mishra, Adv.

For Respondent(s) : Mr. M. R. Shamshad, Sr. Adv.
Mr. Shashank Singh, Adv.
Ms. Savita Devi, Adv.
Mr. Gaurav Gupta, Adv.
Mr. Rohit Kumar, Adv.
Mr. Akshay Verma, AOR
(Respondent in SLP (C) 12235-12236/2019)
(Petitioner in SLP (C) 12421-12422/2023)

Mr. Devendra Kumar Saini, Adv.
Mr. Samar Vijay Singh, AOR
Ms. Sabarni Som, Adv.
Mr. Fateh Singh, Adv.
Mr. Aman Dev Sharma, Adv.
Mr. Ayush Gupta, Adv.
Mr. Vaibhav Vikram Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of.

Reasons to follow.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR