

**HIGH COURT OF TRIPURA  
AGARTALA  
MAC.APP.No.128 of 2024**

**Smt. Khela Sutradhar,**  
wife of Late Manoranjan Sutradhar,  
resident of Khayerpur, P.S. Bodhjungnagar,  
District-West Tripura

---- Appellant(s)

Versus

**1. Sri Sujit Chakraborty,**  
son of Late Bidhu Ranjan Chakraborty,  
resident of Radha Kishore Nagar,  
Near Kash Noagoan, P.O. Khayerpur,  
P.S. Bodhjungnagar, District-West Tripura,  
(Owner of motor bike No.TR-01-W-5423)

**2. The Branch Manager,**  
Reliance General Insurance Company Limited,  
Ker Chowmuhani, Agartala, P.O.Ramnagar,  
P.S. West Agartala, District-West Tripura  
(Insurer of motor bike No.TR-01-W-5423)

**3. Sri Uttam Sutradhar,**  
son of Late Manorajan Sutradhar,  
resident of 124 Khayerpur,  
(north side of Assam Agartala Road)  
P.S. Bodhjungnagar, District-West Tripura

**4. Smt. Supriya Paul,**  
daughter of Late Manoranjan Sutradhar,  
resident of 106 Laxmipur, P.S. Bodhjungnagar,  
District-West Tripura, Pin-799008

**5. Sri Satyajit Sutradhar,**  
son of Late Manoranjan Sutradhar,  
resident of Khayerpur, Near Trinath Temple,  
P.O. Khayerpur, P.S. Bodhjungnagar,  
District-West Tripura

----Proforma-Respondent(s)

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For Appellant(s)	: Mr. Alik Das, Adv.
For Respondent(s)	: Mr. Samarjit Bhattacharjee, Adv. Mr. Kushal Deb, Adv.
Date of Hearing & Judgment & Order	: 07.08.2025
Whether fit for reporting	: YES/NO

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**HON'BLE MR. JUSTICE BISWAJIT PALIT****Judgment & Order**

This appeal under Section 173 of M.V. Act is preferred challenging the judgment and award dated 20.08.2024 delivered by Learned Member, Motor Accident Claims Tribunal No.4, West Tripura, Agartala in connection with Case No.T.S.(MAC)130 of 2017. By the said judgment and award, Learned Tribunal below awarded total compensation amounting to Rs.3,29,160/- along with 9% interest per annum from the date of filing the claim petition i.e. w.e.f. 12.07.2017 to till the date of realization.

**[02]** Heard Learned counsel, Mr. A. Das appearing on behalf of the appellant and also heard Learned counsel, Mr. S. Bhattacharje appearing on behalf of the original claimant petitioner Nos.2 and 3 in the claim petition bearing No.T.S.(MAC)130/2017 herein respondent Nos.3 and 4. Also heard Learned counsel, Mr. K. Deb appearing on behalf of owner of motor bike bearing No.TR-01-W-5423 i.e. the respondent No.1 herein. But none appears on behalf of the respondent Nos.2 and 5 inspite of proper service of notice.

**[03]** At the time of hearing, Mr. A. Das, Learned counsel appearing on behalf of the appellant Khela Sutradhar being the wife of the deceased drawn the attention of the Court that before the Tribunal the claimant produced oral evidence on record regarding income of the deceased husband being a carpenter. But since the deceased was self employed, so, it was not possible on her part to produce and prove any income certificate of the deceased although she alleged that the monthly income of her husband was Rs.15,000/- per month but the Learned Tribunal determined the monthly income of the deceased only at Rs.4,000/- per month which was totally irrational and unjustified and absence of proper application of mind. Learned counsel further submitted that in this case, before the Tribunal Reliance General Insurance Company Limited was impleaded as noticee Insurance Company but

surprisingly at the time of delivery of judgment Learned Tribunal fastened the liability of payment of compensation upon the United India Insurance Company Limited who was not a party and on the day of alleged accident the motor bike of the respondent No.1 was duly insured with the Reliance General Insurance Company Limited which according to Learned counsel for the appellant may be due to clerical/typing mistake the name of United Insurance Company Limited has been mentioned in the award for which the judgment and award requires to be amended.

**[04]** It was further submitted that the deceased had two sons and one daughter all though before the Tribunal the present appellant and her son Uttam Sutradhar and her married daughter Supriya Paul were impleaded as claimant petitioners but another son Satyajit Sutradhar although did not join as a claimant before the Tribunal but he submitted his examination in chief in affidavit before the Learned Tribunal and the Learned Tribunal in para No.13 of the judgment did not say anything about the entitlement of the said son Satyajit Sutradhar in the award and being a legal heir of said deceased he is also entitled to get a portion of compensation.

**[05]** Learned counsel, Mr. S. Bhattacharjee appearing on behalf of the rest two claimant petitioners i.e. Uttam Sutradhar and Supriya Paul in the original claim petition herein respondent Nos.3 and 4 submitted that in para-12 of the judgment Learned Tribunal discussed everything regarding entitlement of compensation in respect of legal heirs. Further, he also drawn the attention of the Court referring one judgment of the Hon'ble Supreme Court of India in **Sadhana Tomar and Others versus Ashok Kushwaha and Others in Civil Appeal No.3763 of 2025 arising out of SLP(C)No.6986 of 2023** wherein in para Nos.5,6,7,8, 10,12,13 and 14 Hon'be the Apex Court observed as under :

**"5. The Tribunal by its Order dated 9th October 2018, observed that Respondent No. 1 and 2 are jointly and severally liable to pay compensation as the driver, at the time of accident, was driving the vehicle without a valid and effective driving licence. The Tribunal awarded compensation to the tune of Rs. 9,77,200/- along with simple interest @**

7% p.a. to appellant No. 1 to 3 herein, by taking the notional income of the deceased as Rs. 4,500/- per month and fixing the future prospects at 40 per cent. A deduction of 1/3rd amount for personal expenses was made, and Appellant Nos. 4 and 5, i.e., his father and younger sister were not considered as dependents of the deceased.

6. Being aggrieved by the amount of compensation awarded, the claimant-appellants filed an appeal before the High Court. The main ground of challenge was that the Tribunal had incorrectly determined the monthly income of the deceased at Rs. 4,500/- per month, whereas it should have been Rs. 35,000/- per month; and also, that the Tribunal had deducted 1/3rd amount from the annual income of the deceased towards personal expenses, whereas since there are five claimant appellants, the deduction for personal expenses ought to have been by 1/4th.

7. The High Court, vide its impugned judgment, affirmed the findings of the Tribunal in respect of the amount of compensation awarded and disposed of the same by holding that the insurance company to pay the amount of compensation to the claimants and, thereafter, recover the same from the driver and owner of the offending vehicle as they are jointly and severally liable to pay the compensation in accordance with the decision of this Court in *National Insurance Co. Ltd. v. Swaran Singh* [(2004) 3 SCC 297].

8. Yet dissatisfied, the claimant-appellants are now before us. The points raised by the appellants are that the High Court incorrectly assessed the monthly income of the deceased at Rs. 4,500/-, and the appropriate multiplier was also not applied.

10. We are unable to agree with the view taken by the Tribunal and the High Court on the monthly salary of the deceased. It is borne from the record that he was doing wholesale business of selling fruits. It is true that in the absence of any material on record, the claimant appellants were not able to prove the income of the deceased. However, it is imperative to note that the accident took away such a potential learning member of the family.

12. Further, the claimant-appellants contended that the High Court did not apply the appropriate multiplier while calculating the compensation. As per the *National Insurance Co. Ltd. v. Pranay Sethi* [(2017) 16 SCC 680], the law is settled that the multiplier for a person of the age of 24 years must be 18 and the same has been correctly taken by the High Court.

13. This Court has clarified in the case of *Meena Devi v. Nunu Chand Mahto* [(2023) 1 SCC 204], that the objective of granting compensation under the Motor Vehicles Act, 1988, is to ensure that just and fair compensation is paid to the aggrieved party. Another question which arose for our consideration, as for the purpose of loss of dependency, the deduction of annual income should be 1/3rd or 1/4th, as there are five claimants. The Tribunal did not consider appellant Nos. 4 and 5, namely, the father and the younger sister, respectively, of the deceased as dependents, stating therein that the father was not dependent on the income of the deceased and since the father is alive, the younger sister is also not dependent on the income of the deceased. This Court in *Gujarat SRTC v. Ramanbhai Prabhatbhai* [(1987) 3 SCC 234], observed that a legal representative is one, who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent or child.

14. Recently in *N. Jayasree v. Cholamandalam MS General Insurance Company Ltd.* [(2022) 14 SCC 712], this Court observed that:

“16. In our view, the term “legal representative” should be given a wider interpretation for the purpose of Chapter XII of the MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, the MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realisation of compensation.”

(Emphasis supplied)

He also referred another citation of the Hon'ble Supreme Court of India in **National Insurance Company Limited versus Birender and**

**Others in Civil Appeal Nos.242-243 of 2020** arising out of **SLP(C)Nos.976-977 of 2020** wherein in para Nos.5,6,7,8,10,12,13,14 and 15 the said Apex Court observed as under :

**"5. Respondents 1 and 2 claimed an amount of Rs 50,00,000 (Rupees fifty lakhs only) along with interest @ 12% p.a. on the assertion that the deceased was earning Rs 28,000 per month (Rs 21,000 as salary and Rs 7000 as family pension of her husband), she was hale and healthy and was the only bread earner of her entire family and that they were largely dependent upon her income and have also been deprived of her love and affection. The appellant disputed the claim and pleaded that the accident did not occur with the offending vehicle (the dumper/tipper) or due to fault of its driver, and that Respondents 1 and 2 were majors and not dependent upon the deceased and as such not entitled for any compensation. Further, the vehicle in question was being plied in contravention of terms and conditions of the insurance policy and the driver was not holding a valid and effective driving licence. Resultantly, the appellant insurance company was not liable to pay compensation.**

**6. After analysing the evidence on record, the Tribunal held that the accident of the deceased occurred due to rash and negligent driving of the offending vehicle. The Tribunal further noted that the driver and the owner of offending vehicle have placed on record the driving licence of the driver, valid insurance policy, public carrier permit and the registration certificate of the offending vehicle and the appellant having failed to lead any evidence to prove that the terms and conditions of the insurance policy were violated, cannot be absolved of its liability. The Tribunal also noted that though Respondents 1 and 2 were major and earning hands, the fact that they were legal heirs of the deceased and have been deprived of the pecuniary benefits through the deceased cannot be denied.**

**7. Having decided the above issues in favour of Respondents 1 and 2, the Tribunal while determining the quantum of compensation took note of the gross monthly salary of the deceased as on September, 2014, which according to her service record was Rs 23,123 and the net take-home salary was Rs 16,918. The Tribunal did not consider the family pension for computation, as the deceased was getting it in her own right as widow and the same could not be reckoned. Her date of birth was 1-4-1967 and date due for retirement was 31-3-2027, for which multiplier of '13" was applied. The deduction towards personal expenses was kept at 50% as Respondents 1 and 2 were major and earning hands. Thus, the loss of dependency was determined at Rs 17,15,532. In addition, an amount of Rs 25,000 was awarded on account of funeral expenses, etc. and the total compensation was computed at Rs 17,40,532 along with interest at the rate of 9% p.a. from the date of institution of the petition. The driver, owner and insurer of the offending vehicle were held jointly and severally liable.**

**8. Against the award passed by the Tribunal, cross-appeals were preferred being FAO No. 1341 of 2016 (O&M) filed by the appellant and FAO No. 4023 of 2016 (O&M) filed by Respondents 1 and 2. The appellant (Insurance Company) primarily contended that Respondents 1 and 2 are not entitled to compensation for loss of dependency as they are major and earning and also because the family of the deceased was entitled to receive financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short "the 2006 Rules). Respondents 1 and 2 contended that being major and also earning by itself cannot be regarded as ineligibility to claim compensation. Further, the Tribunal has wrongly assessed loss of dependency on take-home salary instead of the drawing salary and without considering the family pension received by the deceased had she been alive. They further claimed that the deduction of personal expenses should be one-third (1/3rd) instead of 50%.**

10. The former appeal is preferred by the appellant on the ground that the High Court ought to have deducted the entire amount of financial assistance under the 2006 Rules, instead of deducting only 50% thereof. Reliance was placed on the judgment of this Court in *Reliance General Insurance Co. Ltd. v. Shashi Sharma and Others* : (2016) 9 SCC 627. It is urged that claim for loss of dependency is unavailable to Respondents 1 and 2 in the facts of the present case, they being major sons of the deceased who were married and also gainfully employed. Reliance is placed on *Manjuri Bera (Smt.) v. Oriental Insurance Co. Ltd. and Another* : (2007) 10 SCC 643. It is urged that Respondents 1 and 2 may be entitled only to compensation under conventional heads as held in *National Insurance Co. Ltd. v. Pranay Sethi* : (2017) 16 SCC 680

12. We have heard Mr Amit Kumar Singh, learned counsel for the Insurance Company (appellant) and Ms Abha R. Sharma, learned counsel for Respondents 1 and 2. The principal issues which arise for our consideration are as follows:

- (i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 (for short "the Act")?
- (ii) Whether such legal representatives are entitled only for compensation under the conventional heads?
- (iii) Whether the amount receivable by the legal representatives of the deceased under the 2006 Rules is required to be deducted as a whole or only portion thereof?

13. Reverting to the first issue – that needs to be answered on the basis of the scheme of the Act. Section 166 of the Act provides for filing of application for compensation by persons mentioned in clauses (a) to (d) of sub-section (1) thereof. Section 166 of the Act, as applicable at the relevant time, reads thus:

"Section 166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

3) \* \* \*

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court

in *Manjuri Bera\** had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. Notably, the expression "legal representative" has not been defined in the Act. In *Manjuri Bera*, the Court observed thus: (SCC pp. 647-48, paras 9-12) "9. In terms of clause (f) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act. 10. ... The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same. 11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g). 12. As observed by this Court in *Custodian of Branches of Banco Nacional Ultramarino v. Nalini Bai Naique* the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhaia* legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child." 13. In para 15 of *Manjuri Bera*, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of S.H. Kapadia, J., as his Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of Respondents 1 and 2 (claimants) even though they are major sons of the deceased and also earning. 14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

Referring those citations he drawn the attention of the Court that since the claimant petitioner Nos.2 and 3 are the legal heirs of deceased Manoranjan Sutradhar including Satyajit Sutradhar, so, they being the legal representative of the deceased are entitled to compensation.

It was further submitted that even major married and earning sons of the deceased including married daughters are also entitled to compensation being the legal representatives of the deceased.

**[06]** Learned counsel, Mr. S. Bhattacharjee supporting the arguments made by Learned counsel, Mr. Alik Das representing the appellant, Khela Sutradhar being the wife of the deceased submitted that admittedly before the Learned Tribunal the claimants could not produce and prove any documentary evidence showing income of the deceased at Rs.15,000/- per month but in the claim petition itself and by way of oral evidence, the claimants intended to convince the Learned Tribunal that being a carpenter the deceased was earning Rs.15,000/- per month which remain un-rebutted and un-impeached/shaken by the contesting opposite parties. Furthermore, the accident took place in the year 2017 and in normal parlance even an old person also as a carpenter during the year 2017 definitely could earn not less than Rs.15,000/- per month but the Learned Tribunal at the time of determination of compensation came to the observation that the deceased was non earning member and determined the monthly income of the deceased at Rs.4,000/- per month and accordingly decided notional income at Rs.48,000/- p.a. which was too less for which the interference of the Court is also required. It was further submitted that in the claim petition it was asserted the age of the deceased as 65 years but as per Aadhaar Card and the postmortem examination report the age of the deceased was 71 years at the time of death. So, considering the age of the deceased as 71 years Learned counsel urged before the Court for enhancement of compensation modifying the award delivered.

**[07]** It was further submitted that towards consortium Learned Tribunal awarded only Rs.1,20,000/- but in view of the judgment of **National Insurance Company Limited versus Pranay Sethi and Others** reported in **(2017) 16 SCC 680** the same amount of compensation also should be enhanced with 10% interest after every span of three years. He referred para - 52 of the judgment of said judgment which provides as under :

**"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh versus Rajbir Singh : (2013) 9 SCC 54. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh (supra) refers to Santosh Devi versus National Insurance Co. Ltd. : (2012) 6 SCC 421, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."**

**[08]** He further drawn the attention of the Court referring the same judgment that in the same way 'loss of estate' and 'funeral expenses' be enhanced. According to Learned counsel, the said judgment was delivered on 31.10.2017 and the present accident took place on 05.06.2017 although, after the accident the deceased was admitted in the hospital for a certain period and thereafter, he succumbed to his injuries. So, the said judgment would prospectively cover in the present case. So, Learned counsel urged for allowing this appeal and also urged for enhancement of the award determined by the Learned Tribunal. Referring entitlement of another son Satyajit Sutradhar, Mr. Bhattacharjee, Learned counsel did not dispute anything in course of hearing.

**[09]** Now let us discuss about the subject matter of the claim petition. As already stated the present appellant and her one son and one married

daughter filed a claim petition before the Tribunal claiming compensation due to death of their deceased predecessor Manoranjan Sutradhar in a road traffic accident. Initially the claim petition was filed only by Smt. Khela Sutradhar i.e. the appellant and after that Uttam Sutradhar and Smt. Supriya Paul submitted an application under Order 1 Rule 10(2) of CPC before the Tribunal for allowing them to be added as party and accordingly after hearing their prayer was allowed and they were added as claimants in the original claim petition. According to the appellant claimants deceased Manoranjan Sutradhar on 05.06.2017 after performing his job as a carpenter returned back to home and at about 7 a.m. when he was proceeding towards tea stall through Assam-Agartala road that time the offending motor bike bearing No.TR-01-W-5423 owned by respondent OP No.1 dashed against said Manoranjan Sutradhar from his back and soon after the accident the driver immediately fled away from the spot keeping the motor bike there and resulting which said Manoranjan Sutradhar sustained fatal injuries and the bystanders shifted him to AGMC and GBP Hospital at Agartala and in course of his treatment the victim Manoranjan Sutradhar succumbed to his injuries. In this regard Bodhjungnagar P.S. Case No.2017BJN023 under Section 279/338 of IPC was registered and Section 304A of IPC was added. The claimants had to spent some money for the purpose of treatment of the deceased so long he survived and after that on his death the claimant filed the claim petition stating that the age of the deceased was 65 years and his monthly income was Rs.15,000/- per month.

**[10]** The owner of the motor bike contested the claim petition by filing written statement denying the assertions of the claimant petitioners and further took the plea that on the day of alleged accident his bike was duly insured with the respondent Insurance Company i.e. Reliance General Insurance Company Limited. The noticee Insurance Company also contested the claim by filing written statement denying the assertions of the claimant petitioners and the Insurance Company took the plea that the claim petition

was subjected to strict proof. However, upon the pleading of the parties, the Learned Tribunal below framed two issues :

**“(1) Whether Manoranjan Sutradhar, husband of the claimant, suffered death in a vehicular accident which alleged to have been occurred on 05.06.2017 on Assam-Agartala Road near Trinath temple under Bodhjungnagar PS, due to rash and negligent driving of motor cycle bearing registration No.TR-01-W-5423 by its rider ?  
(2) Whether the claimant petitioner is entitled to compensation as prayed for. If so, upto what extent and who will be held liable to pay the same.”**

In order to prove the case from the side of claimant petitioners three witnesses were examined and certain documents were exhibited and the OP owner was examined as OPW-1 and he also relied upon some documents which were also marked as exhibits but no oral/documentary evidence was adduced by the Insurance Company. However, in order to prove the case, the claimants have examined three witnesses and exhibited the following documents which are mentioned herein below:

**I. Exbt.1 series :- Certified copies of FIR Form and ejahar (3 sheets).  
II. Exbt.2 :- Laboratory report (2 sheets).  
III. Exbt.3 :- Cash Memo (24 sheets out of which 5 are carbon copies).  
IV. Exbt.4 :- P.M. Certificate of deceased.  
V. Exbt.5 :- Aadhaar Card of deceased.  
O.P. owner examined himself as OPW-1 and has exhibited the following documents :  
I. Ext.A :- Photocopy of Registration certificate of the motor bike bearing No.TR-01-W-5423 (compared with original).  
II. Ext.B :- Photocopy of driving license of OPW-1 (compared with original).  
III. Ext.C :- Photocopy of Insurance Policy of the said motor cycle covering from 16.03.2017 to 15.03.2018 (compared with original).  
IV. Ext.D :- Photocopy of Tax token of the said motor cycle (compared with original).”**

Finally on conclusion of enquiry Learned Tribunal below allowed the claim petition filed by the respondent claimant petitioners. The operative portion runs as follows :

**“In the result, the instant claim petition is allowed on contest for an award of Rs.3,29,160/- (Rupees Three Lakh Twenty-nine Thousand One hundred Sixty) only as compensation. The amount of compensation shall carry interest @ 9% per annum from the date of presentation of the claim petition before this Tribunal on 12.07.2017 till realization.  
The apportionment of the compensation amongst the claimants shall be as under :-**

- a) The claimant petitioner No.1 being the widow of the deceased shall be entitled to 60% of the total compensation awarded.
- b) The claimant-petitioners No.2 and No.3 being major married son and daughter of the deceased, each of them shall be entitled to 20% of the total compensation.

**The O.P. No.4, United India Insurance Company Ltd. shall deposit the amount of compensation awarded to this Tribunal within a period of 30(thirty) days from the date of award in terms of Section 168(3) of the Act.**

**Considering the quantum of compensation each of the claimants would get it is ordered that the same be released in their favour through their individual bank accounts after deposit of the same by the insurer.**

**The O.P. insurance company shall give notice of the deposit of the compensation amount to the claimant and shall also file a compliance report with this Tribunal within 15 days of the deposit.”**

Challenging that award the appellant i.e. the wife of the deceased filed this present appeal for enhancement of the award.

**[11]** I have gone through the judgment delivered by Learned Tribunal and also perused the evidence on record. To substantiate the claim petition before the Tribunal, all the claimant petitioners i.e. Khela Sutradhar and her two sons Uttam Sutradhar and Satyajit Sutradhar filed their examination in chief in affidavit before the Tribunal and they were duly cross examined by the opposite parties. From the cross examination it appears that regarding monthly income of the deceased the evidence of the witnesses of the claimants could not be impeached or dismantled by the contesting opposite parties, although, admittedly, the claimants before the Tribunal could not produce and prove any income certificate of the deceased. Regarding age although the claimants relied upon postmortem examination report which shows the age of the deceased at 70 years at the time of accident but as per Aadhaar Card [Exbt.5] his age appears to be 71 years and in this regard there is no rebuttable evidence on record from the side of contesting OPs. Now regarding determination of monthly income it appears that Learned Tribunal did not rely upon the evidence on record of the claimants in absence of documentary evidence on record. Learned Tribunal only determined the monthly income of the deceased at Rs.4,000/- per month and thus assessed the notional income of the deceased at Rs.48,000/- p.a. which in my considered view was not proper. As the profession of the deceased was not challenged and furthermore considering the life span of a person it cannot be said that there was no scope on the part of deceased to survive by rendering the job of a carpenter at the age of 70/71 years. The accident took place in the year 2017 and if we assume that the deceased could have work twenty five days in a month as a carpenter during that period the deceased by doing the job of carpenter definitely could

used to earn at least Rs.400/- per day and in that case, he could have easily earn Rs.10,000/- per month which in my considered opinion during the time of accident, the monthly income of the deceased was in the lower side at Rs.10,000/- per month.

**[12]** According to Learned Tribunal the deceased was hospitalized w.e.f.05.06.2017 to 19.06.2017 for a period of fifteen days and towards cost of attendant awarded Rs.4,500/- in total i.e. Rs.300 per day which in my considered view was not proper which should be Rs.7,500/- i.e. Rs.500 X 15 days per day.

Regarding special diet Learned Tribunal only awarded Rs.200/- per day which in my considered view it should have been Rs. 300 x 15 days i.e. Rs.4,500/-. Thus, Rs.7,500 towards cost of attendant and Rs.4,500 towards cost of diet is awarded in favour of the claimants.

Now, let us recalculate the loss of dependency :

- i) Annual income of the deceased :- Rs.1,20,000/- i.e. (Rs.10,000 per month x 12 months)
- ii) Future prospects :- NIL because the deceased was more than 70 years of age.
- iii) Since there are four claimants, so in view of the judgment of **Sarla Verma** in para No.30 deduction would be  $1/4^{\text{th}}$  (Rs.30,000/-) i.e.  $\text{Rs.1,20,000} - 1/4^{\text{th}} (\text{Rs.30,000/-}) = 90,000/-$ . Applying multiplier 5 x 90,000/- = Rs,4,50,000/-.
- iv) Loss of consortium :- Rs.40,000 x 4 + 20% enhancement as per judgment of **Pranay Sethi** (supra) Rs.32,000/- = Rs.1,92,000/-.
- v) Loss of Estate :- Rs.18,000/- (15,000 + 20%)
- vi) Funeral expenses :- Rs.18,000/- (15,000 + 20%)
- vii) Transportation cost : Rs.5,000/-

So, in view of the judgment of Hon'ble Supreme Court of India in **Pranay Sethi**(supra) which has been affirmed by subsequent judgments of Hon'ble Supreme Court, after recalculation the total amount of compensation would come to **Rs.6,83,000/-** which the petitioners would be entitled to get as total compensation.

It is further observed that Learned Tribunal below imposed rate of interest @ 9% per annum which in my considered view it should be 7.5% from the date of filing of the claim petition to till the date of realization.

So, after hearing both the sides it appears to this Court that the present appellant and her two sons and daughter would be entitled to get the enhanced amount of compensation of **Rs.6,83,000/-**.

In the result, the appeal filed by the appellant is hereby allowed. The judgment and award dated 20.08.2024 delivered by Learned Tribunal below in connection with Case No.T.S.(MAC)130/2017 is hereby enhanced/modified to the extent that the present appellant and her three legal heirs namely Satyajit Sutradhar, Uttam Sutradhar and Smt. Supriya Paul would be entitled to get total amount of compensation of Rs.6,83,000/- along with interest @ 7.5% per month from the date of presentation of the claim petition i.e. w.e.f. 12.07.2017 to till the date of realization. The appellant claimant petitioner being the widow of the deceased namely Khela Sutradhar shall be entitled to get 40% of the total compensation of the award and the rest claimants i.e. Satyajit Sutradhar, Uttam Sutradhar and Smt. Supriya Paul would be entitled to get 20% each of the rest amount of compensation being the major married sons and daughter of the deceased (40% + 20% + 20% + 20%). The respondent No.2, Reliance General Insurance Company Limited who in spite of receipt of notice did not come forward to contest this appeal shall make payment of compensation of the aforesaid amount within a period of 2(two) months from the date of delivery of judgment of this case being the insurer of the offending motor bike to the Registries of this High Court.

A copy of this judgment be given free of cost to Learned counsel for the appellant Smt. Khela Sutradhar, a copy of this judgment also be given to Learned counsel, Mr. Samarjit Bhattacharjee appearing on behalf of Uttam Sutradhar and Supriya Paul and also a copy of this judgment be communicated to the respondent No.2 i.e. the Branch Manager, Reliance General Insurance Company Limited for information and compliance.

Send down the LCR along with a copy of this judgment.

The appeal stands disposed of.

**JUDGE**