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**(2025) 10 OHC CK 0011**

**Orissa HC**

**Case No:** MACA No. 454 Of 2018

Surama Pati And Others

APPELLANT

Vs

Bibekananda Samantaray And  
Others

RESPONDENT

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**Date of Decision:** Oct. 23, 2025

**Hon'ble Judges:** V. Narasingh, J

**Bench:** Single Bench

**Advocate:** K. Panigrahi, S. Roy

**Final Decision:** Disposed Of

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### **Judgement**

V. Narasingh, J

1. Being aggrieved by the award of compensation to the tune of Rs.21,52,936/- along with interest at the rate of 6% from the date of filing of the Claim Application, i.e. 16.12.2013, passed by the learned 1st Addl. District Judge-cum-1st M.A.C.T, Cuttack in M.A.C No.828 of 2013, dated 13.09.2017, seeking enhancement the spouse and children of the deceased Bijaya Kumar Mishra have preferred the present MACA.

2. It is the case of the Claimants-Appellants that they preferred M.A.C. No.828 of 2013 claiming a compensation of Rs.50,00,000/- on account of death of one Mr. Bijaya Kumar Mishra, who is the husband of Appellant No.1 and father of Appellant Nos.2 & 3, in a vehicular accident involving one Maruti Car bearing Registration No. OR-05-AP-2227 on 23. 11.2013 at about 8:00 P.M. on the Ring Road in front of Purighat Police Station, Cuttack.

3. It is the case of the Claimants-Appellants that the deceased was working as S.D.V.O., Khurda under the Department of Animal & Husbandry, Government of Odisha, was aged about 55 years and was getting salary of Rs.68,360/- per month and on the basis of the same, the compensation to the tune of Rs.50,00,000/- as noted above was claimed.

4. The owner of the offending vehicle was arrayed as Opposite Party No.1 and the Insurer (The New India Assurance G.I. Company Limited) as Opposite Party No.2. The owner did not contest and was set Ex-Parte by order dated 05.12.2014.

5. The Insurance Company- Opposite Party No.2 before the learned Tribunal and Respondent No.2 herein contested the case and filed its objection resisting the claim.

On the pleading of the parties, the following issues were framed;

- “i) Whether the claim application in the present form is maintainable?
- ii) Whether due to rash and (or) negligent driving of the driver of the offending vehicle bearing registration no. OR-05-AP-2227 the accident took place and in that accident the deceased, Bijaya Kumar Mishra, succumbed to injuries?
- iii) Whether the petitioners are entitled to get the compensation. If so, what would be the extent?
- iv) Whether both the Opposite Parties or either of them are/is liable to pay the compensation? and
- v) To what relief (s), if any, the petitioners are entitled to?”

6. In order to substantiate the stand, the widow-Appellant No.1 examined herself as P.W.1, one eyewitness to the occurrence was cited as P.W.2 and Junior Clerk working in the office of S.D.V.O., Bhawanipatna was examined as P.W.3 on behalf of the Claimants and several documents were exhibited on behalf of the Claimants-Appellants marked as Exts.1 to 20, of which Ext.17-Salary Certificates, Ext.18-Pay Particulars along with acquittance roll and Ext.19-Service Book are of significance.

Neither documentary nor oral evidence was adduced on behalf of the contesting Insurance Company, Respondent No.2-Opposite Party No.2.

7. Mr. Panigrahi, learned counsel appearing for the Claimants-Appellants submits that there has been gross miscarriage of justice and in as much as for reasons best known, the learned Court in seisin did not take into account the salary of the deceased for the month of November, the unfortunate accident having taken place on 23.11.2025 which comes to Rs.68,360/- which is evident on a bare perusal of Ext.-17.

8. It is also submitted that the learned Court in seisin has also committed patent errors in quantification in not taking into account the future prospects and also committed an error in deducting the income tax. To fortify his submission, learned counsel for the Appellants relies on the following judgments:-

***i. National Insurance Company Ltd. vrs. Pranay Sethi and others National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680***

***ii. M/s. Abhiram Caretaking & Expert Services vrs. Bharat Sanchar Nigam Limited Abhiram Caretaking and Expert Services v. Bharat Sanchar Nigam Limited, 2017 SCC OnLine Ori 763***

***iii. Smt. Sarla Verma and others vrs. Delhi Transport Corporation and another Sarla Verma v. DTC, (2009) 6 SCC 121***

***iv. Bimla Devi and Others vrs. Himachal Road Transport Corporation and Others Bimla Devi v. Himachal RTC, (2009) 13 SCC 530***

***v. Vimal Kanwar and others vrs. Kishore Dan and others Vimal Kanwar v. Kishore Dan, (2013) 7 SCC 476***

***vi. Chairman, Rajasthan State Road Transport Corporation and others vrs. Smt. Santosh and others Rajasthan SRTC v. Santosh, (2013) 7 SCC 107***

9. Per contra, learned counsel for the Insurance Company, Mr. Roy, submits that if assessed on the touch stone of the just compensation, the award does not merit any interference, and he also relies on the order of the Apex Court in the case of Vishavjit Singh & Ors. vs. Cholamandalam Ms General Insurance Company Limited & another Vishavjit Singh v. Cholamandalam Ms General Insurance Company Limited, SLP (Civil) No.13442 of 2020 dated 21.05.2025 in defending the deduction towards family pension.

10. Admittedly, the unfortunate death in question of the husband of Claimant-Appellant No.1 and father of Claimants 2 & 3 (Appellant Nos.2 & 3) took place on 23.11.2013.

11. So far as the salary is concerned, it is clearly established from the evidence of P.W.3 that, taking into account the fraction salary of November, 2013 (for 23 days), the monthly salary of the deceased after increment would come to Rs.68,360/-.

Such statement has withstood the cross-examination.

12. Considering that the deceased had worked for 23 days in November, which has 30 days, this Court finds force in the submission of the learned counsel for the Claimants that the salary of the deceased ought to have been calculated as Rs.68,360/-. So, the gross salary for the month of November would come to Rs.68,360/-. Therefore, the annual salary component comes to Rs.7,83,094/-.

13. Law is no longer res integra that the Consortium is divided into three parts i.e. Spousal, Filial and Parental. The case at hand relates to Spousal and Parental and in this context reference can be made to the judgment of the Apex Court in the case of Magma General Insurance Company Ltd. Vrs. Nanu Ram alias Chuhru Ram & others Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 which was quoted with approval in the case of New India Assurance Company Limited vrs. Somwati and others New India Assurance Co. Ltd. v. Somwati, 2020 SCC OnLine SC 720.

14. The quantification of compensation was considered in the recent judgment of the Apex Court in the case of United India Insurance Company Ltd. Vrs. Satinder Kaur alias Satwinder Kaur and ors United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780.

It is apt to note that the bench strength of the said judgment is three. In the case of Satinder Kaur (supra) 10 the Apex Court has held thus;

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34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

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Such quantification of compensation is reiterated in the case of N. Jayashree and ors. V. Cholamandalam Ms. General Insurance Company Ltd. N. Jayashree v. Cholamandalam MS Gen. Ins., (2022) 14 SCC 712

15. In the light of the judgment of the Apex Court relied on by the learned counsel for the Insurance Company-Respondent No.2, Mr. Roy, this Court finds force in the submission that no irregularity has been committed in deducting the amount of Rs.17,090/-towards family pension received by the widow-Appellant No.1.

16. Hence, on the basis of the law laid down in the Judgments referred to hereinabove, on the touchstone of just compensation, the compensation that the Appellants are entitled is computed as under;

<i>Annual income of the deceased</i>	<i>Rs.7,83,094/-</i>
<i>Less Income Tax</i>	<i>(-) Rs. 81,619/-</i>
<i>Less Income Tax</i>	<i>(-) Rs.2,500/-</i>
<b><i>Actual Salary</i></b>	<i>= Rs.6,98,975/-</i>
<b><i>Add 10% of Rs.7,83,094/- as Future Prospects</i></b> <i>[in terms of Paragraph 59.4 of the Judgment of Pranay Sethi (supra)1 ]</i>	<i>(+) <u>Rs.78,309/-</u> Rs.7,77,284/-</i>
<b><i>Less 1/3 of Rs.7,77,284/- [in terms of Paragraph 32 of the Judgment of Sarla Verma (supra)3 ]</i></b>	<i>(-) <u>Rs.2,59,095/-</u> Rs.5,18,189/-</i>
<b><i>Net yearly income</i></b>  <i>Multiplier to be adopted “9” (Rs.5,18,189/- x 9)</i>  <i>[The age of the deceased at the time of death was about 55 and the relevant multiplier in terms of Paragraph 42 as per Judgment of Sarla Verma (supra)3 is “9”]</i>	<i>(+) Rs.46,63,701/-</i>
<b><i>Add Funeral Expenses @ Rs. 15,000/- [in terms of Paragraph 52 of the Judgment of Pranay Sethi (supra)1 10% enhanced every three years, hence 10% of Rs.15,000= Rs.1,500+ Rs.1,500+Rs.15,000= Rs.18,000/- as the accident occurred on 23.11.2013]</i></b>	<i>(+) Rs.18,000/-</i>
<b><i>Add Loss of Estate @ Rs. 15,000/- [in terms of Paragraph 52 of the Judgment of Pranay Sethi (supra)1 10% enhanced every three years, hence 10% of Rs.15,000= Rs.1,500+ Rs.1,500+Rs.15,000= Rs.18,000/- as the accident occurred on 23.11.2013]</i></b>	<i>(+) Rs.18,000/-</i>
<b><i>Add Loss of Spousal Consortium [Rs. 40,000/- payable to Appellant No.1, in terms of Paragraphs 21 and 24 of the Judgment of Magma (supra)8 and Paragraph 52 of the Judgment of Pranay Sethi(supra)1 with enhancement @ 10% in every three years, the figure calculated is -- Rs. 40,000/- @ 10%= Rs.4000+ Rs.4000+Rs. 40,000/- = Rs.48,000/- as the accident occurred on 23.11.2013]</i></b>	<i>(+) Rs.48,000/-</i>
<b><i>Add Loss of Parental Consortium [Rs. 40,000/- each payable to Appellant Nos.2 and 3, in terms of Paragraphs 21 and 24 of the Judgment of Magma (supra)8 and Paragraph 52 of the Judgment of Pranay Sethi(supra)1 with enhancement @ 10% in every three years, the figure calculated is Rs. 80,000/- @ 10%= Rs.8000+ Rs.8000+Rs. 80,000/- = Rs.96,000/- as the accident occurred on 23.11.2013]</i></b>	<i>(+) Rs.96,000/-</i>
<b><i>Less Family pension received</i></b>	<i>(-) Rs.17,090/-</i>
<b><i>Total</i></b>	<i>= Rs.48,26,611/-</i>

**(Rupees Forty Eight lakhs Twenty Six thousand Six hundred and eleven) only.**

17. The learned Tribunal has awarded Rs.21,52,936/-. On considering the materials, on the touch stone of the doctrine of “just compensation” as discussed above, the Insurance Company is held liable to pay further sum amount of Rs.26,73,675/-(Rs.48,26,611 - Rs.21,52,936) along with interest at the rate of 6% per annum from the date of filing of the claim of application(i.e.16.12.2013) till actual payment.

The amount awarded as aforesaid shall be payable within a period of six weeks hence, failing which, it shall entail penal interest at the rate of 9% per annum from the date of filing of Claim Application till actual payment. The amount, if any, already paid shall be deducted.

18. While not interfering with the apportionment of compensation of Rs. 26,73,675/- as per the impugned award, it is directed that out of the enhanced amount with accrued interest, 25% shall be released in favour of Appellant No.1, a further 25% shall be released in favour of daughter and son (Appellant Nos.2 & 3) in equal proportion and the balance 50% shall be kept as fixed deposit for a period of five years hence, in any Nationalized Bank, which shall not be encumbered without the leave of the Tribunal in seisin.

19. The Claimants shall be liable to pay Court fee as per rules.

20. The MACA stands disposed of. Costs made easy.