Sayyed

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.552 OF 2014

1. Dr. Anagha Bhupendra Kothadiya,
   Age : 35 year, Occ.: Medical Practitioner,
   R/o. Syurga, 251/1, Plot No.5/1,
   Sankalp Pune

2. Ramani Bhupendra Kothadiya,
   Age : 18 year, Occ.: Student,
   R/o. Syurga, 251/1, Plot No.5/1,
   Sankalp Pune

3. Amruni Bhupendra Kothadiya,
   Age : 9 year, Minor u/g of her
   natural mother i.e. Appellant No.1

...Appellants
(Org. Claimant Nos.1 to 3)

Versus

1. Motiram Govind Budhwani,
   Age : major, Occu: Business
   R/o. Chhota Bazar, Paratwada,
   Tal : Achalpur, Dist. : Amravati

2. United India Insurance Company Ltd.
   having its branch office at Kanchand,
   1st Floor, Near Satish Motors, Badnera
   Road Amravati

...Respondents
(Org. Opponent Nos.1 & 3)

Mr. Amit Singh a/w Mr. Bhushan Bhadgale, Ms. Janhavi Jadhav & Ms. Ashlesha Suryavanshi i/by Abhay Nevagi & Associates for the Appellants.
Mr. Amol A. Gatne for Respondent No.2.
Mr. T. J. Mendon, Mr. Yogesh Pande, Mr. Devendranath S. Joshi & Ms. Karishma Jhaveri, Amicus Curiae.

CORAM : JITENDRA JAIN, J.
DATE : 10 JULY 2026

JUDGMENT:-

1. This appeal, for enhancement, is filed by the original claimants challenging an order of the Motor Accident Claims Tribunal, Nashik (Tribunal) dated 30 March 2012, whereby Rs.16,80,910/- was awarded alongwith interest as compensation towards death of Dr. Bhupendra Kothadiya in a vehicular accident.

2. I have heard Mr. Singh, learned counsel for the appellants-claimants and Mr. Gatne, learned counsel for respondent no.2-insurance company, and all other advocates regularly appearing in these matters.

3. Admittedly, on the date when the impugned judgment was delivered, the decision of the Hon'ble Supreme Court in the case of *National Insurance Company Limited vs. Pranay Sethi & Ors.*[1] was not available and, therefore, to that extent, the impugned order would require modification for factoring future prospects, consortium and other heads as per the said decision. On this, the parties are at *ad-idem*. This leaves me with only two important issues viz., determination of income and period of interest.

ISSUE NO. 1 :

4. The real bone of contention between the appellants and the insurance company and first issue which arises for my consideration is whether the Tribunal was justified in adopting income as per income tax return which was arrived at after setting-off of loss under the head "Income from House Property" against positive income under the head "Income from Business" for awarding compensation under the Motor Vehicles Act, 1988 ("the MV Act") ?

1 (2017) 16 SCC 680

TRIBUNAL'S WORKING :

5. The Tribunal has taken average of three years income of Rs. 1,45,858/- per annum as per the income-tax return for awarding compensation, without giving any reasons.

Financial year	Income from business/ profession	Income from house property	Income from other sources	Gross total income	Income tax paid	Balance amount
2003-04	1,82,266/- (correct is 1,84,266/-)	-77,730/-	+646	1,07,182/-	1,308/-	1,05,874/-
2004-05	2,03,975/-	-90,129/-	Nil	1,13,846/-		1,13,846/-
2005-06	3,02,013/-	-76,699/-	1,040/-	2,26,354/-	8,500/-	2,17,854/-

The average of Rs.1,45,858/- per annum is worked out by aggregating Rs.1,05,874/-, Rs.1,13,846 and Rs.2,17,854/- which figures are arrived at in above chart after setting-off loss from house property against income from business / profession.

SUBMISSION OF THE PARTIES IN BRIEF :

6. It is the submission of the appellants-claimants that interest on housing loan shown under income from house property should not be reduced for determining income to arrive at compensation since only amount which can be deducted is the income tax and profession tax and no other amount. The submission of respondent no.2-insurance company is that interest on housing loan should be reduced to arrive at disposable income in the hands of the deceased on the day of his death since it is this amount which remains for the dependents which has to be compensated under the MV Act.

7. All the advocates agree that on this issue there is not a single decision of any Court. The submissions were also made by Advocates

Mr. Mendon, Mr. Pande, Mr. Joshi and Ms. Jhaveri since similar issue arises in other matters, in addition to Mr. Singh, learned counsel for the appellants-original claimants and Mr. Gatne, learned counsel for respondent no.2-insurance company.

ANALYSIS & CONCLUSION :

8. I now propose to analyse the above submissions which would require me to dissect interplay between the two Acts viz., Motor Vehicles Act, 1988 and the Income Tax Act, 1961 ("**the IT Act**").

9. Section 168 of the MV Act provides for "**just compensation**" to be awarded to the claimants by the Tribunal on account of death or bodily injury. The Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Indira Srivastava & Ors.***[2] in paragraph 10 has observed that the word "just compensation" should be assigned broad meaning and in paragraph 25 further observed that the said expression must be given its logical meaning but it cannot be a bonanza or source of profit and in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration. The MV Act does not provide for meaning of the term "just compensation", but said term has evolved by jurisprudence over decades by way of interpretation by various Courts.

10. Under the IT Act, tax is computed on the total income and total income consists of five heads, viz., income from salary, income from house property, business / professional income, capital gains and income from other sources. The IT Act provides for computation of income under each of these heads and it also provides for provisions relating to set-off, if there is a loss under one head against positive income under another head. The aggregate of all the heads constitutes "gross total income" from

2 (2008) 2 SCC 763

which certain deductions are permitted to arrive at total taxable income and tax is calculated on such total taxable income.

11. The controversy in the present appeal can be explained by a simple example. Mr. A earns Rs.100/- from business and out of this he pays Rs.10/- to a housing finance company as interest on loan taken for buying house. Let's say positive income from business is Rs.100/-, loss under the head house property is (Rs.10/-). The Tribunal has considered Rs.90/- (Rs.100(-)Rs.10/-) as income for the purpose of awarding compensation under the MV Act. The contention of the claimants is that Rs.100/- should be considered and interest on housing loan should not be deducted for the purposes of computing compensation under the MV Act, whereas the submission of the insurance company is that the Tribunal is justified in reducing Rs.10/- against Rs.100/- and arriving at compensation of Rs.90/-. Rs.10/- under "income from house property" represents interest paid on housing loan taken by the deceased for purchasing a house which is treated as self occupied property for the purposes of the IT Act and annual value of such self occupied property is to be taken as NIL under the IT Act and, therefore, loss of Rs.10/-.

12. The object of awarding compensation under Section 168 of the MV Act is to compensate the dependents of the deceased in monetary terms which the deceased would have earned had he not died in the accident. Therefore, the phrase used under Section 168 of the MV Act is "just compensation". The MV Act, while dealing with compensation is a social welfare legislation to compensate the dependents in monetary terms, who have lost earning member of the family. This is in sharp contrast to the object of the IT Act which is to compute income tax liability on the taxable income computed as per the provisions of the IT Act. However, for arriving at the compensation under the MV Act which is based on the income of the deceased, the income tax returns are

considered as a base or a guideline for computing the compensation. However, it does not mean nor there is any provisions in the MV Act, which suggests that the income disclosed as taxable income arrived at for the purpose of computation of tax should be considered **as it is** for computing compensation under the MV Act without any changes thereto. If the intention of the legislature was to award compensation as per what is disclosed in the income tax return then they would have expressly said so in the MV Act. Therefore, the object of both the Acts being materially different, disclosure of income under the IT Act is to be considered only for the purposes of guidance to arrive at "just compensation" under the MV Act and cannot be mechanically adopted **as it is.** Therefore, the treatment meted out to a particular item under the IT Act cannot be adopted blindly for computing compensation under the MV Act.

13. With regard to above, useful reference can be made to the decision of the Division Bench of this Court headed by His Lordship Shri Justice A. S. Chandurkar (as he then was) in the case of ***Dr. Sunil Shankar Patil & Ors. vs. Suhel Shaukat Shaikh & Ors.***[3], wherein the interplay between the IT Act and the MV Act have been explained.

> *The income for the purpose of income tax is to be calculated in accordance with Section 15 to Section 17 of the Income-tax Act, 1961 which has its own calculation and the object is to arrive at the tax on such calculated income whereas the salary as per the salary certificate is what is actually agreed to be received by an employee from the employer and same is based on contractual arrangement between the said two parties. For example, capital gains under the Income-tax Act, 1961 is calculated after indexing the cost of acquisition whereas in effect the gain received by a person selling capital asset is simple mathematical calculation of reducing the cost price from the selling price. There are various such examples to show that actual income received would be different than the income calculated as per the Income-tax Act. There are various receipts in the nature of reimbursement on which no income tax is levied. The Income-tax Act itself recognises that many a times the profits shown in the books of accounts is different and more than the income calculated under the*

3 2024 SCC OnLine Bom 927

> *Income-tax Act and therefore the provision in the Income-tax Act is made for levying tax which is known as Minimum Alternative Tax, for eg. Section 115J. This is only to illustrate that income computed under the Income-tax Act is not the same as what is actually received by a person. Therefore, income tax returns cannot be considered as the sole basis for determining the compensation under the M.V. Act. The Tribunal is required to consider the ingredients of the income as per the contract and it is this income which is to be considered for the purpose of arriving at compensation under the M.V. Act. This is so because the object of compensation under the M.V. Act is to compensate for the loss of pecuniary benefits and to mitigate hardship which is different than the object of the Income-tax Act which has its own provisions to calculate the taxable income for the purpose of payment of tax. Therefore, it would depend on the facts of each case as to whether sole reliance can be placed on the income tax return filed under the Income-tax Act for the purposes of compensation to be calculated under the M.V. Act. Therefore, in our view the Tribunal was not justified in considering the income as per the income tax return without giving any reasons for rejecting the income shown as per the salary certificate. Therefore, in our view the LTA at Rs. 40,000/- p.a. should have been considered by the Tribunal for the purpose of calculating loss of dependency.*
>
> (emphasis supplied)

14. The views expressed above also finds support from the decision of this Court consisting of His Lordship Shri Justice G. S. Kulkarni in the case of *New India Assurance Co. Ltd. vs. Hussain Babulal Shaikh & Ors.*[4], wherein it is reiterated by citing decision of the Himachal Pradesh High Court that :-

> *17. If there is a conflict between a social welfare legislation and a taxation legislation, then, this Court is of the view that a social welfare legislation should prevail since it sub-serves larger public interest. The Motor Vehicle Act is one such legislation which has been passed with a benevolent intention for compensating the accident victims who have suffered bodily disablement or loss of life and the Income Tax Act which is primarily intended for Tax collection by the State cannot put spokes in the effective and efficacious enforcement of the Motor Vehicles Act.*
>
> (emphasis supplied)

4 2016 SCC OnLine Bom 9538

15. Keeping in mind the aforesaid object of the MV Act to place the dependents in as close as position as that of the deceased, if the contention of the insurance company is accepted then it would amount to reducing the compensation by the interest on housing loan component and thereby awarding less compensation. This would result into receipt of compensation less than what is required to service the interest on housing loan. In the aforesaid example, if Rs.90/- is accepted as "just compensation" then the dependents would not receive any amount for repayment of interest on housing loan which liability continues post the death of a person and which is required to be serviced to the finance companies or the finance companies would insist upon full repayment of the loan outstanding on the date of the death. The submission made by the insurance company and if accepted by the Court would result into the dependents receiving less compensation as explained above. This would be contrary to the concept of "just compensation". Even if it is accepted that on death full repayment of loan becomes due and payable, still to repay that loan, interest has to be factored in awarding compensation because had the person not died interest liability would continue. This however should not be construed to mean that insurance company undertakes to bear repayment liability, but certainly while awarding compensation the interest liability should be added to the compensation award for determining income.

16. However, if the submission of the claimants are accepted then compensation to be awarded to dependent would be Rs.100/-from which Rs.10/- will be used towards payment of interest on housing loan. This would bring the dependents very close to the position which the deceased would have been, had he not died in the accident. This interpretation would be in consonance with the object of the MV Act.

17. Now I propose to analyse the nature of loss under the head income from house property from Income-tax point of view and how that cannot be considered for the purpose of the MV Act. The Tribunal has set-off loss under the head house property which comprises of interest on housing loan against the business income and balance amount is considered for the purpose of arriving at average income for determining compensation.

18. The Central Government for encouraging housing industry which is an economic multiplier for development of the economy and to encourage people to buy house on loan provides for certain incentives under the IT Act. One such incentive is that the interest on housing loan will be allowed as a deduction from the income of the house property and only on the balance income tax will have to be paid. Section 24(b) of the IT Act provides for deduction of interest on loan borrowed for purchasing the property from annual value of the property. Income from house property is computed by deducting specified deductions from the annual value of property. Section 23 defines “annual value” to mean the sum for which the property might reasonably be expected to let from year to year and if the property is let out and the rent received is more, then the actual rent will be treated as annual value. It is this notional annual value which forms the basis of computing income from house property and from which interest paid on housing loan is deducted to arrive at income from house property.

19. Section 23(2) provides that if the house is in occupation of the owner for his own residence or cannot be occupied because of his profession or business then the annual value shall be taken to be “NIL”. In the instant case, before me, the house on which loan was taken by the deceased was treated as self-occupied property under Section 23(2)and the annual value was, therefore, arrived at NIL. The interest on the

housing loan for acquiring this property was deducted under Section 24(b) from "NIL" annual value i.e. for example for assessment year 2004-05 income under the head house property was loss "Rs.77,730/-". The annual value of self-occupied property was taken as NIL and from this interest on housing loan was reduced which resulted into negative figure of Rs.77,730/-.

20. The above computation under the IT Act would not mean that the dependents do not have to pay Rs.77,730/- to the bank from whom the loan was taken. The liability continues unless the bank is fully repaid of its dues on the date of death. The intention of the MV Act is to arrive at compensation on the premise that the deceased had not died. Therefore, for the purpose of computing compensation under the MV Act, the interest liability is to be considered as continuing and, therefore, the interest on housing loan is to be factored as amount required for repayment of interest and consequently for the purpose of arriving at "just compensation" under the MV Act, same should not be reduced.

21. Section 71 of the IT Act provides that if there is a loss under one head then the same can be set-off against income from another head. The object of Section 71 is to make a person liable to pay tax on the net income and, therefore, the provisions of set-off are provided. This cannot be borrowed mechanically for the purpose of arriving at "just compensation" under the MV Act. Therefore, the Tribunal's approach to adopt the taxable income after set-off of loss from house property against business income for determining the compensation under the MV Act is erroneous. The set-off provision is for the purpose of determining lower-tax but same cannot be read to lower the compensation under the MV Act.

22. Income-tax provisions provides for different treatment of set-off based on different heads of income. For example, capital loss cannot be

set-off against other heads as per Section 70(2) of the IT Act. Similarly, as per Section 73 of the IT Act, speculative loss can be set-off only against speculative profit. If the contention of insurance company is accepted, then with respect to same person compensation will differ based on whether as per the IT Act set-off is permissible or not. This would lead to lot of incongruity and would be contrary to the object of the MV Act. Therefore, even on this basis submissions made by insurance company are to be rejected.

23. Under the IT Act business loss can be carried forward for eight years and set-off against business profit of subsequent years. Let's say in first three years there are huge losses and in years four to six, there are profits. A person doing this business dies in year six. In his returns because of past losses, business income would be less or NIL. In such a case, if the stand of the insurance company is to be accepted of considering income after set-off then no compensation would be awarded under the MV Act. This also illustrates fallacy in the submissions of the insurance company.

24. The submissions of both the parties have proceeded on a premise as to whether interest on housing loan should be deducted in arriving at the compensation. As observed by me above, that is not the issue which arises from the impugned order, but as analysed above, the issue is whether loss under one head of income, as per the IT Act can be set off against the positive income under another head for the purpose of awarding compensation under the MV Act which as observed above cannot be done. However, let me now analyse and proceed on the basis of the submissions made by the parties on whether the interest on housing loan should be deducted while awarding compensation.

25. The answer to the above submission is also in negative for more than one reason. Section 40 of the IT Act provides that no deduction of

income tax shall be allowed in computing the income. However, under the MV Act, the settled position is that income tax is to be deducted in computing the compensation to be awarded. This indicates that the treatment under the IT Act cannot be treated as sacrosanct and cannot be applied mechanically for computing compensation under the MV Act. Similarly, merely because the IT Act provides for deduction under Section 24(b) as deduction of interest on housing loan, it should not be understood to mean that even under the MV Act for determining the compensation, same treatment should be given to the said interest. If same treatment is given, then as observed by me earlier, the dependent would not have sufficient funds to service the interest which otherwise would have been, had the deceased not died. Therefore, for the purpose of awarding compensation under the MV Act, interest on housing loan should not be reduced.

26. It is also important to note that in the instant case, deduction under Section 88 of the IT Act was also claimed towards repayment of housing loan, but same has not been deducted while awarding compensation under the MV Act and rightly so. If repayment of housing loan is not to be deducted, then certainly interest thereon should also be accorded the same treatment for the purpose of awarding compensation under the MV Act.

27. The issue can also be examined from another angle. The compensation under the MV Act is to be awarded by considering the income which the deceased was earning by exercise of his personal skill, labour, etc., which could be income from salary, income from business or profession. Income from assets like rental income, capital gains etc., are earned without there being much exercise of the labour or skill of the deceased and even if a person dies, the income on these assets continues. For example, rental income from immovable property which is taxed

under the head “income from house property”, sale of various assets which is taxed under the head “capital gains” and interest and other income on fixed deposits, etc., which are taxed under “income from other sources”. Therefore, when it comes to awarding compensation under the MV Act, the Court has to compensate the dependents on account of loss of income of the earning member who has passed away and such an earning member would be earning either income from salary if employed or income from business or profession if self-employed. It is this income which gets affected on the death of a person and which is required to be compensated to his or her dependents by awarding compensation. Therefore, when it comes to awarding compensation under the MV act, it is only income from salary or income from business or profession which should be considered for compensating the dependents and not income from house property or income from capital gains or income from other sources because these incomes continue to be earned even after the death of a person. Applying the above said reasoning to the facts of the present case and accepting the submission of the learned counsel for the insurance company that only income disclosed in the income-tax returns should be considered then what is to be considered is only income from business or profession of the deceased and not income from house property. If only income from business or profession is considered and average of three years is taken then the income for compensation under the MV Act will work out to Rs.2,26,815/- (Rs.1,84,266 + Rs.2,03,975 + Rs.3,02,013 (-) Rs.1,308 (-) Rs.8500/3). Therefore, the approach of the Tribunal in considering income from house property is erroneous since income from that head cannot be compensated under the MV Act for the reason stated above and, therefore, same should be ignored while computing compensation to be awarded under the MV Act. However, managerial compensation on rental and other income based on percentage is permissible.

28. The Chhattisgarh High Court in the case of ***Sunita & Ors. vs. Kesh Kumar & Ors.***[5] in MAC No.1286 of 2015 decided on 26 June 2024 held that income from house property and capital gains disclosed in tax returns cannot be considered for determining compensation under the MV Act. Therefore, in my view, even loss under these heads of income should be ignored while computing compensation under the MV Act and if same is ignored in the present case, then only profession / business income remains to be considered for awarding compensation under the MV Act.

29. For the Assessment year 2004-05, the deceased had income from profession/business Rs. 1,84,266/-. There was no property income since the house was self-occupied. Only Rs.646/- was earned by the deceased by way of bank interest and dividend. The professional income was arrived at by reducing Rs.9,61,877/- being fees from profession and various expenses were deducted against the said income. Therefore, the only source of the repayment of interest on housing loan of Rs.77,730/- was various professional fees aggregating to Rs.9,61,877/- against which various expenses for earning these fees were incurred and the net profit was Rs.1,84,266/-.

30. The insurance company has not disputed income from profession. If the contention of the insurance company is to be accepted and since source of payment of interest on housing loan is from professional income, the professional income would reduce to Rs.1,06,536/-. When the insurance company has not disputed Rs.1,84,266/- as professional income, then it cannot be heard to contend that interest on housing loan should be reduced because if that is accepted, then the professional income would be Rs.1,06,536/- which is not the case. Therefore, even on this count, the submission of the insurance company cannot be accepted.

5 2024 : CGHC : 22045

CONSIDERATION OF DECISIONS CITED BY THE PARTIES :

31. The decision relied upon by the learned counsel for the appellants in support of his submission that interest on housing loan should not be reduced by relying upon the decision of the Hon'ble Supreme Court in the case of ***Rashmirekha Tripatthy & Anr. vs. Branch Manager (Legal Claims), Sriram General Company Insurance Co. Ltd. & Ors.***[6] and more particularly paragraph 19 cannot be of any assistance. The issue before the Hon'ble Supreme Court in this case was whether the average income shown in various income-tax returns for preceding years should be considered . The Hon'ble Supreme Court recognises that income-tax returns being a statutory document are an important reference point when it comes to assessing one income for the purpose of compensation under the MV Act. The Hon'ble Supreme Court further observed that in case of salaried individual, income-tax returns of the previous year will be sufficient for showcasing the annual income from salary but when it comes to self employed or individuals carrying out their own business the average of the income upto the previous three years is to be taken and if the three years figures are not available then other factors like nature of business, growth pattern, potential growth, loss from business etc., should be considered. In my view, this decision cannot assist the learned counsel for the appellants. The issue before the Hon'ble Supreme Court was not whether loss under the head "house property" should be set-off against "income under the head business". When there is a reference to negative income in paragraph 19, it is with respect to business and not with respect to income from house property. The only issue which was posed for consideration of the Hon'ble Supreme Court was whether for assessing annual income of a deceased person, the income-tax returns for the previous year is appropriate or average of the past 2/3 years is to be taken into consideration. The issue before the

6 2026 SCC OnLine SC 1256

Hon'ble Supreme Court was not whether all the heads of income should be aggregated for the purposes of arriving at the average and the issue of set-off was also not posed for the consideration of the Hon'ble Supreme Court. Therefore, this decision cannot be of any assistance.

32. Mr. Gatne, learned counsel for respondent no.2-insurance company has vehemently opposed the submissions made by the learned counsel for the appellants. Relying on the decision of the Hon'ble Supreme Court in the case of ***T. N. State Transport Corpn. Ltd. vs. S. Rajapriya & Ors.***[7] and more particularly paragraphs 7 to 9, the learned counsel emphasised that the compensation which is to be awarded is to be based on what remains for the dependents after deducting from income, the amount to be spent upon oneself and for the benefit of the dependents. It is his submission that in the instant case, the amount leftover for the dependents would be after reducing interest on housing loan from the business income and it is only the balance amount which should be considered for the purposes of awarding compensation and, therefore, there is no infirmity in what the Tribunal has done.

33. In my view, the above submission cannot be accepted. As per the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.***[8] and ***Pranay Sethi (supra)*** after the estimate of income and future prospects, certain proportion towards personal expenses has to be reduced for arriving at the figure which is then multiplied by multiplier factor based on age of the deceased for arriving at loss of dependency income. The deduction on account of personal expenses based on the number of dependents is either 1/3 or 1/2 as the case may be any other ratio. When this fraction is applied to the annual income it is the balance which is considered for awarding the compensation being towards loss of dependency. If the contention of the

7 (2005) 6 SCC 236
8 (2009) 6 SCC 121

learned counsel for the insurance company is accepted then this 1/3 or 1/2 or any other fraction in the present case would be reduced twice. Once by accepting the submission of the learned counsel for the insurance company by reducing actual interest on housing loan from business income and the balance leftover is for dependents and again by applying 1/3 or 1/2 as per the decision of ***Sarla Verma (supra)*** and ***Pranay Sethi (supra)***. Therefore, the contention raised by learned counsel for the insurance company that only leftover after payment of interest should be considered cannot be accepted since that would lead to double deduction. If the submission made by learned counsel for insurance company is to be accepted then to avoid double deduction, the proportion of 1/2 or 1/3 or as the case may be any other fraction should not be applied to the balance figure remaining after payment of interest on housing loan and this balance figure would straight away be multiplied for arriving at loss of dependency income. This exercise would be contrary to formulae laid down by above Hon'ble Supreme Court and in any case, if double deduction is avoided by ignoring the said formulae the result will not be material.

34. Furthermore, the issue which arises for my consideration as to whether loss under the head income from house property should be set-off against positive income under the head business or profession and more particularly when there is no other source other than business income for payment of interest was not for consideration before the Hon'ble Supreme Court. Therefore, this decision cannot support the submission made by the learned counsel for the insurance company.

35. The submission made by the learned counsel for the insurance company is that income available for disposal in the hands of the deceased at the time of his death should only be considered is taken care of by the decision of the Hon'ble Supreme Court in the case of ***Sarla***

Verma (supra) and *Pranay Sethi (supra)* by directing deduction of 1/2 or 1/3 or as the case may be any other fraction to be reduced from the notional income added by future prospects and it is only on the balance that the multiplier is applied. Furthermore, the decision of ***T. N. State Transport Corpn. (supra)*** in paragraphs 7 to 9 only says that pecuniary loss to dependents should be set-off against pecuniary benefit accruing to them and only net should be considered. In the instant case, there is no pecuniary benefit accruing to the dependents due to interest obligation and, therefore, even on this count, said decision is not applicable to the facts of the present. The effect of "Net" disposable income as propounded by this decision is taken care of by the decision of the Hon'ble Supreme Court in ***Sarla Verma's case (supra)***, where uniform fraction based on number of dependent's is to be considered for arriving at income available for dependents.

36. The second decision relied upon by the learned counsel for the insurance company is in the case of ***Vijay Kumar Rastogi vs. Uttar Pradesh State Roadways Corporation***[9] and more particularly last five lines of paragraph 11 which states that income should include those benefits either in terms of money or otherwise which are taken into consideration for the purpose of payment of income tax or profession tax, although some elements thereof may or may not be taxable due to the exemption conferred thereupon under the statute. In my view, these lines states that if there are certain income which are exempt under the IT Act and on which no income tax is payable, still, those exempt income should be considered for the purpose of awarding compensation. In this decision nowhere it is stated that a loss under the head house property which is required to be set-off under Section 71 of the IT Act against positive income from business or profession should be set-off for the purpose of awarding compensation under the MV Act. This issue was not before the

9 2018 SCC OnLIne SC 193

Hon'ble Supreme Court. I have already observed that amount shown in income-tax returns form the basis on which compensation is required to be calculated under the MV Act, but it does not mean that the said provisions under the IT Act gets automatically incorporated in the MV Act for awarding compensation. Therefore, even this decision does not support the submission made by the learned counsel for the insurance company.

37. In view of above analysis, adoption of income by the Tribunal after setting off loss from house property against business income cannot be accepted. The loss under the head house property for the reason stated above cannot be considered and reduced from business income for awarding compensation and it is only the business income which should have been considered for determining compensation under the MV Act. Therefore, the Tribunal's order to this extent is quashed and set aside and modified.

ISSUE NO. 2 :

38. The second issue which arises for my consideration is whether the Tribunal was justified in awarding interest from 15 March 2008 to the claimants. This issue is discussed in paragraph 29 of the Tribunal's order.

39. In this case, the original application was filed on 8 June 2006 and at that point of time, the claimants made New India Assurance Company Limited as party opponent. Thereafter, on realising the mistake, the claimants filed an application on 14 January 2008 for deleting New India Assurance Company Limited and to bring United India Insurance Company Limited as correct party opponent. This application was allowed and United India Insurance Company Limited was made as party opponent and New India Assurance Company Limited was deleted on 15 March 2008.

40. The Tribunal while awarding the interest on compensation stated that it would not be just and appropriate to burden United India Insurance Company Limited to pay interest from the date prior to their being made party and, therefore, United India Insurance Company Limited was directed to pay interest only from 15 March 2008 and not from 8 June 2006.

41. In my view, the Tribunal was not justified in awarding interest from 15 March 2008. In this case, the original application was filed on 8 June 2006. United India Insurance Company Limited was made party on 15 March 2008 and the claim was finally decided by the Tribunal on 30 March 2012. United India Insurance Company Limited is not disputing their interest liability from 15 March 2008 till 30 March 2012. Therefore, the contention by the insurance company that interest liability would arise from the date of their knowledge cannot be accepted. Even if United India would have been made a party on 8 June 2006, the compensation liability was not decided on that day, the liability for compensation was crystalised on 30 March 2012, when the Tribunal decided the application. The submission that the liability of interest can be imposed only from the date when United India came to the knowledge and made a party cannot be accepted. On the date of filing application there is no determination of compensation and interest thereon, therefore submission of knowledge made by the insurance company is to be rejected.

42. Section 171 of the MV Act very categorically states that no interest should be awarded for the period prior to filing of the application but the interest should be awarded from the date of application. In my view, the discretion exercised by the Tribunal to award interest from 15 March 2008 is not correctly exercised. Even if United India would have been made a party on 8 June 2006, since the application was not decided on that day, there could never have been interest liability apprehended on

that day by the insurance company. It is only on 30 March 2012 that the compensation was awarded and interest liability came to be enforced.

43. The learned counsel for the appellants is justified in relying upon the decision of the Himachal Pradesh High Court in the case of ***United India Insurance Company Ltd. vs. Manohar Lal & Ors.***[10], wherein on identical facts in paragraph 13, the High Court observed as under :-

> *13. Thus, from the bare perusal of the above provision, it is clear that Section 171 of the Act mandates that the claimant is entitled to interest from the date of filing of the Claim Petition or from the date of the judgment and not earlier to that. Section 171 of the Act nowhere provides that in case a party is arrayed in the Claim Petition at a subsequent date, that party has to be saddled with the interest from the date of impleadment and not prior to that.*

44. In my view, the insurance company before me is same which was before the Himachal Pradesh High Court. The argument made by same company contrary to the said decision cannot be permitted in this matter. In my view, this decision squarely applies to the facts of the present case and, therefore, the Tribunal was not justified in directing interest to be paid by the insurance company from 15 March 2008, but ought to have directed interest payment from 8 June 2006.

45. The revised calculation after considering the above reasoning and the decision of the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)*** is as under :-

Sr. No.	Particulars	Amount (Rs.)
1	Income	Rs. 2,26,800/-
2	Future prospects (25%)	Rs. 56,700/-
	Total	Rs. 2,83,500/-
3	Personal Deduction (¼)	Rs. 70,875/-
		Rs. 2,12,625/-

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4	Calculation of Compensation (Rs.2,12,625/- x 15)	Rs. 31,89,375/-
5	Consortium for 5 claimants	Rs. 2,40,000/-
	Total	Rs. 34,29,375/-
	Less granted by the Tribunal (Less : Rs.10,000/- awarded by the learned Tribunal towards loss of consortium)	Rs. 16,70,910/-
	Enhanced Amount	**Rs. 17,58,465/-**

46. The enhanced amount is Rs.17,58,465/- (Rs.34,29,375(-) Rs.16,70,910/-). The insurance company is directed to deposit original amount and the enhanced amount alongwith interest within eight weeks from today and the claimants would be entitled to withdraw the same. If any amount is deposited and / or withdrawn, same should be considered while giving effect to the present order.

CONCLUSIONS :

(i) Loss as per the IT Act under the head "House Property" cannot be set-off against income under the head "business or profession" for the purposes of the MV Act ;

(ii) Interest paid on housing loan allowed as deduction under the IT Act should not be reduced for determining compensation under the MV Act ;

(iii) Interest under Section 171 of the MV Act is to be from the period of application and not from date of impleadment ;

(iv) Claimants are entitled to enhanced compensation of Rs.17,58,465/- alongwith interest ;

47. Appeal is disposed of in above terms.

[JITENDRA JAIN, J.]