

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****FAO-7641-2015 (O&M)****Date of Decision : 28.08.2025**

Yashwanti Devi and Another

... Appellants

Versus

Lachhman and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jitender Malik, Advocate for the appellants.

Mr. Abhimanyu Batra, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the claimant-appellants aggrieved by the award dated 15.05.2015 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal') qua the quantum of compensation and the income of Sachin Balhara (hereinafter referred to as the 'deceased') as assessed by the Tribunal. The parties are being referred to as the claimants, driver, owner and the Insurance Company for the sake of clarity.

2. The brief facts relevant to the present *lis* are that on 01.01.2014 the deceased was travelling from Rohtak to Delhi in a car bearing No.HR-12N-1516 with his friends Sahil and Aman, which was being driven by him at a moderate speed observing the traffic rules. At about 12.30 am (midnight) when they reached within the revenue estate of village Rohad on National Highway No.10 near Fauji Dhaba, the car rammmed into a stationary truck

bearing registration No.RJ-14GD-3650 (hereinafter referred to as the 'offending vehicle') as the same had been parked on the *pucca* portion of the road by its driver i.e. respondent No.1 herein without any indicators. The parking lights of the offending vehicle were also switched off as a result of which the deceased could not notice the offending vehicle due to the glaring headlights of the vehicles coming from the opposite direction. The deceased and his friends received injuries, and they were taken to Post Graduate Institute of Medical Sciences (PGIMS), Rohtak where the deceased was declared brought dead. FIR No.1 dated 01.01.2014 under Sections 283, 337 and 304A of the Indian Penal Code, 1860 was registered at Police Station Sadar Bahadurgarh.

3. On notice the driver and owner filed their joint written statement admitting the factum of accident and involvement of the offending vehicle however it was stated that the accident was caused due to the negligence of the deceased. The Insurance Company also filed its written statement denying the accident.

4. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. truck bearing registration No.RJ-14GD-3650 ? OPP
2. If issue No.1 is proved, whether Sachin Balhara son of Ramphal Balhara has died due to the injuries received by him in the above-said accident, if so to what amount of compensation and from whom, the claimants are entitled to ? OPP
3. Whether there was willful violation of the terms and

conditions of the insurance policy, if so to what effect ? OPR

4. Relief.

5 The Tribunal holding it to be a case of contributory negligence to the extent of 50% on the part of the deceased, awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹20,000/-
2	Deduction – 50%	[₹20,000 – 10,000] = ₹10,000/-
3	Annual income	[₹10,000 x 12] = ₹1,20,000/-
4	Multiplier – 9	[₹1,20,000 x 9] = ₹10,80,000/- (wrongly calculated as ₹16,80,000/- by applying the multiplier of ‘14’)
5	Funeral expenses	₹25,000/-
6	Loss of love and affection	₹1,00,000/-
	Total Compensation	₹18,05,000/-
	Deduction on account of 50% contributory negligence	₹9,02,500/-
	Interest	7.5% per annum

6. Learned counsel for the claimants would contend that it possibly could not have been held to be a case of contributory negligence as it has come on the record that the offending vehicle was parked in the middle of the road on the *pacca* portion. It is further the contention that neither the driver nor the owner of the offending vehicle stepped into the witness-box to deny the fact that the offending vehicle was not stationed on the *pacca* portion of the road. Learned counsel for the claimants would further contend that not only no evidence was led but infact no issue was also either framed in the present case qua the contributory negligence. The learned counsel has relied upon the judgment of the Hon’ble Supreme Court in the case of **M. Nithya & Ors. Vs.**

SBI General Insurance Company Limited [SLP(Civil) Nos.833-834 of 2023 decided on 03.01.2025] to contend that without there being any specific issue regarding contributory negligence and without there being any evidence led by the Insurance Company, it could not be held to be a case of contributory negligence.

7. Learned counsel for the claimants has further contended that in the present case the deceased was employed with a Government Contractor four months prior to his death and was getting a salary of ₹40,000/- per month. The appointment letter of the deceased was produced by PW1 Dayanand, who was the Contractor and photocopies of receipts (Mark A to D) were also produced. Learned counsel for the claimants has further contended that the Tribunal has not taken the income of the deceased as ₹40,000/- per month on the ground that the salary as stated was doubtful though noticing that the deceased was a graduate in Civil Engineering. Learned counsel for the claimants has further contended that the Tribunal has not made any addition towards loss of future prospects and even the multiplier has wrongly been applied as per the age of parents of the deceased. The deceased in the present case was 23 years of age hence a multiplier of '18' ought to have been applied. It is further the contention that the compensation awarded under the conventional heads is not in consonance with the law. In support of his contention, he has relied upon judgments of the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**, **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram**

& Ors. [(2018) 18 SCC 130].

8. *Per contra* learned counsel for the Insurance Company has contended that it was a case of contributory negligence inasmuch as the deceased himself was negligent in not noticing the offending vehicle which was parked on the side of the road. In support of his contention, he has relied upon judgments of this Court in the cases of **The New India Assurance Co. Ltd. vs. Smt. Harbans Kaur & Ors. [2012(7) RCR (Civil) 112]** and **Baldev Singh vs. Smt. Binder & Ors. [2010(9) RCR (Civil) 847]**. It has further been contended that sufficient amount of compensation has already been granted and there is no scope for any further enhancement.

9. Heard.

10. In the present case the accident took place on 01.01.2014 at 12.30 am (midnight) on National Highway No.10. As per the claim petition and as per the evidence led by the claimants, the offending vehicle was parked on the *pacca* portion of the road without any indicator or taking any requisite precautions leading to the accident. Hon'ble Supreme Court in the case of **M. Nithya** (*supra*) has held as under :

“7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation.

Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained.”

11. In the present case, neither the driver nor the owner of the offending vehicle chose to step into the witness-box to controvert what had been stated by the claimants. Further still, no issue was framed qua the contributory negligence. The Insurance Company also did not lead any evidence to show that it was a case of contributory negligence. Infact, no evidence at all was led by the Insurance Company. In view of the law laid down by the Hon'ble Supreme Court in the case of **M. Nithya** (supra), the judgments relied upon by the learned counsel for the Insurance Company in the cases of **The New India Assurance Co. Ltd. vs. Smt. Harbans Kaur & Ors.** (supra) and **Baldev Singh vs. Smt. Binder & Ors.** (supra) would not come to his aid. In view thereof, it cannot be held to be a case of contributory negligence. The finding qua the contributory negligence is accordingly set aside.

12. The argument of the learned counsel for the claimants that the income of the deceased ought to have been assessed as ₹40,000/- per month deserves to be accepted. PW1 Dayanand had stepped into the witness-box and produced on record the appointment letter of the deceased as Ex.P1. It was categorically stated by PW1 Dayanand in his statement that the deceased had been employed and had been paid for four months prior to his death. The said document has been rejected by the Tribunal on the ground that since no income tax deduction had been made and that the employee was required to be registered with Employee's State Insurance Corporation and certain amount was to be deducted towards provident fund, which had not been done, and therefore found the said document to be doubtful. The Tribunal though noticed that the deceased was qualified Civil Engineer as per documents on the record however rejected the appointment letter on totally hyper-technical grounds. PW1 Dayanand when stepped into the witness-box clearly stated that the deceased worked only for four months and had also stated the income tax was being deducted. Regarding the provident fund a specific suggestion was put in the cross-examination to PW1 who stated that the amount towards provident fund was not being deducted from the salary of the deceased as he had worked only for four months. In view thereof, the salary as assessed by the Tribunal cannot be sustained. Accordingly, the income of the deceased is assessed as ₹40,000/- per month.

13. Admittedly, in the present case no appeal has been preferred by the Insurance Company. Since there is no dispute qua the deduction as applied by the Tribunal, the same is maintained. The Tribunal has not made any addition towards loss of future prospects. The deceased in the present case was 23 years of age. Hence, keeping in view the law laid down by the Hon'ble

Supreme Court in the case of **Pranay Sethi** (supra), an addition of 40% would be applicable towards loss of future prospects. The Tribunal has wrongly applied a multiplier of '9' as per age of the parents of the deceased. Keeping in view the age of the deceased, who was 23 years of age, and the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra), a multiplier of '18' would be applicable. Further, the compensation awarded by the Tribunal under the conventional heads is not in accordance with the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra) hence, the claimant-appellants would be entitled to ₹18,000/- (₹15,000+20% increase) towards loss of estate and ₹18,000/- (₹15,000+20% increase) towards funeral expenses. The compensation of ₹1,00,000/- awarded by the Tribunal towards 'loss of consortium' is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded	
1	Monthly Income	₹40,000/-	
2	Annual Income	₹4,80,000/-	[₹40,000 x 12]
3	Deduction - 50%	₹2,40,000/-	[₹4,80,000 - ₹2,40,000]
4	Future Prospects - 40%	₹3,36,000/-	[₹2,40,000 + ₹96,000]
5	Multiplier - 18	₹60,48,000/-	[₹3,36,000 x 18]
6	Loss of estate	₹18,000/-	
7	Funeral expenses	₹18,000/-	
8	Loss of consortium as assessed by the Tribunal	₹1,00,000/-	
	Total Compensation	₹61,84,000/-	

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

15. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 AIR (SC) 1713]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimant-appellants within six weeks from today and the apportionment thereof shall be as per the percentage directed by the Tribunal. The particulars of the bank account(s) alongwith the requisite documents(s) in support thereof shall be furnished by the claimant-appellants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

16. In view of the above discussion, the impugned award passed by the Tribunal is modified in the above terms and the present appeal filed by the claimants stands disposed off accordingly. Pending applications, if any, also stand disposed off.

28.08.2025
jk

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO