

2025:PHHC:122498



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-2622-2009 (O&M)

Date of Decision: September 03, 2025

Smt.Sumitra Devi and another

...Appellants

VERSUS

Prit Paul Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ajay Kumar Kansal, Advocate
for the appellants.

Mr.N.S.Gill, Advocate
for respondent No.1.

Mr.Neeraj Khanna, Advocate
for respondent No.2.

ARCHANA PURI, J.

The appellants-claimants have questioned the adequacy of the compensation awarded by learned Motor Accident Claims Tribunal, and also challenged the reduction to the extent of 20% of the compensation, as assessed, on account of contributory negligence, on the part of deceased Mehar Singh.

It is the version put forth by the appellants-claimants that on 30.09.2006, Angrez Singh, driver of truck bearing registration No.HR-37-6970 along with his employer Prit Paul Singh had started from Khanori District Sangrur, after loading rice from Khanori Food Products Pvt. Ltd. for

Delhi. They were proceeding via Jind-Safidon-Panipat. At about 2.00 p.m., when they were 2-3 kms. ahead of Safidon towards Panipat, a blue bull, all of a sudden, appeared on the road and Angrez Singh tried to save the animal, but however, in that process, he had lost balance of the truck and consequently, struck the same against the truck bearing registration No.HR-46-8550, which was coming from opposite side. Angrez Singh died at the spot, on account of injuries sustained by him, whereas, driver of the other truck, namely Mehar Singh, had suffered serious injuries and he was taken to Civil Hospital, Safidon, where he succumbed to his injuries.

It is categorical claim of the claimants that the accident had taken place, due to rash and negligent of truck bearing registration No.HR-37-6970, driven by its driver Angrez Singh. DDR was recorded by the police, on the statement of owner of truck bearing registration No.HR-37-6970, who gave false story to the police, who did not further investigate the case. In fact, the accident had taken place, due to rash and negligent driving of truck bearing registration No.HR-37-6970.

Further also, the claimants had asserted about the age of the deceased, his vocation and extent of his earnings as well as they stated about the dependence of all the claimants upon the earnings of the deceased, during his lifetime.

Upon notice issued, respondents No.1-Prit Paul Singh, owner of truck bearing registration No.HR-37-6970, filed reply wherein, he admitted about the factum of the accident, but he asserted about the accident to have taken place, on account of fault on the part of driver Mehar Singh, who was driving truck bearing registration No.HR-46-8550. All other assertions were denied.

Likewise, respondent No.2-insurance company had raised the plea of total denial. In fact, it was asserted that false story of the accident has been concocted, only to extract compensation from the answering respondent, in collusion with respondent No.1. The truck in question was never involved in the accident and it was planted later on, in collusion with respondent No.1. The accident, if any, had taken place due to rash and negligent driving of deceased Mehar Singh, while driving truck bearing registration No.HR-46-8550.

Issues were framed and evidence was adduced by both the sides.

On appraisal of the evidence, brought on record, learned Tribunal, while relying upon the testimony of PW-3 Narsi, who was accompanying deceased Mehar Singh and also taking into consideration the fact about Prit Paul Singh, owner of the other truck, not having stepped into witness box, had concluded about the accident to be result of rash and negligent driving of truck bearing registration No.HR-37-6970, but however, blameworthiness could not be placed solely upon the driver of the said truck in question. Consequently, contributory negligence was held to be there, on the part of deceased Mehar Singh, while driving truck bearing registration No.HR-46-8550 and the blameworthiness was apportioned to the ratio of 80:20 i.e. 80% on the part of Angrez Singh, driver of truck bearing registration No.HR-37-6970 and 20%, on the part of Mehar Singh, driver of truck bearing registration No.HR-46-8550.

Further, learned Tribunal, while relying upon the recital of Prathma examination certificate, proved in evidence, held the date of birth of Mehar Singh to be 27.04.1978 and thus, concluded about his age to be 28 years, at

the time of accident. The claimants had asserted about the deceased to be driver on the truck owned by Bharat Bhushan and was earning Rs.7000-8000/- per month, but however, taking deceased Mehar Singh to be a skilled worker, his earning were taken to be Rs.3300/- per month. '14' was held to be suitable multiplier to be applied in the present case. Then, applying the unit system i.e. two units for a major member and one unit for minor member, it was held that at the time of death of Mehar Singh, there were 10 units and 2 units have gone with the death of Mehar Singh and thus, the annual dependency was worked upon as $Rs.3300 \times 8/10 \times 12 = Rs.31,680/-$ and while applying the multiplier of '14', the compensation was worked upon as Rs.4,43,520/-. Besides the same, on the count of 'loss of consortium', widow of deceased was awarded Rs.20,000/- and another amount of Rs.20,000/- was granted to the parents of the deceased, in equal shares, on account of funeral and last rites expenses. In total, the compensation was granted to the extent of Rs.4,83,520/-.

Being aggrieved, the appellants-claimants, who are parents of deceased Mehar Singh, have filed the present appeal to assail the adequacy of the compensation as well as to question the blameworthiness, fastened upon deceased Mehar Singh to the extent of 20%.

In pursuance of the notice issued, respondents made appearance through counsel.

Counsel for the parties heard.

To establish the factum and manner of taking place of the accident, the appellants-claimants have examined PW-3 Narsi, who tendered into evidence his affidavit Ex.PW3/A, wherein, he had categorically stated about the manner of taking place of the accident and he imputed rashness

and negligence, on the part of driver of truck bearing registration No.HR-37-6970, which was driven by Angrez Singh. It is categorically stated therein that the accident had occurred due to fault, on the part of driver of truck bearing registration No.HR-37-6970. Even, his statement has been reproduced in verbatim by learned Tribunal, in paragraph No.21. Besides the same, PW-2 Hema, wife of Mehar Singh also deposed about death of her husband, in a motor vehicular accident. The post-mortem report Ex.P1 has also been duly proved by PW-1 Dr.Gopal Goyal. Even, death certificate of Mehar Singh has been proved as Ex.P9. Therefore, the fact of death of Mehar Singh, as such, who was driving the truck bearing registration No.HR-46-8550, at the relevant time, stands amply established.

On the other hand, Prit Paul Singh, owner of truck bearing registration No.HR-37-6970, who was accompanying driver Angrez Singh, at the relevant time, though, in his reply, had admitted about the factum of accident, but however, he denied about the accident to have caused by driver Angrez Singh. In view of such assertion, it is pertinent to mention that Prit Paul Singh did not step into witness box. In fact, after death of Angrez Singh, he was the best person, who could have stated about the manner of taking place of the accident and confront the version given by the claimants, but however, he had chosen to remain away from the witness box. In fact, as evident, he was proceeded against ex-parte, during the course of the proceedings and had again joined the proceedings later on, when the evidence of the insurance company was closed by order by learned Tribunal.

Not only this, even it is pertinent to mention that PW-4 HC Ramphal, on the basis of the record, had duly proved DDR No.41 dated 01.10.2006, got recorded on the statement of Prit Paul Singh i.e. owner of truck bearing

registration No.HR-37-6970. Perusal of this DDR, clearly shows that a blue bull had suddenly appeared on the road and driver of the truck in question had tried to save the animal and in that process, had lost the control over his truck and consequently, it struck against another truck bearing registration No.HR-46-8550, which was being driven by Mehar Singh deceased. Prit Paul Singh, as observed aforesaid, had not come forward to substantiate the recitals and the accident, as mentioned in the DDR, which was the first version of the accident in question.

Anyhow, the police had also not made any independent investigation, relating to the same. It had only mentioned about the same to be case of simple accident. However, this is not sufficient. From the recitals of the DDR itself, it is evident that Prit Paul Singh had himself stated that the driver of his truck had lost balance and struck against another truck bearing registration No.HR-46-8550, which was driven by deceased Mehar Singh. In the worst circumstances, otherwise also, the DDR as such, which was self-serving version, put forth by Prit Paul Singh, singularly, cannot be considered, more particularly, when he himself has not stepped into witness box.

In the light of the same, suffice to consider the testimony of PW-3 Narsi, who was accompanying deceased Mehar Singh, at the relevant time. He has categorically imputed rashness and negligence, on the part of Angrez Singh, driver of truck bearing registration No.HR-37-6970. He was subjected to cross-examination, but nothing material elicited out. In the light of the aforesaid, it is further significant to note that learned Tribunal, while considering the statement of Narsi, got recorded to the police and further also his affidavit Ex.PW3/A, in presumptuous manner, had reached

the conclusion that he had not denied that blue bull had suddenly appeared before the truck in question.

This presumption having drawn by learned Tribunal, on the basis of the record, is purely based on conjectures and surmises. Learned Tribunal has visualized that truck of deceased Mehar Singh, being driven at an excessive speed and thus, observed that had the truck of deceased Mehar Singh, being driven by him at a moderate speed and had the deceased, being vigilant and careful enough, the accident would have been avoided. This was the imaginary version coming forth at the instance of the Tribunal, of its own. This is presumptuous version, on the face of the record, as the same was never pleaded by either of the parties, nor it came forth in the evidence adduced by the parties, about the truck bearing registration No.HR-46-8550, being driven at an excessive speed.

Anyhow, to establish the contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person, against whom, it is alleged, where, by his negligence, one party placed another in a situation of danger, which compels the other to act quickly, in order to extricate himself, it does not amount to contributory negligence, if that other, acts in a way, with which the benefit of hindsight is shown, not to have been the best way out of the difficulty. In fact, the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute negligence.

Considering the aforesaid, the conclusion drawn by learned Tribunal, about the present case to be a case of contributory negligence, is purely based on conjectures and surmises and therefore, erroneously the blameworthiness was apportioned in the ratio of 80:20 i.e. 80%, on the part

of Angrez Singh, driver of truck bearing registration No.HR-37-6970 and 20%, on the part of Mehar Singh, driver of truck bearing registration No.HR-46-8550.

Therefore, this Court holds that Angrez Singh (since deceased) in control of the offending truck bearing registration No.HR-37-6970, insured with respondent No.2-insurer was fully responsible for the negligence, leading to the accident. As a consequence, the deduction of 20% of the compensation, to the appellants-claimants, on account of contributory negligence, as such, cannot be sustained and this finding, is hereby reversed.

So far as, the compensation awarded by learned Tribunal, as detailed in the earlier portion of the judgment, is concerned, the same calls for re-computation, as per settled prevalent law.

It is the categoric claim of the appellants-claimants that deceased Mehar Singh was employed as driver on the truck owned by Bharat Bhushan and he was earning Rs.7000-8000/- per month. PW-2 Hema, widow of deceased has deposed about the earnings of the deceased to be Rs.7000-8000/- per month. Said Bharat Bhushan, employer, as such has not been examined, but however, the deceased was having heavy vehicle licence. Possessing of such a driving licence and driving the heavy vehicle, on the date of accident, as proved in the present case, coupled with testimony of PW-2 Hema as well as PW-3 Narsi, amply establish that deceased was working as driver. That being so, he was 'highly skilled' worker.

There is no evidence, as such, coming forth, with regard to the extent of earnings of deceased Mehar Singh, but for the statement of Hema. Learned Tribunal had assessed the monthly income of the deceased by adopting minimum wages notified for the skilled labourer, at the relevant

time. However, it is pertinent to mention that minimum wages notification can only be a yardstick but, at the same time, cannot be absolute one to fix the income of the deceased. In the absence of documentary evidence, some amount of guess work is required to be done. But at the same time, the guess work for assessing the income of the deceased, should not be totally detached from the reality. Merely because the claimants were unable to produce the documentary evidence or did not examine the employer Bharat Bhushan to establish the monthly income of the deceased, the same does not justify adoption of lowest tier of minimum wages, while computing the income. There is no reason to discard the oral testimony of the wife of the deceased, who has deposed about her husband Mehar Singh to be earning Rs.7000-8000/- per month.

However, at the same time, it ought to be kept in mind that there is an attempt made on the part of the claimants also, at times, to show exaggerated earnings of the deceased, with the purpose to seek more compensation. However, in the case hand, deceased Mehar Singh was in possession of heavy vehicle licence, which has been brought on record and was driving such vehicle, on the date of accident. As such, it stands established that he was working as driver upon the truck, at the relevant time. At the same time, one has to keep in mind the enormous growth of vehicle population and demand for good drivers and thus, by considering the oral evidence, brought on record as well as the scarcity of good skilled drivers, in modest estimate, proximate to the reality, the earnings of deceased Mehar Singh is taken as Rs.6,000/- per month, annual whereof is Rs.72,000/-.

To the said amount, on the count of 'future prospects' addition has to be made to the extent of 40%. Considering the number of dependents,

deduction of 1/4th has to be made. Furthermore, considering the age of deceased Mehar Singh to be about 27 years, '17' is the suitable multiplier to be applied. Besides the aforesaid, on the count of 'loss of consortium', be it 'filial', 'spousal' or 'parental', the claimants are entitled to Rs.48,400/- each and they are also entitled to compensation on the counts of 'loss of estate' and 'funeral expenses' to the extent of Rs.18,150/- on each count.

Thus, considering the aforesaid, the compensation is re-computed as herein given:-

Annual earnings	Rs.72,000/-
Addition of 40%	Rs.72,000+28,800=Rs.1,00,800/-
Deduction of 1/4th	Rs.1,00,800-25,200=Rs.75,600/-
Multiplier of '17'	Rs.75,600x17= Rs.12,85,200/-
Loss of consortium	Rs.48,400x5= Rs.2,42,000/-
Loss of estate	Rs.18,150/-
Funeral expenses	Rs.18,150/-
Total	Rs.15,63,500/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.15,63,500-4,83,520=Rs.10,79,980/-**. On the enhanced amount of the compensation i.e. **Rs.10,79,980/-**, the appellants-claimants and respondents-claimants No.3 to 5, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. Out of the amount of total compensation, as now worked upon, appellants-claimants No.1 and 2 are held entitled to **Rs.2,00,000/-** each, whereas, respondent No.3-Smt.Hema, is held entitled to the compensation of **Rs.4,63,500/-** and respondents No.4 and 5 are held entitled to **Rs.3,50,000/-** each. Any amount, earlier disbursed to the claimants, in

consonance with the terms of the Award passed by the learned Tribunal, shall be adjusted accordingly.

The impugned Award dated 10.12.2008 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same. The Tribunal shall initiate process of disbursement of the compensation, as now worked upon, not only qua the appellants i.e. parents of the deceased, but also, vis-a-vis, widow and children of the deceased, who have been impleaded as proforma respondents.

With the above observations, the present appeal stands allowed.

September 03, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No