



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

**FAO-29-2020**

**Judgment Reserved on 08.08.2025**

**Judgment pronounced on 26.08.2025**

**PINKI DASS AND OTHERS**

**... APPELLANTS**

**VERSUS**

**UMED GIRI AND OTHERS**

**...RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Sagar Aggarwal, Advocate  
for the appellants.

Mr. Vinod Chaudhary, Advocate  
for the respondent-Insurance Company.

\*\*\*

**PARMOD GOYAL, J.**

Present appeal has been preferred by wife, minor son, and parents of deceased Gurmukh Singh, who died in a roadside accident which took place on 25.12.2017 on account of rash and negligent driving by respondent No. 1 while driving vehicle No. HP-12-C-9256.

2. Not fully satisfied by impugned award dated 03.08.2019 passed by Motor Accidents Claims Tribunal Kurukshetra (for short 'Tribunal') vide which appellants were found entitled to total compensation of ₹22,00,480/-, the appellants are seeking enhancement of compensation awarded by learned Tribunal on the ground that same is not according to their entitlement.

3. It was the case of claimants/appellants that deceased Gurmukh Singh was a truck driver and was earning ₹25,000/- per month and was contributing entire amount for the welfare of claimants-appellants. Learned Tribunal, however, concluded that except for oral assertions that deceased was earning ₹25,000/- and no evidence was led by claimants to prove monthly income of the deceased.



However, keeping in view the fact that deceased had died while driving truck, therefore, his monthly income was taken equivalent to minimum wages payable to skilled labourer and accordingly income of deceased was assessed as ₹10,568/- per month. Since deceased was 25 years old, multiplier of 18 was applied. Additional 40% was awarded towards future prospects. Personal expenses were deducted to the extent of 1/3<sup>rd</sup> and following compensation was determined

Monthly income/Annual income	₹ 10568 x 12 =	₹ 1,26,816
Future prospects	40% 10568 x 40% / 100	₹ 4227
Total income (annual)	₹ 10568 (monthly income) + ₹ 4227 (40%) future prospects = ₹ 14795 x 12	₹ 1,77,540/-
Personal expenses	1/3 <sup>rd</sup> - 3 Number of dependents	1/3 <sup>rd</sup>
Total loss of dependency annual	₹ 1,77,540 (Annual income) - ₹ 59,180 personal expenses	₹ 1,18,360
Multiplier	18	
Loss of dependency	₹ 1,18,360 x 18	₹ 21,30,480/-
Funeral and last rites etc.		₹ 15,000/-
Loss of estate		₹ 15,000/-
Loss of consortium to wife		₹ 40,000/-
Total		₹ 22,00,480/-

4. Compensation awarded by learned MACT, Kurukshetra is being challenged on the ground that Tribunal has erred in determining monthly income of deceased to be ₹10568 instead of ₹25000/-. It is being asserted that personal expenses have been wrongly deducted to the extent of 1/3<sup>rd</sup> instead of 1/4<sup>th</sup> and neither minor child nor parents were awarded compensation on account of



consortium by the learned Tribunal. Claimants/appellants have accordingly sought enhancement of compensation.

5. On consideration, I find that determination of monthly income of deceased by learned Tribunal, cannot be faulted with. Perusal of record goes to show that there is no evidence justifying conclusion that deceased was earning ₹25000/-. The oral evidence of RW3- Davinder Singh, regarding salary of deceased cannot be taken as true in absence of any corroborating evidence in the shape of salary certificate or record of employer or bank statement showing payment of wages to the extent of ₹25,000/- per month to the deceased.

6. Learned Tribunal has rightly concluded that deceased was driver by profession and has rightly taken his monthly income as ₹10,568/-, considering him to be skilled labour. The minimum wages payable to skilled truck driver in the year 2017 were ₹10,562/- as per Haryana Government and accordingly learned Tribunal has rightly assessed the monthly income of deceased to be ₹10568/-. No fault with approach of learned Tribunal in awarding future prospects to the extent of 40%, can be found. Multiplier of 18 has been rightly applied by the Tribunal in the facts and circumstances of the present case, since the deceased was 25 years of age. However, I find merit in contention raised on behalf of appellants that Tribunal has erred in deducting 1/3<sup>rd</sup> as personal expenses instead of 1/4<sup>th</sup>. Hon'ble Supreme Court in '**Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(6) SCC 121** had mandated deduction of 1/4<sup>th</sup> towards personal expenses, if number of dependents are 4 to 6. In the present case, number of dependents are 4. Ld. Tribunal has wrongly excluded father of deceased from list of dependents. In present case father was 54 years old. Dependency is not only based upon financial dependency but is also dependent on other aspects like emotional and social support. Keeping in view limited earning years left with father his exclusion from list of dependents is not justified.



Accordingly, personal expenses to the extent of 1/4<sup>th</sup> ought to have been deducted instead of 1/3<sup>rd</sup>. This needs to be corrected. Accordingly, it is held that compensation needs to be awarded after deducting 1/4<sup>th</sup> towards personal expenses.

7. I also find merit that children and parents are also entitled to consortium. Consortium in the present case, as alleged, has been granted to appellant No. 1 only. Children are entitled to parental consortium and parents are entitled to filial consortium to the extent of Rs. 40,000/- each.

8. Accordingly, loss on account of death of deceased is determined as under:-

Monthly income/Annual income	₹ 10568 ₹ 10568 x 12 months	₹ 1,26,816
Future prospects	40% ₹ 10568 x 40%	₹ 4227
Total income (annual)	₹10568 (monthly income) + 4227 (40%) future prospects = ₹14795 x 12 months	₹ 1,77,540/-
Personal expenses	Number of dependents 4	1/4 <sup>th</sup>
Total annual loss of dependency	₹ 1,77,540 / 4 = 44385 ₹ 1,77,540 - ₹ 44,385	₹ 1,33,155/-
Multiplier	18	18
Loss of dependency	₹ 1,33,155 x 18	₹ 23,96,790/-
Funeral and last rites etc.	₹ 15,000/-	₹ 15,000/-
Loss of estate	₹ 15,000/-	₹ 15000/-
Loss of consortium to wife	₹ 40,000/-	₹ 40,000/-
Loss of parental consortium to child	₹ 40,000/-	₹ 40,000/-
Loss of filial consortium to mother	₹ 40,000/-	₹ 80,000/-
Total		₹ 25,86,790/-



9. Claimants have also challenged finding of contributory negligence on the part of deceased. It is a case of claimants-appellants that learned Tribunal has wrongly concluded that deceased had also contributed in accident since accident was head on and taken place in the early morning hours at about 3.00 a.m. Learned counsel for the appellants has argued that PW2 Saravjeet Singh has duly asserted manner of accident and the same has remained unrebutted. That no question regarding contributory negligence was put to PW2 by respondents in his cross-examination. That in the absence of any fault/contribution on the part of deceased, he cannot be held liable for contributory negligence merely because accident was head-on collision. In order to find out contributory negligence, it is must to conclude that acts of deceased/driver contributed towards accident in question.

10. Hon'ble Supreme Court in ***Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak, 2002 (3) LJR 821*** had laid down parameter to conclude contributory negligence in given set of facts. Hon'ble Supreme Court had held :-

*"The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."*

*Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question of defendant's negligence is decided. The standard of reasonable man is as relevant in the case of plaintiff's contributory negligence as in the case of defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in *Astley Vs. Austrust Ltd. (1999) 73 ALJR 403* is worthy of quoting :*

*"A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many*



*cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."*

11. Therefore, in order to conclude contributory negligence, it is incumbent to record contribution on the part of deceased (driver) on whose behalf compensation is being claimed. In the present case, evidence of PW2 goes to show that he had not only witnessed the accident but had also lodged FIR bearing No. 194 dated 26.12.2017 under Sections 279 and 304-A IPC at Police Station Ismailabad, District Kurukshetra. Perusal of First Information Report Ex.P8 and affidavit of PW2 in evidence go to show that PW2 had clearly stated that on 25.12.2017 he and Gurmukh Singh had started in separate trucks at about 10 p.m. after loading material from Nalagarh to Jaipur. Gurmukh Singh was driving truck No. HP-12-C-9256. Both the vehicles were following each other. Gurmukh Singh was driving his truck at normal speed and on the left side of the road, while observing all the traffic rules. PW2 was ahead of truck driven by Gurmukh Singh at about 3.00 a.m. on 26.12.2017, when they had reached near power house of village Malikpur on Ambala-Hisar road, in the meanwhile, a tanker came from opposite side being driven at high speed and negligently. He somehow saved himself but thereafter the offending truck stuck against the vehicle of Gurmukh Singh which was behind his truck. He in his evidence further asserted that after seeing the offending tanker, Gurmukh Singh had slowed down speed of his truck



and came on extreme left-hand side but despite that, the offending tanker stuck against the truck driven by Gurmukh Singh, while coming on wrong side of the road. Resultantly, Gurmukh Singh received multiple injuries resulting into his death. That truck of Gurmukh Singh was badly damaged and after the accident, respondent No. 1 stopped his tanker and disclosed his name and address. PW2 further claimed that accident was the result of sole negligent driving by the tanker driver. PW2 was duly cross examined by learned counsel for the respondents, however, perusal of his cross examination shows that nothing substantial regarding accident was asked from him so as to challenge the mode and manner of accident as was stated by PW2 or to show the role of deceased Gurmukh Singh in causing the accident in question.

12. Admittedly, no evidence has been led by respondents to rebut evidence of PW2. Respondent No. 1 has not stepped into the witness box. Learned Tribunal has recorded finding of contributing negligence merely because accident was head on collision. In-fact, from reading of finding of learned Tribunal, it is clearly made out that Tribunal had based his finding not on the basis of evidence but on the basis of assumption. The finding of learned Tribunal is reproduced as under:-

*“I find force in the argument of learned counsel for respondent No.3 as admittedly, the offending Tanker bearing registration No.GJ12-BV-9199 came from the opposite side and as per FIR, Ex.P8, straightway hit in Truck bearing registration No.HP12-C-9256 being driven by Gurmukh Singh (since deceased). Moreover, the accident was occurred at 3.00 a.m. in the morning and there is every possibility that deceased (Gurmukh Singh), who was driving the truck bearing registration No. HP12-C-9256 might have also not keeping the eyes on the road.”*

13. From reading of above conclusion drawn by learned Tribunal, it is



clear that tribunal has presumed that deceased might have also not kept eyes on the road. This finding is not based upon evidence on record and cannot be sustained. There is no material to conclude that deceased Gurmukh Singh had also contributed in causing the accident dated 26.12.2017. The finding of learned Tribunal to the extent of contributory negligence, therefore, cannot be sustained. Hence set-aside. It is held that accident was caused by respondent No. 1 by his rash and negligent driving. The finding on issue No. 1 recorded by Tribunal are accordingly modified.

14. In view of above discussion, appellants are entitled to total compensation of ₹25,86,790/- to be divided amongst the claimants as per the shares mentioned in impugned award of Ld. Tribunal, Kurukshetra. Share of petitioner No. 3 & 4 shall remain same as was awarded by Ld. Tribunal i.e. 30 % out of total compensation which they will share equally to the extent of 15 % each. Respondent-Insurance Company is directed to pay the amount of compensation within a period of 2 months from today. The amount already paid be adjusted accordingly.

26.08.2025  
manoj

**(PARMOD GOYAL)**  
**JUDGE**

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No