

**FAO-8971-2014 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH****(226-2)****FAO-8971-2014 (O&M)  
Date of decision:- 27.01.2025****The New India Assurance Company Ltd.****... Appellant****Versus****Babita and others****... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Shubham Gupta, Advocate for  
Mr. Raj Kumar Bashamboo, Advocate  
for the appellant-Insurance Company.

Mr. Sandeep Kumar Yadav, Advocate  
for the respondents No.1 to 3.

Respondents No. 4 and 5 was ordered to be proceeded against ex-  
parte by this Court vide order dated 02.02.2015.

**\*\*\*\*****SUVIR SEHGAL, J. (ORAL)**

1. This appeal has been filed by the appellant/Insurance Company assailing award dated 15.07.2014 passed by the Motor Accident Claims Tribunal (for short "the Tribunal"), Rewari, whereby a petition filed by claimants-respondents No.1 to 3 under the Motor Vehicles Act, 1988 (for short "the MV Act") has been partly accepted.

2. Facts, in brief, leading to the filing of the appeal are that on 31.05.2011, Pawan Dev was riding a motorcycle and Parveen Kumar was sitting pillion. A Maruti Car bearing registration No. HR-36C-0549, which was being driven at a high speed by respondent No.4, came from the opposite direction and struck



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against the motorcycle. Both the motorcyclists fell on the road. Pawan Dev sustained fatal injuries and died on way to the hospital. Parveen Kumar was taken to H-way Hospital, where he was medically treated. An FIR No.116 dated 31.05.2012, Ex.PA, was lodged under Sections 279, 337 and 304-A, IPC at Police Station Rampura. Petition filed under Section 166 of the MV Act by the claimants-respondents No.1 to 3 for grant of compensation on account of death of Pawan Dev has been partly accepted and they have been granted compensation of Rs.11,55,000/-, along with interest @ 7% per annum, from the date of filing of the claim petition. The owner, driver as well as the Insurance Company have been jointly and severally held liable to pay the amount.

3. Counsel for the appellant has urged that the accident has not been proved in as much as neither Satyavir Singh, the first informant, has been examined, nor the Investigating Officer of the criminal case has stepped into the witness box. He contends that the Tribunal has erred in placing reliance upon the testimony of Rupesh Kumar, PW-12, who claims to be an eye witness.

4. On the other hand, counsel for the claimants-respondents No.1 to 3 have supported the findings recorded by the Tribunal and have argued that Pawan Dev died due to the rash driving of respondent No.4. It is their stand that the compensation awarded by the Tribunal is on the lower side.

5. I have heard counsel for the parties and considered their respective submissions, besides examining the requisitioned record.

6. Claimants have examined Rupesh Kumar, PW-12, who was an eye witness to the accident. He deposed that on the fateful day, he was going to the



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temple of Shree Shyam Baba at village Jaitpur on his motorcycle, when he saw the offending car, which was being negligently driven, strike the motorcycle of Pawan Dev. This witness deposed that he tried to chase the car, but the driver sped away. Parveen Kumar, PW-11, appellant, who was injured in the accident, has supported the testimony of the eye witness. Both the witnesses have been extensively cross-examined and their testimony has remained unrebutted.

7. Non-examination of the first informant or the Investigating Officer is not fatal to the case of the claimants. It has been settled by the Supreme Court in *Ravi Versus Badrinarayan and others, (2011) 4 SCC 693* that lodging of the FIR proves the factum of the accident and enables a victim to lodge a case for compensation. It could not be denied that the driver of the offending vehicle is facing trial in the criminal case. Evidence has come on the record that after investigation, final report under Section 173 Cr.P.C., Ex.PB, has been filed against him and he has been charge-sheeted. Although, FIR was lodged against an unknown driver and the vehicle number was also not mentioned, but during investigation, it was found that the offending vehicle was a Car bearing No.HR-36C-0549. Therefore, there is no error in the finding of the Tribunal that the accident occurred due to the rash and negligent driving of respondent No.4, which resulted in the death of Pawan Dev and injuries to Parveen Kumar.

8. The deceased was 27 years of age and was a graduate. He possessed a diploma in Advanced Hardware and Network Engineering. His widow deposed that the deceased had undergone a course of training in driving of Light Motor Vehicle and held agricultural land. She claimed that he was earning Rs.10,000/- per month, but could not produce any documentary evidence to



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support her stand. On the basis of the notification dated 24.02.2011, whereby minimum wages of skilled labour were notified, Tribunal came to the conclusion that the monthly income of the deceased was Rs.5,022/- and rounded it off to Rs.5,000/-. Tribunal has granted future prospects @ 50%, which deserves to be reduced to 40%. The multiplier was 17 and deduction of 1/3rd from his income made by the Tribunal does not require any interference.

9. In view of the guidelines laid by the Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Company Ltd. Versus Parnay Sethi and others, (2017) 16 SCC 680** and **Magma General Insurance Company Ltd. Versus Nanu Ram @ Chuhru Ram and others, (2018) 18 SCC 130**, claimants are entitled to compensation for loss of estate, funeral expenses, consortium, besides other heads. The head wise computation of compensation is calculated as under:-

| <b>SR. NO</b> | <b>HEADS</b>                                  | <b>COMPENSATION AWARDS</b>                                      |
|---------------|---|---|
| 1             | Monthly Income                                | Rs.5,022/-  |
| 2             | Deduction towards personal expenditure 1/3rd. | Rs.1,674/- (Rs.5,022/- X 1/3rd)                                 |
| 3             | Future prospectus                             | Rs.1,339/- (40% of Rs.3,348/-)                                  |
| 4             | Total Monthly Income                          | Rs.4,687/-<br>(Rs.3,348/- + Rs.1,339/-)                         |
| 5             | Multiplier                                    | 17  |
| 6             | Annual dependency                             | Rs.9,56,148/- (Rs.4,687/- X 12 X 17)                            |
| 7             | Loss of Estate                                | Rs.18,000/-   |
| 8             | Funeral expenses                              | Rs.18,000/-   |
| 9             | Loss of consortium                            | Rs.1,44,000/- (Rs.48,000/- payable to each of three dependents) |
| 10            | Total compensation                            | Rs.11,36,148/-  |
| 11            | Interest                                      | 7%  |

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10. The Tribunal has awarded an amount of Rs.11,55,000/-, along with interest, whereas as per the above calculation, they are entitled to Rs.11,36,148/-. The amount calculated by the Tribunal must have been paid to the claimants as there was no interim order in the instant appeal. As the difference between the amount calculated by the Tribunal and the compensation calculated by this Court is marginal, this Court is of the view that no interference is called for in the award passed by the Tribunal.

11. For the reasons recorded above, there is no merit in the appeal, which is dismissed, though with no order as to costs.

12. As the main appeal has been decided, pending application(s), if any, is/are disposed off.

27.01.2025  
*Kamal*

**(SUVIR SEHGAL)**  
**JUDGE**

|                           |        |
|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |