



265

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

**FAO-5904-2016 (O&M)  
and XOBJC-25-CII-2017 (O&M)  
Date of Decision : 08.09.2025**

National Insurance Co. Ltd. ... Appellant(s)

Versus

Sukhwinder Kaur & Ors ... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Ram Avtar, Advocate for the appellant.

Mr. Digvijay, Advocate for  
Mr. Ashish Gupta, Advocate  
for respondent Nos.1 to 5/cross-objectors.

Mr. HPS Ishar, Advocate for respondent Nos.9 to 11  
(through hybrid mode).

**ALKA SARIN, J. (Oral)**

**CM-20193-CII-2016**

1. For the reasons mentioned therein, the application seeking condonation of delay of 10 days in filing the appeal is allowed and the delay of 10 days in filing the appeal is condoned.

**FAO-5904-2016 and XOBJC-25-CII-2017**

2. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the quantum of compensation awarded vide the impugned award dated 19.04.2016 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'Tribunal'). The cross-

objections (**XOBJC-25-CII-2017**) have been filed by the claimant-respondent Nos.1 to 5 aggrieved by the finding qua 50% contributory negligence as well as quantum of compensation. The parties are being referred to as Insurance Company, claimants and driver and owner.

3. Brief facts relevant to the present *lis* are that on 08.06.2015 when Harbhajan Singh (since deceased) was going on his motorcycle bearing registration No.HR-07J-5811 towards Ladwa side at a normal speed by turning on the turn of Mustafabad Road to Ladwa, a car bearing registration No.HR-07V-2375 (hereinafter referred to as 'offending vehicle) which was being driven by the driver in a rash and negligent manner came from behind without blowing horn and struck against the motorcycle of the deceased. As a result, the deceased fell and the offending vehicle ran over both the legs of the deceased. Thereafter, the offending vehicle and motorcycle of the deceased fell in the fields. The deceased sustained multiple grievous injuries and he was taken to CHC Ladwa from where he was referred to PGI Chandigarh where he succumbed to his injuries. The accident was witnessed by Ankit Kumar who was working in his fields. FIR No.143 dated 08.06.2015 under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered at Police Station Ladwa, District Kurukshetra.

4. Claim petition was filed. The driver and owner of the offending vehicle filed their written statement raising various preliminary objections qua maintainability, no cause of action and *locus standi*. It was averred that the Insurance Company would be liable to pay the compensation in the eventuality of the claim petition being allowed. It was further averred that the factum of the accident was denied and a false FIR was got registered in connivance with the Police.

5. The Insurance Company filed its separate written statement taking various preliminary objections qua maintainability, no locus standi and the claim petition being filed by the claimants in collusion with the owner and driver of the offending vehicle just to extort money from the Insurance Company. It was averred that the driver was not holding a valid and effective driving license at the time of accident. On merits, it was stated that no such accident took place. It was further averred that if the Tribunal comes to the conclusion that the accident in question had taken place then in that eventuality the accident took place due to the sole negligence of the deceased while driving his motorcycle in a rash and negligent manner.

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

1. Whether Harbhajan Singh died due to injuries suffered in the accident caused on 08.06.2015 by rash and negligent driving of car bearing registration No.HR-07V-2375 by the respondent No.1 as alleged ? OPP
2. Whether the claimants in the present claim petition are entitled to compensation, if so how much and from whom ? OPP
3. Whether the respondent No.1 did not have valid and effective driving license at the time of the accident, if so to what effect ? OPR-3
4. Whether the respondent No.2 has violated the terms and conditions of the insurance policy, if so to what effect ? OPR-3
5. Relief.

7. The Tribunal vide the impugned award dated 19.04.2016 held it to be a case of contributory negligence to the extent of 50% and awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹10,200/-
2	Future prospects 30%	[₹10,200 + 3,060] = ₹13,260/-
3	Deduction 1/4 <sup>th</sup>	[₹13,260 – 3,315] = ₹9,945/-
4	Annual income	[₹9,945 x 12] = ₹1,19,340/-
5	Multiplier of 15	[₹1,19,340 x 15] = ₹17,90,100/-
6	Funeral expenses	₹25,000/-
7	Loss of estate	₹1,00,000/-
8	Loss of consortium to wife	₹1,00,000/-
9	Love and affection to children	₹4,00,000/- [₹1,00,000 x 4]
10	Love and affection to mother	₹50,000/-
11	<b>Total Compensation</b>	<b>₹24,65,100/-</b>
	Contributory Negligence @ 50%	[₹24,65,100 – 12,32,550] = ₹12,32,550/-
	<b>Interest</b>	<b>9% per annum</b>

8. Aggrieved by the same, the present appeal has been preferred by the Insurance Company challenging the quantum of compensation and the cross-objections by the claimants challenging the finding qua contributory negligence as well as quantum of compensation.

9. Learned counsel for the Insurance Company would contend that the finding qua contributory negligence has rightly been given by the Tribunal keeping in view the fact that the eye-witness - Ankit Kumar (PW2) - had stated that the deceased was turning from Mustafabad to Ladwa and since the accident took place in the middle of the road, there was a violation of Rules 8 and 9 of the Rules of Road Regulations, 1989 issued under Section 118 of the Motor Vehicles Act, 1988. It is further the contention of the learned counsel that the income of the deceased has wrongly been assessed as per the Deputy

Commissioner's Rates which should be as per the minimum wage. It is further the contention of the learned counsel that the deceased was above 40 years and therefore future prospects ought to have been 25% since he was not in a permanent job. It is further the contention of the learned counsel that the compensation awarded under the conventional heads as well as under the head 'loss of consortium' is on the higher side.

10. *Per contra* learned counsel for the claimants would contend that in the present case no issue was framed or claimed qua the contributory negligence. It is further the contention of the learned counsel that the owner and driver had denied the factum of the accident and no plea of contributory negligence was raised by them. Even the Insurance Company though raised the plea that the deceased was solely responsible for driving the motorcycle in a rash and negligent manner, however, no evidence was led in this regard by the Insurance Company or by the owner and driver. Learned counsel would further contend that in the absence of any issue and any evidence having been led qua the contributory negligence, the finding qua contributory negligence cannot be sustained. In support of his contentions he 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]**. It is further the contention of the learned counsel that the income of the deceased as well as the deduction of 1/4<sup>th</sup> has rightly applied by the Tribunal. It is further the contention of the learned counsel that the date of birth of the deceased was 15.10.1975, as per his Aadhaar Card (Ex.P4), and therefore he was below the age of 40 at the time of the accident which took place on 08.06.2015, hence, an addition of 40% ought to have been made towards future prospects.

11. I have heard the learned counsel for the parties.

12. In the present case no issue was framed qua contributory negligence. Though the owner, driver and the Insurance Company had taken the plea that no accident had taken place and a false FIR had been registered, however, the driver, owner and the Insurance Company failed to examine any witness qua the fact that there was any contributory negligence on the part of the deceased. As per the statement of the eye-witness - Ankit Kumar (PW2) - the deceased who was working in Vishal Poultry Farm owned by his brother was riding his motorcycle on the correct side of the road and at a normal speed and was going towards Ladwa and while turning on the turn of Mustafabad to Ladwa, the offending vehicle hit his motorcycle from behind. It was stated by the said witness that the offending vehicle was being driven rashly and negligently and without blowing any horn and violating all traffic rules. The argument of the learned counsel for the Insurance Company that the deceased was riding the motorcycle in violation of the Rules and that he ought to have slowed down before turning is all based on presumptions. Even the finding recorded by the Tribunal is based on the assumptions and presumptions. There is nothing on the record to even remotely suggest that the deceased had not slowed down or that he had taken the turn in an improper manner. 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.”*

13. In view of the discussion above and in the absence of any evidence having been led by the Insurance Company and driver and owner, finding recorded by the Tribunal qua contributory negligence cannot be sustained and is accordingly set aside.

14. The argument of the learned counsel for the Insurance Company that the income ought to have been assessed as per the minimum wages prescribed under the Minimum Wages Act, 1948 and not as per the Deputy Commissioner rates deserves to be rejected inasmuch as the DC Rates have been upheld by the Hon’ble Supreme Court in the case of **Saroj & Ors. Vs. IFFCO TOKIO General Insurance Company & Ors. [2024 (1) RCR (Civil) 881]** wherein it was held as under :

*“9.3 The question before the High Court was not as to which yardstick to use to determine the notional income of the deceased was ‘better’. Since there is nothing on record to establish that the rates notified by the District Commissioner, Rohtak, would*

*not apply to the deceased, we find no reason to interfere with the finding of the Tribunal. Further, the testimonies of PWs 2, 5 and 6 show that he is an agriculturist who owned his own tractor and a JCB machine.”*

15. Further, the minimum wage notification is merely a yardstick and not an absolute factor to be taken to determine the compensation payable to the claimants. It has been laid down in a plethora of judgments by Hon'ble the Supreme Court that the Courts must strike a balance between inflated and unreasonable demands of the victim and the equally untenable claim of the opposite party saying that nothing is payable. The compensation should be just in order to adequately restore the claimants to the position prior to the accident. In the present case the deceased left behind a widow and four minor children. The minor children have their whole life ahead of them. Their education has to be taken care of as well as living expenses of all the claimants. The compensation cannot in any manner compensate for the loss suffered by the family of the deceased, but it should at least be sufficient to mitigate the financial difficulties the family is likely to face. Accordingly, the argument of the learned counsel for the Insurance Company that the income of the deceased ought to have been assessed as per the Minimum Wages Act, 1948 stands rejected. Hence, the income of the deceased as ₹10,200/- per month as assessed by the Tribunal is maintained.

16. The argument of the learned counsel for the claimants that an addition of 40% ought to have been made towards future prospects instead of 30% deserves to be accepted inasmuch as the date of birth of the deceased as per his Aadhaar Card (Ex.P4) was 15.10.1975 and on the date of accident i.e. 08.06.2015, he was 39 years, 7 months, 3 weeks, 3 days i.e. below 40 years. Hence, as per the law laid down by the Hon'ble Supreme Court in the case of

**National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, 40% addition would be applicable towards future prospects. Since there is no dispute qua 1/4<sup>th</sup> deduction as applied by the Tribunal, the same is accordingly maintained.

17. The argument of the learned counsel for the Insurance Company that the compensation awarded under the conventional heads and under the head 'loss of consortium' is on the higher side deserves to be accepted keeping in view the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi (supra)**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**. Hence, the claimants would be entitled to ₹18,000/- (₹15,000+20% increase) towards loss of estate and ₹18,000/- (₹15,000+20% increase) towards funeral expenses and the claimants (wife, four children, brother and two sisters of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly Income	₹10,200/-
2	Annual Income	₹1,22,400/- [₹10,200 x 12]
3	Deduction - 1/4 <sup>th</sup>	₹91,800/- [₹1,22,400 - ₹30,600]
4	Future Prospects - 40%	₹1,28,520/- [₹91,800 + ₹36,720]
5	Multiplier - 15	₹19,27,800/- [₹1,28,520 x 15]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 4] (ii) Filial [₹48,000/- x 3] (iii) Spousal	₹1,92,000/- ₹1,44,000/- ₹48,000/- (Total ₹3,84,000/-)
	<b>Total Compensation</b>	<b>₹23,47,800/-</b>

18. 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. The claimants (proforma respondent Nos.9 to 11 herein) shall be entitled to filial consortium only.

19. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors. [AIR 2025 SC 1713 = 2025 SCC OnLine SC 567]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimants within six weeks from today and the apportionment thereof shall be as per the direction of the Tribunal. The particulars of the bank account(s) alongwith the requisite documents(s) in support thereof shall be furnished by the claimants 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.

20. In view of the above discussion, the appeal filed by the Insurance Company and the cross-objections filed by the claimants are disposed off. The award passed by the Tribunal stands modified to the above extent. Pending applications, if any, also stand disposed off.

08.09.2025  
Yogesh Sharma

( **ALKA SARIN** )  
**JUDGE**

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