

2025:PHHC:047999



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

**Reserved on : 04.04.2025
Pronounced on : 08.04.2025**

FAO-7235-2019 (O&M)

AJIT MASIH Appellant

V/S

RAMANDEEP KAUR AND ORS. Respondents

AND

FAO-4195-2018 (O&M)

RAMANDEEP KAUR AND ORS Appellants

V/S

AJIT MASIH AND ORS. Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Pal Singh Rehan, Advocate
for the appellant in FAO-7235-2019
and for respondent No.1 in FAO-4195-2018.

Ms. Ravinder Kaur Manaise, Advocate
for respondents No.1 to 4 in FAO-7235-2019
and for the appellants in FAO-4195-2018.

ALKA SARIN, J.

1. The present order shall dispose off the above noted two appeals being FAO-7235-2019 preferred by the driver of the vehicle bearing Temporary Registration No.PB-11-M(T)-1063 and FAO-4195-2018 preferred by the claimants challenging the award dated 25.01.2018 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to

as the ‘Tribunal’). The parties are being referred to as the driver of the offending vehicle and the claimants for the sake of clarity.

2. Since the factum of the accident is not in dispute, the facts, as recorded in the impugned award passed by the Tribunal, are not being adverted to herein for the sake of brevity.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹33,078
2.	Annual income	[₹33,078 x 12] = ₹3,96,936
3.	Addition @15%	[₹3,96,936 + ₹59,540] = ₹4,56,476
4.	Deduction 1/3 rd	[₹4,56,476 - ₹1,52,158] = ₹3,04,318
5.	Multiplier of ‘11’	[₹3,04,318 x 11] = ₹33,47,498
6.	Funeral expenses	₹15,000
7.	Loss of estate	₹15,000
8.	Loss of consortium	₹40,000
	Total Compensation	₹34,17,498
	Interest	@ 6% per annum if the payment is made within three months and @ 9% per annum if payment is not made within three months.

4. Learned counsel for the driver of the offending vehicle has contended that the driver has since been acquitted in the criminal trial and hence the claim petition qua him ought to have been dismissed. Though no application is filed for placing on record the judgment passed in the criminal trial, however, the same has been appended with the appeal being FAO-7235-2019.

5. *Per contra*, learned counsel for the claimants had contended that the deceased in the present case was posted as a Constable in the Office of Superintendent of Police, CID, Amritsar and that as per the last pay certificate and the salary certificate (Ex.A-6 and Ex.A-7) of the deceased, his income had been assessed as ₹33,078 after deduction the GPF, GIS, Funds, Income Tax etc. which ought not to have been deducted as the same form part of the salary. It was further the contention that deduction of 1/3rd has wrongly been applied by the Tribunal, whereas it ought to have been 1/4th as there were 4 (four) dependents upon the deceased. Learned counsel would further contend that an addition of 15% had been made towards future prospects whereas it ought to have been 30% as the deceased was a Constable in the Punjab Police and further that multiplier of '11' has wrongly been applied by the Tribunal which ought to have been '13' keeping in view the age of the deceased being 50 years at the time of the accident. It was further the contention of the learned counsel that the amount awarded under the conventional heads is on the lower side and that no amount had been awarded towards loss of consortium to the father as well as the children. In support of her contentions the learned counsel for the claimants relied upon the 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]**, **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].**

6. Heard learned counsel for the parties and perused the record.

7. The arguments of the learned counsel for the driver of the offending vehicle that the claim petition ought to have been dismissed as the driver has since been acquitted in the criminal trial deserves to be rejected.

In the case of **N.K.V. Bros (P) Ltd. Vs. M. Karumai Ammal [(1980) 3 SCC 457]** the case set up was that since the criminal case in relation to the accident had ended in acquittal, hence, the claim under the Motor Vehicles Act, 1988 should also be rejected. The Supreme Court negated the said argument and held as under :

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising

this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”

Further, in **Krishan Vs. Tarawati [2011 (3) PLR 29]** it was held :

“It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court.”

Again, in **Harjinder Kaur & Ors. Vs. Pushpinder Kumar & Ors. [2017 (4) ACC 395]** this Court held that *“It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal”*.

8. In view of the above settled position of law, it is clear that *dehors* the outcome of the criminal proceedings, the matter before the Motor

Accident Claims Tribunal is to be decided on merits, in accordance with law and as per the evidence available on the record.

9. The argument of the learned counsel for the claimants that deductions form part of the salary and hence the same ought not to have been deducted deserves to be accepted. The Hon'ble Supreme Court in the case of **Triveni Kodkany & Ors. Vs. Air India Limited & Ors. [2020(4) RCR (Civil) 184]** has held as under :

“9. Both the sides have prefaced their submissions by relying on the principles which have been evolved by the Court in determining compensation under the Motor Vehicles Act, where an accident has resulted in death. The table which we have reproduced in the earlier part of the judgment would indicate that the total CTC per annum, on account of the employment of the deceased, to his employer was AED 4,82,395. This comprises of the basic pay, house rent allowance, transport allowance, telephone allowance, LTA, medical aid and gratuity. The ion which has been made by the employer in the salary of the deceased is, in our view, no reason to make any deductions from the total CTC of AED 4,82,395. The consolidated amount is the amount annually borne by the employer on account of the employment of the deceased. Hence, we are unable to accept the reasons which weighed with the NCDRC in making a deduction of AED 30,000 from the total CTC. Similarly and for the same reason, we are unable to accept

the submission of Air India that the transport allowance should be excluded. The bifurcation of the salary into diverse heads may be made by the employer for a variety of reasons. However, in a claim for compensation arising out of the death of the employee, the income has to be assessed on the basis of the entitlement of the employee. We, therefore, proceed for the purpose of computation on the basis of the annual income of AED 4,82,395.

10. The submission which has been made on behalf of the complainants is that in addition to the salary which was paid to the deceased, he was entitled to diverse benefits. These benefits have been adverted to in a letter dated 21 March 2011 of the Vice President, Human Resources of the employer. The letter indicates that in March 1999, August 1999, November 2001, February 2004 and April 2007, the deceased was given ESOPs by the employer. The letter contains the following statement:

"As part of the Talent Development initiative in the organization, Mahendra Kodakany as a key performer was inducted in the Family Jewel Program (FJP) in the year 2006- 07 and thereby graduated to the Business Partner Program (BPP) in the year July 2007 - June 2010. As part of both the programs he was eligible for a benefit (over and above his CTC) amount of INR 4.5 Lacs per annum

and INR 13.8 lacs per annum respectively."

10. A perusal of the last pay certificate and the salary certificate (Ex.A-6 and Ex.A-7) of the deceased reveals that the deceased was getting a gross total salary of ₹48,517 which comprised of various allowances, which form part of his salary. However, the same is subject to deduction of income tax prevalent at the relevant time, which was as under :

<i>Sr. No.</i>	<i>Income Slabs</i>	<i>Tax Rates</i>
<i>i.</i>	<i>Where the taxable income does not exceed ₹2,50,000</i>	<i>Nil</i>
<i>ii.</i>	<i>Where the taxable income exceeds ₹2,50,000 but does not exceed ₹5,00,000</i>	<i>10% of amount by which the taxable income exceeds ₹2,50,000 Less: Tax credit under Section 87A – 10% of taxable income upto a maximum of ₹2,000</i>
<i>iii.</i>	<i>Where the taxable income exceeds ₹5,00,000 but does not exceed ₹10,00,000</i>	<i>₹25,000 + 20% of the amount by which the taxable income exceeds ₹5,00,000</i>

Accordingly, the income of the deceased is assessed as ₹48,517 per month (₹5,82,204 per annum) minus income tax which comes to ₹41,440 per annum.

11. Further, deduction of 1/3rd has wrongly been applied which ought to have been 1/4th keeping in view the fact that there were 4 (four) dependents upon the deceased. A multiplier of '11' has wrongly been applied and hence, as per the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra), multiplier of '13' would be applicable keeping in view the age of the deceased being 50 years at the time of the accident. Since the deceased was a salaried person, an addition of 30%

would have to be made towards future prospects instead of 15%.

12. The amount awarded under the conventional heads is on the lower side and no amount has been awarded under the head 'loss of consortium' to the father and the children. Hence, as per 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), 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. The claimants, being widow, children and father of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium which comes to ₹1,92,000 (₹48,000 x 4).

13. Accordingly, the reworked compensation, to which the claimants are entitled to, is as under :

Sr. No.	Heads of claim	Amount awarded
1.	Monthly salary	₹48,517
2.	Annual salary	[₹48,517 x 12] = ₹5,82,204
3.	Less income tax	[₹5,82,204 - ₹41,440] = ₹5,40,764
4.	Deduction 1/4 th	[₹5,40,764 - ₹1,35,191] = ₹4,05,573
5.	Future prospects @30%	[₹4,05,573 + ₹1,21,672] = ₹5,27,245
6.	Multiplier '13'	[₹5,27,245 x 13] = ₹68,54,185
7.	Loss of estate	₹18,000
8.	Funeral expenses	₹18,000
9.	Loss of Consortium : (i) Parental (ii) Filial (iii) Spousal's	[₹48,000 x 2] = ₹96,000 [₹48,000 x 1] = ₹48,000 ₹48,000 Total = ₹1,92,000
Total compensation		₹70,82,185

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 present appeal till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

15. In view of the above discussion, the award passed by the Tribunal is modified accordingly and the appeal being FAO-7235-2019 filed by the driver of the offending vehicle is dismissed and the appeal being FAO-4195-2018 filed by the claimants is allowed. Pending applications, if any, also stand disposed off.

08.04.2025

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*