



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

FAO-5359-2010 (O&M)

Date of Decision : 05.03.2025

Sumitra Devi & Ors ... Appellant(s)

Versus

Gyan Singh & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Jain, Advocate for the appellants.

Service of respondent Nos.1 and 2 dispensed with
vide order dated 02.09.2011.

Mr. R.N. Singhal, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'Tribunal') vide the impugned award dated 16.01.2010 in a motor vehicle accident which occurred on 22.06.2009.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced 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	₹3,000/-
2	Deduction 1/4 th	[₹3,000 - 450] = ₹2,550/-
3	Annual income after multiplier 14	[₹2,550 x 12 x 14] = ₹4,28,400/- (wrongly calculated as ₹3,78,000/-)

4	Funeral expenses	₹5,000/-
5	Loss of consortium	₹5,000/-
	Total Compensation	₹3,88,000/-
	Interest	7% per annum

4. Learned counsel for the claimant-appellants would contend that the deceased was running a *kiryana* shop in the name and style of Goyal Kiryana Store in village Jogiwala, District Hanumangarh besides owning a Tata 407 bearing Registration No.RJ-31G-0503, registration certificate of which was proved on record as Ex.P3 and that the deceased was earning ₹25,000/- per month. However, the Tribunal erred in not taking into consideration the registration certificate (Ex.P3) while assessing the income of the deceased as ₹3,000/- per month. It is further the contention of the learned counsel that no addition has been made by the Tribunal towards future prospects which ought to have been 25% keeping in view the age of the deceased as 45 years at the time of the accident and that the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are also not as per the law laid down by the Hon'ble Supreme Court. In support of his contentions the learned counsel for the claimant-appellants has relied upon the judgments of the Hon'ble Supreme Court in the cases of **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]**. No challenge has been laid by learned counsel for the claimant-appellants to deduction of 1/4th and the multiplier of '14' as applied by the Tribunal.

5. *Per contra* learned counsel for respondent No.3-Insurance Company has contended that the income of the deceased has correctly been assessed as ₹3,000/- per month in the absence of any evidence and that sufficient amount has already been awarded as compensation in the present case and there is no scope of any enhancement.

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

7. In the present case the Tribunal has assessed the income of the deceased as ₹3,000/- which according to the learned counsel for the claimant-appellants was on the lower side. Appellant No.1 – Sumitra Devi – stepped into the witness box as PW1 and testified that besides running a *kiryana* shop in the name and style of Goyal Kiryana Store in village Jogiwala, District Hanumangarh, the deceased was also owning a Tata 407 bearing Registration No.RJ-31-G-0503, registration certificate of which was proved on record as Ex.P3 and was earning ₹25,000/- per month. There is no contrary evidence to prove that the deceased was not running any such *kiryana* shop and was not owning any such Tata 407. Thus, the deceased if was running a *kiryana* shop besides keeping a Tata 407, as is apparent from Ex.P3, must have been earning a substantial amount to run the household of his family and, hence, this Court deems it appropriate to use some guesswork for assessing the income of the deceased. Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav [2021 (4) RCR (Civil) 492]** has held as under :

10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such

licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the

deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3 rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/. As an amount of Rs.10,99,700/ is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors. (2018) SCC Online SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/- each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr.(2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record.”

8. Keeping in view the above-noted judgment in the case of **Chandra @ Chanda @ Chandraram** (supra), the income of the deceased is assessed as ₹5,000/- per month.

9. In the present case there is no challenge to the deduction as 1/4th

as well as to the multiplier of '14' as applied by the Tribunal and coupled with the fact that there is no appeal by the Insurance Company, hence, the same are maintained. Further, no addition has been made by the Tribunal towards future prospects. In the present case the deceased was 45 years of age at the time of the accident and, hence, as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), 25% addition is made towards future prospects. Further, the amounts awarded under the conventional heads and under the head 'loss of consortium' are not 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) and hence, the claimant-appellants 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 and three children 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	₹5,000/-
2	Annual Income	₹60,000/- [₹5,000 x 12]
3	Deduction 1/4th	₹45,000/- [₹60,000 – 15,000]
4	Future Prospects - 25%	₹56,250/- [₹45,000 + 11,250]
5	Multiplier - 14	₹7,87,500/- [₹56,250 x 14]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 3] (ii) Spousal's	₹1,44,000/- ₹48,000/- (Total ₹1,92,000/-)
	Total Compensation	₹10,15,500/-

10. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

11. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

05.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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