2025:PHHC:132676

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-117-2024 (O&M)
Date of Decision : 23.09.2025

AMARDEEP KUMAR (MINOR) AND ORS .... Appellants

VERSUS

M/S G.S.K BUS SERVICE AND OTHERS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. C.L. Verma, Advocate for the appellants.

Mr. Salinder Kumar, Advocate for
Mr. Amandeep S. Gill, Advocate for respondents No.1 and 3.

Mr. Imran Ahmad Ali, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

CM-263-CII-2024

1. This is an application for condonation of delay of 134 days in filing the appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 134 days in filing the appeal is condoned. However, the claimant-appellants shall not be entitled to any interest for the period of delay in filing the appeal.

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3. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the 'Tribunal') vide

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award dated 20.04.2023 as also the fact that it was held to be a case of contributory negligence contributing 20% negligence to the deceased.

4. Brief facts relevant to the present *lis* are that the claimant-appellants filed the claim petition averring therein that on 03.11.2019 claimant-appellant No.5 and his wife (since deceased) along with their minor children were going on an Activa Scooter bearing No.PB-10-DT-6074 to meet the brother of deceased towards Shivpuri. When they reached near Basti Jodhewal on bridge at about 4:00 pm, the offending bus bearing No.PB-06-V-0939, which was being driven by respondent No.3, came from behind in a rash and negligent manner and at fast speed and hit the Activa from behind. Due to that impact, the deceased fell down on the road towards right side and the driver crushed the deceased under the tyre of the bus. It was further averred that the incident was witnessed by claimant-appellant No.5 who got lodged the FIR No.119 dated 03.11.2019 under Sections 279, 337, 338, 304-A IPC registered with P.S. Daresi, Ludhiana. On notice the respondents filed written statement denying the averments made in the claim petition and prayed for its dismissal.

5. From the pleadings of the parties, the following issues were framed :

1. Whether deceased Fulmati Devi @ Fulamati wife of Sh. Nagender Yadav died in a Motor Vehicular accident caused by respondent No.3, due to rash and negligent driving of vehicle i.e. bus bearing registration No.PB-06-V-0939, in the area in P.S Daresi, Ludhiana, on

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03.11.2019 ? OPP

2. Whether the claimants are entitled to compensation? If so, from whom and to what extent ? OPP

3. Whether the claim petition is not maintainable as alleged ? OPR

4. Whether no cause of action accrued to the claimants to file the present claim petition ? OPRs

5. Whether the respondent No.3 was not holding a valid and effective driving licence at the time of alleged accident ? OPR (2)

5. Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties ? OPR (2)

6. Whether the offending vehicle bearing No.PB-06-V-0939 did not have the valid registration certificate, fitness certificate and route permit at the time of alleged accident ? OPR (2)

7. Relief.

6. The Tribunal, though there was no issue framed qua contributory negligence, returned a finding that it is a case of contributory negligence as the deceased was pillion rider along with three others on the Activa scooter. After considering the evidence led by the parties, the Tribunal had awarded the following compensation :

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Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹5,000
2.	Annual income	[₹5,000 x 12] = ₹60,000
3.	Deduction 1/4th	[₹60,000 - ₹15,000] = ₹45,000
4.	Future prospects 40%	[₹45,000 + ₹18,000] = ₹63,000
5.	Multiplier of 16	[₹63,000 x 16] = ₹10,08,000
6.	Funeral expenses	₹16,500
7.	Loss of estate	₹16,500
8.	Loss of consortium	₹44,000
	Total Compensation	**₹10,85,000**
	Less @ 20% on account of contributory negligence	₹2,17,000
	Compensation awarded	**₹8,68,000**
	Interest	**@ 7% per annum**

7. Learned counsel for the claimant-appellants would contend that without there being any issue regarding contributory negligence and no witness having stepped into the witness box on behalf of the driver and the owner or the insurance company, it has been held to be a case of contributory negligence holding the rider of the scooter to have contributed 20% to the accident. It is further the contention of the learned counsel that merely because four people were riding the Activa scooter it cannot be presumed that the accident took place because of the fact that there were four people riding the Activa unless cogent evidence is led in this regard. Learned counsel would further contend that though the claimant-appellants do not challenge the deduction, the addition made towards future prospects and the multiplier applied by the Tribunal, however, the deceased in the present case was a homemaker aged 34 years and her income has been assessed as ₹5,000 per

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month only. While relying upon the judgment in the case of **Kirti & Anr. Vs. Oriental Insurance Company Ltd. [2021 (1) RCR (Civil) 478]** learned counsel has contended that the income of the homemaker ought to have been assessed as per the rate prevalent for a skilled worker at the time of the accident which was ₹10,453 per month. It is still further the contention of the learned counsel that the amounts awarded under the conventional heads i.e. loss of estate and funeral expenses as well as under the head 'loss of consortium' are not in consonance with the law laid down by 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]**.

8. *Per contra*, learned counsel for the respondents would contend that in the present case CW-1 i.e. the witness of the claimant-appellants had admitted that there were four people riding the Activa scooter and as such it has rightly been held to be a case of contributory negligence. It is further the contention that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

9. Heard.

10. In the present case the Tribunal has held it to be a case of contributory negligence as the deceased was pillion rider with three other persons. However, it is not the case where the deceased was the rider of the Activa scooter. She was only riding the Activa scooter as a pillion rider. At

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best it would be a case of a traffic violation and cannot be a case of contributory negligence. The Hon'ble Supreme Court in the case of **Mohammed Siddique & Anr. vs. National Insurance Company Limited & Ors. [2020 (1) RCR (Civil) 689]**, which was a case where the victim was one of the two pillion riders on a motorcycle, has held as under :

> *"13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim.*

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There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor

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> *cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.*
>
> *14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."*

Further, no issue for determination of contributory negligence was framed by the Tribunal. 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]** (supra) has held as under :

> *"7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributary 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*

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> *jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributary 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 contributary negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained."*

In the absence of any evidence having been led by the respondents to show that the fact that four people were riding on the Activa scooter had contributed to the accident, the finding of the Tribunal qua contributory negligence cannot be sustained. It is noticed by the Tribunal that no one had stepped into the witness box on behalf of the respondents. In the absence of any evidence and in the absence of any issue having been framed qua the same, it cannot be held to be a case of contributory negligence. In view thereof, the said finding of the Tribunal cannot be sustained and the same is accordingly set aside.

11. Further, the argument of the learned counsel for the claimant-appellants that the deceased was a homemaker aged 34 years hence her

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income ought to have been assessed as that of a skilled person deserves to be accepted. The Hon'ble Supreme Court in the case of **Kirti (supra)** has held as under :

> *"42. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:*
>
> *a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.*
>
> *b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.*
>
> *c. Various methods can be employed by the Court to fix the notional income of a homemaker,*

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depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation."

A homemaker contributes immensely to the household activities and does much more. Infact, she performs multiple functions in the house i.e. cooking for the family, cleaning the house, washing clothes and utensils, the list is endless. A homemaker is also a caretaker of her children as well as all the members of the house are taken care of by a homemaker. In view thereof, the income of the deceased would have to be considered as that of a skilled person at the relevant time which was ₹10,453 per month. Since there is no challenge to the deduction, the addition made towards future prospects and the multiplier applied by the Tribunal, the same are maintained.

12. The amounts awarded under the conventional heads i.e. loss of estate and funeral expenses and under the head loss of consortium are not in consonance with the law laid down by the Hon'ble Supreme Court. 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

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N. Jayasree (supra), 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. The claimant-appellants, being the children and the husband of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium.

13. Accordingly, the reworked compensation to which the claimant-appellants are entitled is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹10,453
2.	Annual income	[₹10,453 x 12] = ₹1,25,436
3.	Deduction 1/4th	[₹1,25,436 - ₹31,359] = ₹94,077
4.	Future prospects 40%	[₹94,077 + ₹37,631] = ₹1,31,708
5.	Multiplier of 16	[₹1,31,708 x 16] = ₹21,07,328
6.	Funeral expenses	₹18,000
7.	Loss of estate	₹18,000
8.	Loss of consortium (i) Spousal (ii) Parental	 ₹48,000 [₹48,000 x 4] = ₹1,92,000 Total = ₹2,40,000
	Total Compensation	**₹23,83,328**

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 claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal. However, the claimant-appellants shall not be entitled to any interest for the period of delay in filing the appeal.

15. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [AIR 2025 SC 1713]**, after

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calculation of the enhanced amount, the same be transferred by respondent No.3-Insurance Company in the bank account(s) of the claimant-appellants within a period of six weeks from today. The share of the minor claimant-appellants shall be kept in an FDR with a nationalized bank fetching maximum rate of interest. The particulars of the bank account(s) along with the requisite documents in support thereof shall be furnished by the claimant-appellants to respondent No.3-Insurance company within a period of two weeks from today and needful shall be done by respondent No.3-Insurance Company after verification thereof within a period of four weeks thereafter along with up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

16. 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.

23.09.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

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

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