



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

245

FAO-1363-2002

Date of decision: 21.07.2026

SAVITA AND ORS.

.....APPELLANTS

VERSUS

BISHAN CHAND AND ORS.

..... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present: Mr. Tarun Yadav, Advocate and
Mr. Pawan Kumar, Advocate
for the appellants.

Ms. Madhu Sharma, Advocate
for respondent No.3-NIA.

YASHVIR SINGH RATHOR. J.(Oral)

1. In the present case, all the respondents i.e. driver, owner and insurer of offending Van No.DL-6CA-2289 have been held liable to pay compensation to the claimants jointly and severally and Insurance Company is already represented by its counsel and as such, there is no necessity to issue notice to the driver (respondent No.1) and owner (respondent No.2) and issuance of notice to above said respondents stands dispensed with.

2. This appeal has been instituted by claimants for enhancement of compensation against the Award dated 30.07.2001 passed in MACT case No.37 of 1999 decided by the MACT, Gurgaon (**for short “Tribunal”**) in a petition under Section 166 of Motor Vehicles Act, 1988 (**for short “Act”**) vide which a



sum of Rs.1,70,000/- has been awarded as compensation to the claimants along with interest at the rate of 9% per annum from the date of filing of claim petition till realization on account of death of Bharat Singh in a motor vehicular accident.

3. From the pleadings of parties, following issues were framed by learned Tribunal:-

- “1. Whether death of Bharat Singh was caused by rash and negligent driving of vehicle no. DL-6CA-2289 by Bishan Chand respondent No.1 as alleged? OPP*
- 2. If issue no.1 is proved to what amount the petitioners are entitled to receive compensation and from which of the respondents? OPP*
- 3. Whether respondent no.1 did not possess a valid driving licence on the date of accident? OPR-3*
- 4. Relief.”*

4. Thereafter, the parties led evidence in support of their case.

5. After hearing the parties and on going through the material on the file, the Tribunal under issue No.1 came to the conclusion that accident in question had taken place due to rash and negligent driving on the part of the deceased himself as well as the driver of the offending vehicle and it was a case of contributory negligence. The Tribunal deducted 40% of the amount out of the compensation assessed by it on account of contributory negligence of the driver. Under issue No.3, it was held that there is no violation of terms and conditions of the insurance policy and all the respondents were held liable to pay compensation to the claimants jointly and severally.

6. Feeling aggrieved, the appeal in hand has been preferred by the



claimants. The material on file has been perused and parties have been heard.

7. Learned counsel for the appellant argued that the Tribunal has gravely erred while returning the finding that deceased had also contributed to the accident and infact the accident had taken place on account of rash and negligent driving of the driver of Maruti Van bearing No.DL-6-CA-2289 being driven by respondent No.1. Learned counsel next contended that the claimants in order to prove the rash and negligent driving on the part of respondent No.1 had examined the author of the FIR, namely, PW2 Rati Pal Singh, who was accompanying the deceased in the Jeep being driven by him and he has categorically stated that the accident in question had taken place due to rash and negligent driving on the part of respondent No.1. Learned counsel next contended that no evidence was led by the respondents to controvert the evidence led by the claimants and police after conducting the investigation had also challaned the driver of the offending vehicle for the offences under Sections 279, 304-A of IPC and he prayed that the finding on issue No.1 be modified. Learned counsel for the appellants argued that the impugned award vide which compensation of Rs.1,70,000/- has been awarded is based on conjectures and surmises and is liable to be modified and enhanced amount of compensation should be awarded. Learned counsel next contended that income of the deceased has been assessed on lower side by taking him to be a labourer whereas the Tribunal has held that deceased owned a Jeep which was being plied as a taxi/commercial vehicle. The accident had taken place on 08.02.1999 and it can be assumed that deceased who used to ply a taxi must be earning at least Rs.5,000/- per month and he could not have been treated merely as a labourer. Learned counsel further contended that the income of deceased be



assessed at least Rs.5,000/- per month and future prospects be also added to the monthly income. Learned counsel next contended that Tribunal has deducted 1/3rd amount towards personal expenses whereas deceased has left behind 5 dependents and as such, 1/4th amount should have been deducted out of his monthly income. Learned counsel further contended that the compensation awarded under conventional heads is on the lower side and he prayed that the same be suitably enhanced. In support of his contentions, learned counsel has relied upon 2009(6) SCC 121 **Sarla Verma and others Vs. Delhi Transport Corporation and Another**, 2017 (16) SCC 680 **National Insurance Co. Ltd Vs. Pranay Sethi and Others**, 2018 (4) R.C.R. (Civil) 333 **Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others**, and (2021) 11 SCC 780 **United India Insurance Co. Ltd. Vs. Satinder Kaur**.

8. On the other hand, learned counsel for respondent No.3/Insurance Company argued that the finding of the Tribunal regarding rash and negligent driving on the part of deceased himself is well reasoned and justified and such a conclusion has been drawn from the attending circumstances and admission of PW2 Rati Pal Singh. Learned counsel next contended that infact the accident in question had taken place due to rash and negligent driving on the part of deceased himself without there being any negligence on the part of respondent No.1. Learned counsel next contended that adequate compensation has been awarded and Award in question does not require any interference and appeal in hand be dismissed.

9. The first point to be determined is as to on account of whose negligent driving, the accident had taken place. PW2 Rati Pal Singh had lodged



the FIR and had witnessed the accident. He deposed that on 08.02.1999, he was travelling in Jeep bearing No.HR-36-A-7581 which was being driven by deceased Bharat Singh. They took meals at Chinar Hotel located at Delhi border and as soon as Jeep came on the metalled road for going towards Gurgaon, one Maruti car bearing No.DL-6CA-2289 came from the side of Delhi which was being driven by respondent No.1 at a high speed, rashly and negligently. The van driver brought the van on the wrong side of the road and dashed it into the bumper of the Jeep on the right side. He again stated that the van had hit Jeep on the left side of the bonnet of the Jeep as a result of which Jeep turned turtle and Bharat Singh died while another occupant namely Ramesh Chand suffered injuries. Learned Tribunal while giving finding on issue No.1 has held as under:-

“10. I have gone through this aspect of evidence. It is well made out from the statement of PW2 Rati Pal Singh that deceased Bharat Singh, driver of the Jeep had been entering the main road from the side whereas Maruti Van No.DL-6CA-2289 was already coming on the main road from the side of Delhi. It could not be disputed before this Court that the traffic rules require a person entering the main road to give pass to the vehicles running on the main road. Thus a duty had casted upon Bharat Singh driver of the Jeep to permit the Maruti Van to pass before turning towards Gurgaon. PW2 Rati Pal Singh in his statement has given a little twist in saying that the Jeep had already taken a turn which is not correct from the surrounding circumstances. Had the Jeep taken the complete turn from the passage on the metalled road towards Gurgaon, as said by PW2 Rati



Pal Singh in cross-examination, then in that situation, the Maruti Van which was coming from the side of Delhi could only hit the Jeep from the back side and not the left side of the bonnet of the jeep from the back side and not the left side of the bonnet of the Jeep as PW2 Rati Pal Singh himself has admitted. This fact is also apparent from the FIR Ex.P1 lodged by Rati Pal.

11. The matter does not rest here. PW2 Rati Pal himself has admitted in cross-examination that when the Jeep came on the metalled road he had noticed the Maruti Van and Bharat Singh had estimated that the Jeep would take a turn before the Van could reach there. Thus, from his own saying there was an error of Judgment by Bharat Singh while taking a turn on the metalled road towards, Gurgaon, and paid the price for his own mistake. Thus, it is a clear cut case of contributory negligence. Now the question arises as to what extent. It cannot be forgotten that simultaneously a duty casts on the driver of a van to have slow down the Maruti Van to avoid the impact which he did not do so. The statement of PW2 Rati Pal Singh suggests that the van was driven in a rash and negligent manner and was at a fast speed. He was subjected to lengthy cross-examination. The stood firm to his stand. This fact also finds corroboration from the FIR Ex.P1 lodged by him with utmost promptness on the same at 4.45 AM wherein complete sequence of the accident has been narrated. Had Bishan Chand who was driving the van been little mindful, he could apply brakes and avoid the accident. Hitting the



van into Jeep in the manner indicated above also suggests that it was driven in a rash and negligent manner and was at a fast speed and could not stop the same despite noticing the Jeep entering the main metalled road. The impact was so heavy that Jeep over turned. The criminal case is also pending against him as evident from the statement of PW4 Rajesh Kumar. Bishan Chand driver has also not appeared in the witness box which goes adverse to him.

12. In view of the facts and circumstances and the discussion made in the earlier paras, the responsibility of having caused the accident by Maruti van No.DL-6CA-2289 driven by Bishan Chand is held to be 60% and that of the deceased Bharat Singh is to the extent of 40%. This issue is decided accordingly as indicated above.”

10. As such, the cross-examination of PW2 Rati Pal Singh reveals that deceased entered the main road from the roadside for going towards Gurgaon while the Maruti Van was coming from the side of Delhi and going towards Gurgaon. As such, deceased was required to take reasonable precautions before entering the main road and he should have looked to his left and right before entering the main road to avoid the incoming vehicles. Though, PW2 Rati Pal Singh stated that the Jeep had already taken the turn but he has improved his version and had the Jeep taken the complete turn through the passage between the divider on the metalled road, the Maruti Van which was coming from the side of Delhi would have hit the Jeep from backside and not on the left side of its bonnet. In these circumstances, the only irresistible conclusion that can be drawn is that



Jeep suddenly entered the main road when the Maruti Van hit its bonnet from the left side and there was thus an error of judgment on the part of deceased Bharat Singh while entering the metalled road. The Tribunal has further rightly held that the Van driver too should have taken reasonable care of the vehicle entering the main road and should have applied brakes to avoid the accident and that Maruti Van too was being driven at a high speed and in a rash and negligent manner and the impact was so heavy that the Jeep turned turtle. The Tribunal thus rightly held the drivers of both the vehicles to be rash and negligent while driving their respective vehicles and no other reasonable finding could have been arrived at from the evidence led on file and finding on issue No.1 thus does not require any interference. The Tribunal has thus rightly apportioned the liability of Van driver and the deceased in the ratio of 60:40.

11. Claimant Savita stepped into the witness box as PW1 and deposed that her husband worked as driver of a Jeep and used to earn Rs.10,000/- per month. They have also examined PW5 Jogender, who was owner of the Jeep in question which was being driven by deceased at the time of accident. He deposed that he had sold the same to deceased Bharat Singh on 15.09.1998 vide affidavit Mark-A and he has also led in evidence Registration Certificate Mark-B. Learned Tribunal has also relied upon the version of the claimants that PW5 Jogender Singh had sold the Jeep to deceased during his lifetime but vehicle had not been transferred in his name and same has been transferred in favour of Savita wife of deceased on 03.06.1999. The permit of the vehicle was also led in evidence Ex.P4 which shows that the Jeep in question was a commercial vehicle and was being plied as a taxi. However, the Tribunal treated the deceased to be an ordinary



labourer and assessed his monthly income to be Rs.2,100/- but the same certainly is on lower side. Hon'ble Supreme Court in (2022) 1 SCC 198, **Chander alias Chander alias Chanda Ram and another Vs. Mukesh Kumar Yadav**, decided vide judgment dated 01.10.2021 has held that merely because claimants are unable to produce documentary evidence to show the monthly income of the deceased is not a ground to discard the oral evidence and in such cases, the Court is required to ensure just compensation based on preponderance of probabilities. Minimum wage notification may serve as a yardstick but cannot be the sole basis for assessing the income. Moreover, it is also well settled that where the victim/deceased belongs to unorganized, strict proof of income is not mandatory and notional income can be reasonably assessed based on the social status and facts and circumstances of the case. Hon'ble Supreme Court in 2019 (5) RCR (Civil) 884, **Chameli Devi and others Vs. Jivrali Mian and others**, has assessed the monthly income of a carpenter to be Rs.5000/- per month in the year 2001 and it was further held that in such cases where deceased is engaged in such type of profession, claimants can only lead oral evidence.

12. In the present case, deceased owned one commercial vehicle/Jeep which was being plied for carrying passenger and deceased thus could not have been treated as an ordinary labourer and some amount of guesswork has to be applied while assessing the monthly income of the deceased. The accident had taken place on 08.02.1999 and it can be assumed that the deceased must be earning at least Rs.4,000/- per month by plying the taxi. Learned Tribunal has thus gravely erred while assessing his monthly income to be Rs.2,100/- per month, which is on lower side. Accordingly, income of deceased is taken as



Rs.4,000/- per month.

13. The Tribunal has held the age of the deceased to be 32 years as mentioned in the postmortem report Ex.P4 as proved by PW3 Dr. Sanjay Narula. As such, age of the deceased was 32 years at the time of accident and 40% amount has to be added to the monthly income of the deceased towards future prospects in view of law laid down in **Pranay Sethi's case (supra)**, which takes his income to **Rs.5,600/- (Rs.4,000/- + Rs.1,600/-)**.

14. The petition in hand has been instituted by wife, three minor children and mother of the deceased. Accordingly, it is held that deceased has left behind 5 dependents and 1/4th of the income thus has to be deducted towards personal and living expenses as per law laid down in **Sarla Verma's case (supra)**. After deducting a sum of Rs.1,400/- towards personal expenses, the monthly loss of dependency comes out to Rs.4,200/- (Rs.5,600/- - Rs.1,400/-) and the annual loss of dependency comes out to **Rs.50,400/-**.

15. As per guidelines laid down in **Sarla Verma's case (supra)**, multiplier of 16 has to be applied as deceased was 32 years of age and after applying the same, the compensation comes to **Rs.8,06,400/- (Rs.50,400/- X 16)**.

16. In addition to this, claimant No.1 (wife of the deceased) is held entitled to a sum of **Rs.70,000/-** under conventional heads i.e. **Rs.40,000/-** towards loss of consortium, **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** on account of funeral expenses, as per law laid down in **Pranay Sethi's case (supra)**. Likewise, claimants No.2 to 5 who are children and mother of deceased are also held entitled to a sum of **Rs.40,000/- each** on account of **loss of parental and filial consortium**, in view of law laid down in **Nanu Ram's case (supra)**



and **Satinder Kaur’s case (supra)**.

17. Accordingly, the compensation to be awarded to the appellants/claimants is assessed as under:-

S.No.	Under Head	Compensation Assessed by this Court
1.	Age of deceased	32 years
2.	Monthly income of deceased	Rs.4,000/- per month
3.	Future prospects @ 40%	Rs.1,600/-
4.	Total income	Rs.5,600/- per month
5.	Number of dependents	5
6.	Deduction towards personal expenses of the deceased	Rs.1,400/- (1/4th)
7.	Monthly loss of dependency	Rs.4,200/-
8.	Annual loss of dependency	Rs.50,400/- (Rs.4,200/- X12)
9.	Multiplier	16
10.	Compensation on account of Loss of dependency	Rs.8,06,400/-
11.	Compensation under conventional heads to wife	Rs.70,000/-
12.	Loss of parental and filial consortium to children and mother of deceased	Rs.1,60,000/- (Rs.40,000/- each X 4)
13.	Total	Rs.10,36,400/-
14.	Deduction of 40% on account of negligence of deceased Bharat Singh	Rs.4,14,560/-
	Total Compensation to which claimants are entitled	Rs.6,21,840/- (rounded off to Rs.6,22,000/-)
	Interest	9% per annum

18. Resultantly, the appeal in hand is partly accepted with costs and



appellants/claimants are held entitled to a sum of **Rs.6,22,000/-** as compensation. The enhanced compensation thus comes out to **Rs.4,52,000/- (Rs.6,22,000/- - Rs.1,70,000/-)** over and above the compensation awarded by the Tribunal alongwith interest at the rate of **9%** per annum from the date of filing of claim petition i.e. 04.03.1999, till realization payable by respondents No.1 to 3, jointly and severally. Out of the enhanced compensation, a sum of Rs.60,000/- each be paid to the claimants No.2 to 5 along with interest and remaining amount to claimant No.1/wife along with proportionate interest.

19. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of directions issued by the Hon’ble Supreme Court in Writ Petition (Civil) No.534 of 2020 titled **Bajaj Allianz General Insurance Company Versus Union of India and others**, decided on 16.03.2021 and Insurance Company shall comply with the directions as issued under Clause (F) of the said judgment.

20. Pending misc. application (s), if any, shall also stand disposed of.

21.07.2026
Vishal Vardhan

(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No