

**FAO No. 8150 of 2017**

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

**FAO No. 8150 of 2017**

**Date of Decision: May 16, 2019**

Surinder Kumar Juneja and another

..... Appellants(s)

**Versus**

Kehar Singh and others

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Ms. Anjali Khosla , Advocate  
for the appellants.

None for respondent no.1.

Mr. Gurpal Singh Sandhu, Advocate  
for respondent no.2.

Mr. Vinod Gupta, Advocate  
for respondent no.3.

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**LISA GILL, J.**

Appellants-claimants have filed this appeal challenging award dated 05.04.2017, passed by learned Motor Accident Claims Tribunal, Sri Muktsar Sahib (hereinafter referred to as 'the Tribunal), being aggrieved of the finding of the learned Tribunal regarding contributory negligence on the part of the deceased. Enhancement of compensation is also sought.

Brief facts necessary for adjudication of the case are that a petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the

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claimants seeking compensation on account of death of their son Sagar Juneja in a motor vehicle accident. As per the pleadings in the claim petition, Sagar Juneja along with Nitish Kathpal, Varun, Anil Bajaj and Rohit went to Bathinda in a car bearing registration No. DL-4C-AM-4864 on 16.08.2015. At about 8:15 P.M. when they were returning to Malout from Bathinda and when they were about half a kilometer ahead of village Karamgarh, a truck was lying stationary on the road, without any parking light or indicators and due to blinding headlights of the oncoming traffic, the car which was driven by Sagar Juneja, struck against the stationary truck from behind. Sagar Juneja and Varun died on the spot. An FIR dated 17.08.2015 under Sections 287/337/338/304-A IPC was registered against respondent no.1 - Kehar Singh in this regard. It is pleaded that Sagar Juneja, aged 22 years was the only son of the claimants and he had completed B. Com and was running a gift shop. Compensation was prayed for.

Following issues were framed by the learned Tribunal:-

1. *Whether Sagar Juneja son of Surinder Kumar died in a motor vehicular accident, which took place on 16.08.2015 on Bathinda-Malout road due to rash and negligent driving of respondent no.1 driver of offending vehicle bearing registration No. RJ-19-1G-8591? OP Claimants*
2. *Whether claimants are entitled for any compensation? If so, to what extent and from whom? OP Claimants*
3. *Whether claim petition is not maintainable? OPD*
4. *Whether respondent no.1 is not having valid and effective driving license at the time of alleged accident? OPR*
5. *Relief.*

While deciding issue no.1, learned Tribunal concluded that the accident in question took place due to negligence on the part of the driver of the truck namely Kehar Singh as well as negligence of Sagar Juneja, who was driving the car, in as much as, the car had struck against the stationary truck parked on the road. Both of them were held guilty of contributory negligence to the extent of 50% each. Learned Tribunal while assessing income of the deceased to be Rs.7,000/- per month, awarded a sum of Rs.12,59,000/- as compensation, which is detailed as under:-

| Sr. No. | Heads                                                                  | Calculations                  |
|---------|------------------------------------------------------------------------|-------------------------------|
| 1.      | Income                                                                 | 7,000/- per month             |
| 2.      | Income after 50% increment on account of future prospects.             | 7000+50% = 10,500/-           |
| 3.      | Income after deducting 50% as personal living expenses of the deceased | 10,500 - 50% = 5,250/-        |
| 4.      | Dependency after applying multiplier of 18                             | 5,250 x 12 x 18 = 11,34,000/- |
| 5.      | Loss of estate                                                         | 50,000/-                      |
| 6.      | Loss of love and affection                                             | 50,000/-                      |
| 7.      | Funeral expenses                                                       | 25,000/-                      |
|         | <b>Total</b>                                                           | <b>12,59,000/-</b>            |

As the deceased himself was driving the car, the claimants were held entitled to 50% of the compensation assessed.

Learned counsel for the appellants vehemently argues that the evidence on record does not prove that the deceased Sagar Juneja was guilty of any negligence what-so-ever. The offending truck was parked on the

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State highway without any parking lights or indicators. Therefore, learned Tribunal has erred in concluding that there was contributory negligence on the part of the deceased. This finding, it is prayed should be set aside. It is further submitted that the deceased was a graduate in commerce and he had just started his gift shop. He had a monthly income of Rs.30,000/- per month. Claimant-appellant no.1 specifically deposed in this respect. Therefore, income of the deceased has been wrongly assessed as Rs.7,000/- per month. It is fairly stated that future prospects @ 40% instead of 50% should have been awarded by the learned Tribunal in terms of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. Compensation under the conventional heads, it is submitted, be worked out in terms of the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333**. It is, thus, prayed that this appeal be allowed.

Learned counsel for the respondent-insurance company vehemently opposes the arguments raised by learned counsel for the appellants while submitting that once it is admitted that the car in question had struck the offending vehicle from behind, element of contributory negligence is apparent on the fact of it. Therefore, this finding of the learned Tribunal be upheld. Moreover, there is no ground for enhancement of the compensation awarded by the learned Tribunal, which is in any case excessive. There is no evidence on record to prove that the deceased was

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running a gift shop as claimed. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is the matter of record that the deceased alongwith Varun, Anil Bajaj, Rohit and Nitish Kathpal were travelling in the car bearing registration No. DL-4C-AM-4864 on 16.08.2015. They were returning to Malout from Bathinda. The car was being driven by Sagar Juneja (deceased) and at about 8:15 P.M., when they were about half a kilometer ahead of Karamgarh, the offending truck bearing registration No. RJ-19-1G-8591 was stationed on the road without any indication of its presence. It is in this situation that the car driven by Sagar Juneja struck against the truck from behind. The Hon'ble Supreme Court in *Archit Saini and another Vs. Oriental Insurance Company Limited and others* 2018(5) RCR (Civil) 80 has held that merely because a vehicle strikes against a vehicle from behind does not, per se, lead to an inference of contributory negligence on the part of the vehicle coming from behind. In the present case, the offending truck was admittedly parked on the State highway without any kind of parking lights or indication regarding its presence on the road at 8:15 P.M. Furthermore, there is no evidence on record to indicate any rash and negligent act on the part of the deceased, who was driving the car. Merely because the car struck the offending truck from behind, cannot *per se* be a ground to presume the element of contributory negligence. It is obvious that causative factor of the accident in question is the rash and negligent act on

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the part of the driver of the truck who had callously parked his vehicle on the State highway without any indication of its presence. There is no evidence on record that there was any kind of mechanical failure etc., due to which the truck was lying stationed on the metalled road. Furthermore, even if it is assumed that the truck was afflicted by mechanical failure, needless to say, it was the duty of the driver to ensure sufficient indication of its presence on the road, which would be visible to the other commuters from a reasonable distance. Therefore, learned Tribunal has clearly erred in concluding that the deceased was guilty of any contributory negligence in the given facts and circumstances of the case. Accordingly, this finding is set aside and it is held that the accident in question took place due to the sole negligence of the driver of the offending truck.

There is no dispute regarding the death of Sagar Juneja in the motor vehicle accident, which took place on 16.08.2015. Deceased was admittedly 22 years old at the time of the accident and a graduate in Commerce. Though, it is pleaded that the deceased had started running a gift shop recently and was having a monthly income to the tune of Rs.30,000/- per month, there is indeed no evidence on record to indicate that Sagar Juneja was running such a gift shop and earning a sum of Rs.30,000/- per month. However, at the same time, it cannot be countenanced that income of a person who was admittedly a Graduate in Commerce should be assessed as Rs.7,000/- per month with reference to the minimum wage of a labourer. Keeping in view the facts and circumstances of the case, income of the deceased is thus assessed as Rs.10,000/- per month instead of Rs.7,000/- per

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month. In terms of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680***, 40% increment towards future prospects has to be afforded instead of 50% awarded by learned Tribunal. Deduction of 50% was correctly effected by learned Tribunal. Multiplier of 18 was also correctly applied by learned Tribunal. Claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs.25,000/- and Rs.50,000/- awarded by the learned Tribunal on these counts. Instead of a sum of Rs.50,000/- awarded by learned Tribunal on account of loss of love and affection the appellants are entitled to a consolidated amount of Rs.40,000/- towards loss of filial consortium in view of the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333***, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others.***

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

| Sr. No. | Heads                                                       | Calculations                              |
|---------|-------------------------------------------------------------|-------------------------------------------|
| 1.      | Income 10,000 x 12                                          | 1,20,000/- per annum                      |
| 2.      | Income after deducting 50% as personal living expenses      | 1,20,000 – 50% = 60,000/-                 |
| 3.      | Income after addition of 40% on account of future prospects | 60,000 + 24,000 (60,000 x 40%) = 84,000/- |
| 4.      | Compensation after applying multiplier of 18                | 84,000 x 18 = 15,12,000/-                 |
| 5.      | Loss of estate                                              | 15,000/-                                  |

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|    |                           |                    |
|----|---------------------------|--------------------|
| 6. | Funeral expenses          | 15,000/-           |
| 7. | Loss of filial consortium | 40,000/-           |
|    | <b>Total</b>              | <b>15,82,000/-</b> |

Needless to say, the claimants are entitled to the entire amount of compensation as the finding regarding contributory negligence has been set aside. The amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

**May 16, 2019.**  
Sunil

**( LISA GILL )**  
**JUDGE**

Whether speaking/reasoned:      Yes/No  
Whether reportable:                Yes/No