

**2024:PHHC:062796**

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

**(i) FAO-3607-2009 (O&M)**

Sumitra Devi and another

...Appellants

# VERSUS

Hari Ram and others

## ...Respondents

**(ii) Cross Objection-9-CII-2015 (O&M)**

Sumitra Devi and another

...Appellants

## VERSUS

Hari Ram and others

## ...Respondents

**Date of Decision: May 06, 2024**

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

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

Mr.D.R.Bansal, Advocate  
for respondent No.3.

Mr. Anil K. Sokal, Advocate for  
Mr. Vaibhav Jain, Advocate  
for respondent No.4/cross-objector.

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**ARCHANA PURI, J.**

FAO-3607-2009 has been filed by the appellants-claimants, thereby, questioning the adequacy of the compensation awarded by learned Motor Accident Claims Tribunal, on account of death of Anil Kumar, in a motor vehicular accident, which took place on 02.11.2003.

Vide impugned Award dated 24.03.2009, learned Tribunal had decided four claim petitions, arising out of the same accident.

The facts germane, to be noticed, are as follows:-

That, on 02.11.2003, at about 5.00 a.m., Pawan Kumar, Sunil and Anil Nagpal were going from Hisar to Patiala in Esteem car bearing registration No.DL-3CK-3010, for their personal work. Anil Kumar was driving the car, at a moderate speed. At about 6.15 a.m., when they reached bus stand of village Gagankheri, a Max bearing registration No.RJ-21C-7064, came from Jind side, being driven by respondent No.1-Hari Ram, in a rash and negligent manner and struck the same into the Esteem car, as a result whereof, Pawan and Sunil received multiple injuries and Anil Kumar died instantaneously. Ashwani Nagpal, brother of the deceased, was also coming in his car and he shifted the injured to the hospital. The driver of the Max ran away from the spot. It is specifically pleaded that accident had taken place, due to rash and negligent driving of the offending vehicle by respondent No.1-Hari Ram and FIR was also got registered.

Two claim petitions were filed by injured Pawan Kumar and Sunil Kumar i.e. 165-MACT and 166-MACT, respectively, for seeking compensation, on account of injuries sustained by them. Case No.164-MACT was filed by Anjali, widow of deceased Anil Kumar, whereas, case No.164(A)-MACT was filed by parents of the deceased, for seeking compensation, on account of death of Anil Kumar.

It is the pleaded case of the appellants-claimants that Anil Kumar was doing business of spare-parts under the name and style of M/s New Spare House, at shop No.406, Ground Floor, Auto Market, Hisar and

used to earn Rs.25,000/- per month. He was an income tax assessee. The appellants-claimants claimed that they had spent Rs.5000/- on transportation of dead body and also spent of Rs.1 lakh, on funeral and last rites.

However, the respondents denied the accident in toto. Besides taking various preliminary objections, with regard to cause of action, locus standi, estoppel, maintainability, mis-joinder and non-joinder of necessary parties, also, it was alleged that no accident had taken place near village Gagankheri on 02.11.2003 at about 6.15 a.m. and a false case has been registered against respondent No.1-Hari Ram. Vehicle bearing registration No.RJ-21C-7064 was never involved in the accident. On similar lines, even the written statement was filed by Respondent No.2-owner.

Respondent No.3-insurance company also filed written statement, thereby, taking similar preliminary objections and also further, asserted about the claim petition to have been filed in contraventions of provisions of Motor Vehicles Act, 1988 and that the Max bearing registration No.RJ-21C-7064 was not being driven by a person, holding a valid and effective driving licence, nor the person, under the employment of the insured, at the time alleged accident and that the fitness of the said vehicle had expired. However, it was admitted that Max vehicle in question was insured with the answering respondent.

On appraisal of the evidence, adduced on record, learned Tribunal, while considering the testimonies of various witnesses, more particularly, of PW-7 Anjali, who is widow of the deceased as well as PW-6 Sumitra Devi, who is mother of the deceased, and considering the income tax record, proved through PW-8 Rajesh Kumar, had concluded about

deceased Anil Kumar indulging in the business of sale of spare parts. While taking it to be so, the income tax returns Ex.PW8/A to Ex.PW8/G were taken into consideration. It was concluded by learned Tribunal that the earnings of the deceased for the assessment year 2002-2003 was Rs.60,070/- and he paid income tax to the tune of Rs.1014/-. Thus, his total income tax Rs.59,056/-. Further also, for the assessment year 2003-04, the income of the deceased was Rs.91,680/- and he paid income tax, to the tune of Rs.7336/- and thus, the total income was Rs.84,344/-. Considering both the aforesaid income tax returns, mean income of both the assessment years, was taken as his income, which came to be Rs.71,701/- per annum. Out of the same, deduction was made to the extent of 1/3rd towards personal expenses of the deceased and the dependency was worked upon as Rs.47,801/-. Considering the age of deceased Anil Kumar to be 35 years, multiplier of '15' was applied and the compensation was worked upon as Rs.7,17,015/-. Besides the same, another amount of Rs.20,000/- was granted, on the count of 'funeral and last rites' and on the count of 'loss of estate', Rs.2500/- was granted. In total, the compensation was granted to the extent of Rs.7,39,515/-.

This extent of compensation was apportioned between the parents and widow of the deceased, to the extent of 30%(parents) and 70% (widow). Besides the same, the widow was also held entitled to Rs.5000/-, on the count of 'loss of consortium'.

Also further, it should be noted even though, the claim for ill-fated car was also made, but however, considering the fact that neither Anjali nor Sumitra Devi, while stepping into witness box as PW-7 and PW-6

respectively, had uttered about any family settlement reached between the parties to the lis, relating to the car in question, as none of them was held entitled to any compensation, vis-a-vis, the damage caused to the car in question. As a result thereof, the compensation, as worked upon aforesaid, was granted on account of death of Anil Kumar. Besides the same, the liability fastened upon the respondents was joint and several.

Feeling aggrieved by this extent of compensation granted, the appellants, who are parents of the deceased have filed the present appeal.

Be it noted that no appeal, as such, has been filed by any of the respondents, upon whom, the liability was fastened. However, Anjali, who was impleaded as respondent No.4, in the appeal filed at the instance of the parents of the deceased and also, who had separately filed the claim petition, in the capacity of being widow of the deceased, though, had not filed separate appeal, but however, she had filed cross-objections, in the appeal, thereby, seeking enhancement of the compensation awarded to her. In the grounds of appeal, she had asserted that apportionment of the compensation, ought to be in the ratio of 80:20. Be it noted that qua compensation, on account of damage caused to the ill-fated car, there is no such claim made, at the instance of Anjali, widow of the deceased.

While making reference to the evidence adduced before learned Tribunal, it has been submitted by learned counsel for the appellants that the compensation has been worked upon, miserably on lower side, which calls for extensive enhancement on various counts, to which amiss has been given by learned Tribunal. It is submitted that the income tax returns, as such, have not been appraised in proper perspective. The annual income, so taken,

is on lower side, as a result whereof, the work on of the compensation, is miserably low. Even, addition on the count of 'future prospects', has not been made. Besides the same, under the conventional heads, the enhancement is called for.

It is further submitted by learned counsel for the appellants that learned Tribunal had erroneously reached the conclusion about neither widow nor mother of the deceased to be entitled to compensation, on account of damage caused to the esteem car, of which the deceased was the occupant, at the relevant time. Even though, it is submitted that Sumitra Devi, in her affidavit Ex.PW6/A, had not stated about the car, which was registered in the name of Anjali, to have fallen to her share, but however, it is submitted that learned Tribunal, besides the aforesaid fact, has not taken into consideration, the judgment delivered by the Civil Court in a suit bearing No.249C of 2003, decided on 11.08.2004, wherein, Sumitra Devi had sought declaration against Smt.Anjali as well as Oriental Insurance Company Limited.

Learned counsel for the appellants also submitted that looking at the aged parents of the deceased, the apportionment of the compensation, done by learned Tribunal is also erroneous. The apportionment ought to have been in the ratio of 50:50.

Learned counsel for the appellants has drawn the attention of this Court to the judgment, which has been proved on record as Ex.PA, as well as decree sheet Ex.PB. Besides the same, copy of the compromise, which was reached between Anjali and Sumitra Devi, with regard to their entitlement to share of properties in the name of Anil Kumar, was proved on

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record as Ex.PC. It is submitted that as per this compromise, which was duly signed by Sumitra Devi as well as Anjali, the claim qua car bearing registration No.DL-3CK-3010 was foregone by Anjali, in favour of Sumitra Devi. On the basis thereof, it is submitted that learned Tribunal, oblivious of this decree, had deprived Sumitra Devi of her rightful compensation, on the basis of the report Ex.P6 proved by PW-2 Rajiv Gupta, Surveyor Loss and Assessor, wherein, assessment of the damage caused to the car in the accident in question, was worked upon.

In view of the aforesaid submissions, learned counsel for the appellants has made a prayer for the acceptance of the appeal and to enhance the compensation manifold.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellants. He submits that the compensation granted, cannot be said to be on lower side. Further, it is submitted that rightly the claim qua the damage caused to the car in the accident in question, has been denied by learned Tribunal, as no satisfactory evidence, relating to the same, was led by mother or widow of deceased. As such, he made a prayer for dismissal of the appeal.

Further, learned counsel for cross-objector, who is respondent No.4, in the present appeal, has resisted the claim of the appellants. In fact, objections have been filed, at the instance of Anjali, thereby, also seeking enhancement of the compensation. Besides the same, qua the apportionment also, it is submitted that, at the maximum, it ought to be to the extent of 80:20. Furthermore, it is submitted that qua the damage caused to the car, since Anjali is the registered owner, she has rightful claim to the

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compensation, vis-a-vis, damage to the car in question. With these submissions, learned counsel for cross-objector has made a prayer for dismissal of the appeal and acceptance of the cross-objections.

However, the compensation, as worked upon by learned Tribunal, as detailed aforesaid, as per prevalent law, definitely, calls for red-determination.

At this juncture, it is pertinent to mention that it is submitted by learned counsel for the appellants-claimants that respondent No.4-Anjali, who is widow of the deceased, had performed re-marriage and therefore, she is not entitled to any compensation, on account of death of Anil Kumar, her husband. However, qua this issue, it is pertinent to mention that while conducting cross-examination, suggestions had been put to Anjali, with regard to her re-marriage, but however, she had denied about the same. No concrete evidence is coming forth, with regard to her re-marriage. Otherwise also, fact of re-marriage (if any had taken place), the same, does not amount to denial of compensation to her. The re-marriage, as such, could not be a reason to deprive widow of her rightful claim. Re-marriage of widow has nothing to do with her right, which accrued to her to seek compensation, on account of loss, which has accrued to her, as a result of unnatural demise of her husband. Her decision to re-marry is entirely her personal choice and nobody can have say in the same. In this regard, beneficial reference is made to decision rendered in ***Reliance General Insurance Co. Ltd. vs. Rajni and others, 2024 ACJ 317***, wherein, widow was held to be entitled to compensation, on account of death of her husband, in a motor vehicular accident, even though, she had re-married.

In the aforesaid judgment, reliance was further placed upon in *Dincy Devassy vs. United India Insurance Company and others, 2019 ACJ 1428*, wherein, it was concluded that right of the widow to claim compensation crystallized upon her husband's life, being tragically snatched away in the motor accident. Therefore, simply because she had re-married, her claim does not abate or lessen. Considering the same, the Hon'ble Court had removed the disparity between the apportionment of the compensation, so worked upon, granted to the widow as well as the parents of the deceased and held each of the claimants, to be entitled to receive equal share in the awarded amount. This decision was further challenged by way of filing of SLP (C) No.9844-2010, titled as *Bridget Irene and another vs. Dincy Devassy and another*, decided on **06.04.2021**, wherein, the Hon'ble Apex Court was not inclined to interfere in this matter and the Special Leave Petition was dismissed.

In view of the aforesaid case law, widow Anjali, as such, is also entitled to compensation, besides the parents.

Learned Tribunal had considered the mean income, while taking consideration two income tax returns of the deceased, which are for the assessment years 2002-2003 Ex.PW8/C and 2003-2004 Ex.PW8/E. However, it should be kept in mind that accident had taken place on 02.11.2003. The income tax return for the assessment year 2003-2004 was filed by Anil Kumar, soon before his death. This is the last income tax return filed by the deceased. There is progressive enhancement in the extent of income given in two income tax returns, so proved in evidence. In the income tax return for the assessment year 2002-2003, the income of the

deceased as Rs.60,070/- and the income tax Rs.1014/- was paid and the income was taken as Rs.59056/-. However, for the assessment year 2003-2004, the total income was Rs.91680/-. The income tax returns are the reliable source of evidence, which ought to be taken into consideration. The income tax return for the assessment year 2003-2004 is latest in time, which was filed by the deceased himself, soon before his death and thus, it ought to be taken into consideration. In the same, the income is shown to be Rs.91680/- per annum and there is no reason, as such, to take the mean income of the two income tax returns, there being progressive enhancement in the income in the later return. As such, mean income cannot be taken into consideration.

In the income tax return for the assessment year 2003-2004, the total income tax payable is shown to be Rs.5000/- and after making deduction of the same, the income works out to be Rs.86,680/- per annum. From the income tax returns only, the date of birth of Anil Kumar is evident to be 02.12.1969 and thus, he was 34 years at the time of accident. To the aforesaid amount, keeping in view the age of the deceased, as per ***Pranay Sethi's case***, addition of 40%, on the count of 'future prospects' ought to be made. Thus, the annual income of the deceased is worked upon as  $\text{Rs.}86680 + \text{Rs.}34672(40\%) = \text{Rs.}1,21,352/-$ .

However, looking at the number of dependents, as per ***Sarla Verma's case***, the deduction ought to be made to the extent of 1/3rd and after deducting the same, the annual dependency is worked upon as  $\text{Rs.}121352 - 40450(1/3\text{rd}) = \text{Rs.}80,902/-$ .

***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***  
***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***

Learned Tribunal had erroneously applied the multiplier of ‘15’, but however, considering the age of the deceased to 34 years, as per *Sarla Verma’s case*, appropriate and suitable multiplier, to be applied is ‘16’ and while applying the same, the loss of dependency, works out to be  $\text{Rs.}80902 \times 16 = \text{Rs.}12,94,432/-$ .

Further, it is pertinent to mention that learned Tribunal had granted a sum of Rs.5,000/-, on the count of loss of consortium only to Anjali, widow of the deceased. However, as per *‘Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130’*, all the dependents are entitled to loss of consortium, may it be ‘parental’, ‘spousal’ or ‘filial’ consortium. In the present case, the appellants-claimants, who are parents of the deceased, are entitled to compensation, on the count of ‘loss of consortium’. Considering the same, as per *Pranay Sethi’s case (supra)*, the compensation payable, on the count of ‘loss of consortium’, to each of the dependents, considering the enhancement clause of 10%, after every three years of the passing of the judgment, works out to be **Rs.48,400/-** to each of the dependents (i.e.  $\text{Rs.}48400 \times 3 = \text{Rs.}1,45,200/-$ ) and on the similar pattern, on the counts of ‘loss of estate’ and ‘funeral expenses’, the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable on account of death of Anil Kumar, is computed, as herein given:-

|                    |   |                 |
|--------------------|---|-----------------|
| Loss of dependency | : | Rs.12,94,432 /- |
| Loss of consortium | : | Rs.1,45,200/-   |
| Loss of estate     | : | Rs.18,150/-     |
| Funeral expenses   | : | Rs.18,150/-     |
| Total              | : | Rs.14,75,932/-  |

Now, arises the question of apportionment of the compensation. Learned Tribunal had apportioned the compensation, so worked upon, between the parents and widow of the deceased to the ratio of 30:70. However, this apportionment cannot be considered to be appropriate. Definitely, lesser amount has been granted to the parents of the deceased. Though, submission is made by learned counsel for the cross-objector about the apportionment ought to be in the ratio of 80% to the widow and 20% to the parents, but however, the submission so made, is not tenable.

To work upon the loss caused to the parents as well as to the widow, on account of death of Anil Kumar, in the fitness of the circumstances, the apportionment is made to the extent of 40% in favour of the parents (i.e. 20% each to father and mother) and 60% in favour of the widow.

The total compensation as now awarded is **Rs.14,75,932/-**. After deducting the amount awarded by learned Tribunal, the differential amount comes to be  $\text{Rs.14,75,932} - 7,39,515 = \text{Rs.7,36,417/-}$ . The apportionment shall to be extent of 40:60 ratio, as observed aforesaid. If any amount earlier granted, shall be adjusted from the share, as now worked upon. However, on the enhanced amount of the compensation i.e. **Rs.7,36,417/-**, the appellants-claimants and respondents No.4/cross-objector shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Further, it is pertinent to mention that Rs.5,000/- as earlier granted by learned Tribunal to Anjali, widow of the deceased, on the count of 'loss of consortium', shall be adjusted from the aforesaid amount, as

apportioned above.

Now, let us consider the entitlement of the appellants-claimants, vis-a-vis, damage caused to the ill-fated car, of which Anil Kumar was the occupant, at the time of accident. It is categoric claim of the appellants-claimants that the car was badly damaged in the accident and the said car, in the family settlement, had fallen to the share of Sumitra Devi and it was claimed that damage caused to the car was to the extent of Rs.2,00,000/-, which was required for repair of the car.

In the light of the same, learned counsel for the appellants-claimants has also made reference to the testimony of PW-2 Rajeev Gupta, Surveyor Loss and Assessor. He had inspected the ill-fated car bearing No.DL-3CK-3010, Maruti Esteem Car of 1997, for the purpose of assessment of loss of vehicle and had made the report, which is Ex.P6. Photographs are also part of his report Ex.P6. In the light of the report furnished by Rajeev Gupta, it is submitted that learned Tribunal had erroneously deprived the compensation to appellant-claimant Sumitra Devi.

It is further also submitted that even though, Sumitra Devi had pleaded about the car having fallen to her share in the family settlement, but however, this was not considered by learned Tribunal. In this regard, learned counsel submits the judgment passed by Civil Court with regard to settlement, so reached with Anjali, qua the car in question, has been proved on record and the same ought to have been taken into consideration. So far as, cross-objector Anjali is concerned, she has maintained total silence, with regard to her entitlement to the car in question.

Considering the same, it is pertinent to mention that Sumitra

Devi had filed a suit against Anjali as well as the insurance company, for seeking declaration to the effect that she is legally entitled to half share of the properties, in respect of policies, which stood in the name of Anil Kumar i.e. deceased and furthermore, had also sought relief of mandatory injunction as well as permanent injunction. The said suit is bearing Civil Suit No.249-C of 2003, instituted on 31.05.2004, which was decided on 11.08.2004. The judgment of the said suit has been proved as Ex.PA, copy of decree sheet is Ex.PB. The aforesaid judgment was passed, on the basis of the compromise arrived between Sumitra Devi and Anjali. The suit was decreed, on the basis of the compromise, which has been proved on record as Ex.PC.

Perusal of this compromise categorically reveals that Anajli, who is owner of the car bearing registration No.DL-3CK-3010 had foregone all her ownership rights, in favour of Sumitra Devi. As per the compromise, now Sumitra Devi claimed to be entitled to compensation, qua damage caused to the car in the accident in question. The arrival of the compromise, as such, is not disputed by learned counsel for respondent No.4/cross-objector. In view of the recitals aforesaid, about foregoing of ownership rights by Anjali, in the car in question, in favour of Sumitra Devi, on the basis whereof, judgment was passed by Civil Court, copy whereof is Ex.PA and decree sheet is Ex.PB, Sumitra Devi, as such, is entitled to compensation, qua damaged caused to the car. Therefore, findings recorded by learned Tribunal, thereby, depriving both Sumitra Devi and Anjali, qua compensation, on this account, is hereby set aside and Sumitra Devi is held entitled to the compensation, on the count of damage caused to the car.

In this backdrop, now the report furnished by Surveyor Loss

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and Assessor, which is proved as Ex.P6, ought to be taken into consideration. Considering the same, it is pertinent to mention that the liability on total loss basis, after deducting salvage value is mentioned as Rs.1,14,000/-, whereas, on repair loss basis, the liability after deducting salvage is Rs.1,57,095.68. Therein, the assessment was made, while considering damage caused to each part of the body of the car. The photographs are also coming on record, which depicts about the extensive damage near total loss, caused in the accident. Working upon the same and while doing some moderation, on the count of damage caused to car bearing registration No.DL-3CK-2010, in the fitness of circumstances, this Court deems it appropriate to grant Rs.1,40,000/- to Sumitra Devi. Thus, besides the aforesaid amount, as apportioned aforesaid falling to share of Sumitra Devi, she is also entitled to Rs.1,40,000/-, on the count of damage to the car. The insurance company is directed to pay the aforesaid amount of Rs.1,40,000/- to appellant-claimant Sumitra Devi, within a period of two months from today onwards. In the eventuality of non-payment of the aforesaid amount, the insurance company shall be liable to pay interest @ 6% from the date of filing of the present appeal, till realization of the aforesaid amount.

In view of the aforesaid observations, the appeal filed by the appellants-claimants i.e. FAO-3607-2009 stands allowed, whereas, XOBC-9-CII-2015 filed by respondent No.4/cross-objector, stands partly allowed.

May 06, 2024  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No