



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

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**FAO-3791-2019 (O&M)
Date of Decision : 16.05.2025**

GURPREET KAUR AND ORS

.... Appellants

VERSUS

MALKIT SINGH AND ANR

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Yogesh Gupta, Advocate
for the appellants.

Mr. Vijay Lath, Advocate
for respondent No.1.

Mr. Punit Jain, Advocate
for respondent No.2.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants challenging the award dated 02.03.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') aggrieved by the quantum of compensation awarded.

2. Since the factum of the accident is not in dispute, the facts, as recorded in the impugned award passed by the Tribunal, are not being adverted to 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	₹18,000
2.	Annual income	[₹18,000 x 12] = ₹2,16,000
3.	Deduction @ 1/3 rd	[₹2,16,000 - ₹72,000] = ₹1,44,000
4.	Future prospects @ 40%	[₹1,44,000 + ₹57,600] = ₹2,01,600
5.	Multiplier of '17'	[₹2,01,600 x 17] = ₹34,27,200
6.	Funeral expenses	₹15,000
7.	Loss of estate	₹15,000
8.	Loss of consortium	₹40,000
	Total Compensation	₹34,97,200
	Interest	@ 7.5% per annum

4. Learned counsel for the claimant-appellants would contend that Kulwant Singh (since deceased) in the present case was 29 years of age at the time of the accident and is survived by his widow, two minor children and parents. The deceased was running three taxies which were attached to OLA/UBER and was also running the same privately. It is further the contention of the learned counsel that the deceased, as per Ex.P-4 i.e. the bank account statement, was paying an EMI of ₹12,605 towards the repayment of loan taken for purchase of the taxies. Further, as per Ex.C-22 and Ex.C-23, an amount of ₹2,542 was being paid per month towards school fees for the education of his two children. Learned counsel has further pointed out to the statement of the Operations Manager from UBER Company, who stepped into the witness box as PW-3, who stated in his cross-examination that two of the three taxies were not being plied and were not active with UBER Cabs as the documents submitted with regard to the same had already expired. Learned counsel would further contend that at least one of them, at the given time, was being plied by the deceased himself

and now even if the taxies are to be plied by the family, they would have to hire three separate drivers for plying the taxies which means that additionally one driver would have to be employed. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in **S. Vishnu Ganga & Ors. V/s M/s Oriental Insurance Company Ltd. [2025 (1) RCR (Civil) 888]** to contend that merely stepping into the shoes of the deceased would not mean that the claimant-appellants would be capable of running the business.

5. Learned counsel for the claimant-appellants has further contended that the deduction of 1/3rd has wrongly been applied by the Tribunal, whereas it ought to have been 1/4th as there were five dependents upon the deceased. It is further the contention of the learned counsel that the amounts awarded under the head 'loss of consortium' and under the conventional heads are on the lower side. 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. Chola mandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

6. *Per contra*, learned counsel for respondent No.2-Insurance Company would contend that no income tax returns were being filed by the deceased and hence it cannot be assumed that he was earning more than what had been assessed by the Tribunal. It is further the contention that as

per statement of PW-2 one of the taxies was attached with OLA and one with UBER. Learned counsel has further referred to the statement of PW-1 (father of the deceased) to state that one of the taxies was attached with OLA Cabs and the payment was being remitted to his account. In support of his contentions the learned counsel for respondent No.2-Insurance Company has relied upon the judgment of the Hon'ble Supreme Court **Shivaleela & Ors. V/s The Divisional Manager, United India Insurance Co. Ltd. & Ors. [2025 SCC OnLine SC 563]**.

7. Heard.

8. Learned counsel for the claimant-appellants has contended that the income of the deceased ought to have been assessed keeping in view the fact that an amount of ₹12,605 was being paid as EMI as per Ex.P-4 and further school fees of the minor children to the tune of ₹2,542 per month was also being paid. It has further been contended that out of three taxies, two were detached and hence the income of the deceased had been assessed on the lower side. On the other hand, learned counsel for respondent No.2-Insurance Company has contended the income has rightly been assessed as two of the taxies are still attached with the OLA and UBER Companies.

9. The Hon'ble Supreme Court in the case of **S. Vishnu Ganga** (supra) has held as under :

'11. Having examined the matter, the Court finds that the Award rendered by the Tribunal is well-considered. Though the claimed compensation was Rs.1,00,00,000/- (Rupees One Crore) each with regard to the father and

the mother, the Tribunal granted Rs.58,24,000/- (Rupees Fifty-Eight Lakhs Twenty-Four Thousand) re the father and Rs.93,61,000/-(Rupees Ninety-Three Lakhs Sixty-One Thousand) re the mother. The documents produced by the appellants and the reasoning given by the Tribunal as well as the Karnataka High Court's Division Bench judgment in B Parimala (supra) indicate, and in our opinion, rightly so, that merely because the appellants stepped into the shoes of the deceased, by such factum itself, the appellants would not be capable of running the Mill. It would be of relevance as to whether due to their lack of experience and maturity, real/expected downfall in the profitability of the firm or the business would ensue. Such factor, while considering a claim pertaining to loss of future income/earnings, would have to be dealt with. In the present cases, even the monthly incomes of the parents as claimed by the appellants i.e. income of the father being Rs.25,00,000/- (Rupees Twenty-Five Lakhs) per year and the mother's being Rs.20,00,000/- (Rupees Twenty Lakhs) per year, the notional income fixed by the Tribunal of Rs.60,000/- (Rupees Sixty Thousand) each per month, is much more reasonable. It is no longer res integra that Income Tax Returns are reliable evidence to assess the income of a deceased,

reference whereof can be made to Amrit Bhanu Shali v National Insurance Co. Ltd., (2012) 11 SCC 738 Para 17; Kalpanaraj v. Tamil Nadu State Transport Corporation, (2015) 2 SCC 764 Para 7 and K Ramya (supra) Para 14’.

Further the Hon’ble Supreme Court in the case of **Shivaleela** (supra) has held as under :

‘10. Having given our anxious thought, this Court finds that both the MACT as also the High Court had not correctly approached the issue. When evidence was there before the MACT with regard to loan being advanced of Rs.4,20,000/- (Rupees Four Lakhs Twenty Thousand) and that of PW6, who purchased the banana crops from the deceased, stating that the latest transaction amounted to more than Rs.5,00,000/- (Rupees Five Lakhs) within a few months, which could not be controverted by the respondent-Insurance Company, coupled with the fact that there was a tractor in the name of the family and also evidence of PW3 to the effect that the deceased used to supply milk, which is also reflected in the passbook of the Milk Producer’s Cooperative Society showing payments being made to the mother of the deceased of Rs.6,000/- (Rupees Six Thousand) per month, the MACT

and the High Court erred in assessing the income on the lower side’.

Though the judgment of the Hon’ble Supreme Court in the case of **Shivaleela** (supra) has been relied upon by the learned counsel for respondent No.2-Insurance Company to contend that since the business is being continued and therefore, the income assessed by the Tribunal is right, however, the said reliance of the learned counsel on the said judgment is wholly misplaced. Rather, the said judgment comes to the aid of the claimant-appellants inasmuch as their Lordships have taken into account the loan being advanced as well as the transactions for the sale of the crops and the other sources of income.

10. In the present case it needs to be taken into account that three taxies were being plied by the deceased. It has come in the statement of PW-1 (father of the deceased) that the deceased used to ply one of the vehicles himself. Even if the argument of the learned counsel for respondent No.2-Insurance Company is to be accepted, the family, additionally, would have to now employ a driver and the wage for a skilled worker for the year 2018 was ₹9,529 per month. The claimant-appellants have placed on record Ex.P-4, which is the bank account statement of the deceased, to show that an amount of ₹12,605 was being paid by him as EMI and Ex.C-22 and Ex.C-23 to show that the school fees of the children amounting to ₹2,542 per month was also being paid by him. Merely because the claimant-appellants had stepped into the shoes of the deceased would not necessarily mean that they are able to run the business of taxies the way it was being run by the

deceased. Though it has come in the statement of father of the deceased that one of the taxies is attached to OLA and the amount is being remitted to his account, however, that would not show that the family is earning the same amount as the deceased was prior to his death from the said business.

11. The Hon'ble Supreme Court in **Gurpreet Kaur & Ors. V/s United India Insurance Company Ltd. & Ors. [2022 (4) RCR (Civil) 826]** has held as under :

'7. We have heard learned counsel appearing on behalf of the parties and carefully perused the material placed on record.

8. Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the testimony of P.W.4 - Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased - Pyara Singh was regularly making the payment of Rs.11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs.50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of monthly instalment of Rs.11,550/- towards

loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs.25,000/- per month.

9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs.25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased. Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court.

10. For the reasons aforestated, we are inclined to allow these appeals. Ordered accordingly'.

12. Further, the Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors. [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 1/3rd 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.

Keeping in view the fact that EMI was being paid to the tune of ₹12,605 and school fees to the tune of ₹2,542 per month was also being paid by the deceased and additionally the fact that another driver would have to

be employed as also the fact that family may not be able to run the business as efficiently as the deceased was and may need a Manager to manage the same, this Court deems it appropriate to apply some amount of guesswork as held by the Hon'ble Supreme Court in **Chandra @ Chanda @ Chandraram's** case (supra) and assess the income of the deceased as ₹25,000 per month.

13. Further, deduction of $1/3^{\text{rd}}$ has wrongly been applied which ought to have been $1/4^{\text{th}}$ keeping in view the fact that there were five dependents upon the deceased. The amounts awarded under the conventional heads as well as under the head 'loss of consortium' are on the lower side. 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 **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 widow, the minor children and the parents of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium. Since there is no challenge to the addition of @40% made towards future prospects and multiplier of '17' as applied by the Tribunal, the same are maintained.

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

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹25,000
2.	Annual income	[₹25,000 x 12] = ₹3,00,000
3.	Deduction @ 1/4 th	[₹3,00,000 - ₹75,000] = ₹2,25,000
4.	Future prospects @ 40%	[₹2,25,000 + ₹90,000] = ₹3,15,000
5.	Multiplier of '17'	[₹3,15,000 x 17] = ₹53,55,000
6.	Funeral expenses	₹18,000
7.	Loss of estate	₹18,000
8.	Loss of consortium i. Spousal ii. Filial iii. Parental	₹48,000 ₹96,000 (₹48,000 x 2) ₹96,000 (₹48,000 x 2) Total = ₹2,40,000
	Total Compensation	₹56,31,000

15. 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.

16. It is apt to note that the appeal being FAO-5353-2019 titled as 'Cholamandlam MS General Insurance Company Ltd. V/s Gurpreet Kaur & Ors.' filed by respondent No.2-Insurance Company already stands dismissed by this Court vide order dated 11.03.2025.

17. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 SCC Online SC 567]**, **Civil Appeal No.4299 of 2025 arising out of SLP (C) No.4484 of 2020 decided on 18.03.2025]**, after calculation of the enhanced amount, the same

be transferred by respondent No.2-Insurance Company in the bank account(s) of the claimant-appellants within a period of six weeks from today. The compensation amount of the minor claimant-appellants No.2 and 3 shall be kept in a fixed deposit by the Bank concerned. 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.2-Insurance company within a period of two weeks from today and needful shall be done by respondent No.2-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.

18. In view of the above discussion, the present appeal is allowed, and the award passed by the Tribunal is modified to the extent as stated above. Pending applications, if any, also stand disposed off.

16.05.2025
Aman Jain

(ALKA SARIN)
JUDGE

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