



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

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**FAO-661-2008 (O&M)
Date of Decision : 07.03.2025**

NACHHATTAR SINGH AND ORS.

.... Appellants

VERSUS

SURJIT SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

None for respondent No.1.

Mr. Paul S. Saini, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been filed by the claimant-appellants challenging the award dated 11.09.2007 passed by the learned Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') on two-fold grounds being aggrieved by the quantum of compensation as well as qua the finding where the liability was held to be that of the person who had stolen the vehicle and had caused the accident.

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. Learned counsel for the claimant-appellants has relied upon the judgment of this Court in the case of **Rozi & Ors. V/s Subhash Chand & Ors. [2018 (1) Law Herald 274]** to contend that even if the vehicle is

stolen, the insurer cannot escape the liability as also in the case of **National Insurance Company Ltd. V/s Rohit Sharma [2013 (20) RCR (Civil) 40]** on the same proposition of law. Learned counsel for the claimant-appellants would further contend that the age of the deceased in the present case was 48 years and she was a home maker. However, only a lump sum amount of ₹1,50,000 (rupees one lakh fifty thousand) had been awarded. It is further the contention of the learned counsel for the claimant-appellants, while relying upon the judgment in the case of **Kirti & Anr. Vs. Oriental Insurance Company Ltd. [2021 (1) RCR (Civil) 478]** that after assessing the income of the homemaker as that of the skilled worker, which was ₹3,535 per month at the relevant time, a multiplier method ought to have been applied and future prospects should also be granted. Learned counsel would still further contend that no amount has been awarded towards future prospects and under the conventional heads as well as under the head 'loss of consortium' and has further relied upon the judgments of the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**, **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]**.

4. *Per contra*, learned counsel for respondent No.3-Insurance Company would contend that in the present case the vehicle was stolen and the person who stole the vehicle caused the accident and hence respondent

No.3-Insurnace Company cannot be held liable. Learned counsel would further contend that the FIR was lodged at 11:30 a.m. qua the stolen vehicle and the accident took place at 1:30 p.m. It is further the contention that in case a multiplier method is applied then the deduction ought to be made keeping in view the number of dependents upon the deceased.

5. Heard.

6. In the present case the vehicle was stolen qua which FIR No.60 dated 17.04.2006 was registered at 11:30 a.m. and the accident took place at 1:30 p.m. and hence the Tribunal held the Insurance Company not liable.

7. In the case of **Rozi** (supra) it has been held as under :

'5. The learned Tribunal has held that the claimants are entitled to compensation of ₹50,000 only, under no fault liability of the ground that the vehicle was stolen when the accident took place and the owner was not having domain over the offending vehicle at the time of the accident. The vehicle had been stolen eleven days before the accident and the theft had been reported to the police. Under the circumstances, in the opinion of the learned Tribunal, the owner was not liable to compensate any third-party and therefore, his insurer viz., respondent No.2-New India Assurance Company Limited, would also not be bound to make any payment, as there was no question of indemnification if the owner was not liable to pay. In my opinion, this finding of the learned Tribunal is

unsustainable in law. It is now settled beyond shadow of doubt that the insurer can only escape liability in the event of willful breach of the conditions of the insurance by the insured. Where, a vehicle has been stolen, there is no question of any breach leave alone willful breach of a condition of the terms of the Insurance. Therefore, respondent No.2 cannot escape liability on the said ground and the insurance company being in the business of insurance is bound to indemnify a third-party, who has died or suffered injuries on account of the accident. Section 149(1) of the Act imposes a statutory duty upon an insurer to satisfy the judgments and awards against the insured person in respect of third-party risks. The insurer can only escape liability, if there has been a willful breach of the conditions of the policy and I have already held that there can be no question of breach of terms of a policy, where a vehicle has been stolen. My view is supported by a judgment of Hon'ble Supreme Court of India in United India Insurance Company Limited Vs. Lehu and Others, 2003(3) SCC 338, wherein after examining the issue of liability of an insurance company in a case relating to fake driving licence. It has been held as follows:

“18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had not licence. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the Company is to insurance. In all

businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured.”

Similar view was taken in **Rohit Sharma’s** case (supra).

8. In view of the above said facts and also merely because the vehicle was stolen, the Insurance Company cannot be absolved of its liability. Accordingly, respondent No.3-Insurance Company is held liable to pay the compensation.

9. Coming to the quantum of compensation, the Tribunal had awarded only a lump sum compensation of ₹1,50,000 (rupees one lakh fifty thousand).

10. In the present case the deceased was a homemaker aged about 48 years. A homemaker does much more and 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. 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, 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.”*

11. The minimum wages of a skilled worker prevailing at the time of the accident were admittedly ₹3,535 per month. Hence, the income of the deceased is assessed as ₹3,535 per month. As per the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra), 25% addition is made towards future prospects. Further, as per the law laid down by the Hon’ble Supreme Court in the case of **Sarla Verma** (supra), multiplier of ‘13’ would be applicable keeping in view the age of the deceased being 48 years at the time of the accident. Deduction of 1/3rd ought to have been made keeping in view the number of dependents upon the deceased. Further, no amount had been awarded under the conventional heads as well as under the head ‘loss of consortium’. 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 husband and sons of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium.

12. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹3,535
2.	Annual income	[₹3,535 x 12] = ₹42,420
3.	Deduction 1/3 rd	[₹42,420 - ₹14,140] = ₹28,280
4.	Future prospects @ 25%	[₹28,280 + ₹7,070] = ₹35,350
5.	Multiplier 13	[₹35,350 x 13] = ₹4,59,550
6.	Loss of estate	₹18,000
7.	Funeral expenses	₹18,000
8.	Loss of Consortium : (i) Parental (ii) Spousal	[₹48,000 x 2] = ₹96,000 ₹48,000 [Total ₹1,44,000]
	Total Compensation	₹6,39,550

13. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @9% 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.

14. 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.

07.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

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