



233

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

FAO-1788-2011 (O&M)

Date of Decision : 12.11.2025

Asha Joon (deceased) through LR & Anr ... Appellant(s)

Versus

Jag Mohan Singh & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Yadav, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate (through hybrid mode),
Mr. Ravinder Arora, Advocate and
Mr. Vipul Sharma, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

CM-4338-CII-2022

1. This is an application for impleading the legal representative of appellant No.1 – Smt. Asha Joon – who is stated to have died.

2. For the reasons stated in the application, the same is allowed subject to all just exceptions. Legal representative of appellant No.1 – Smt. Asha Joon – mentioned in para No.3 of the application is impleaded as a party. Vakalatnama signed by the legal representative of appellant No.1 – Smt. Asha Joon – is already appended with the present application. Amended memo of parties is taken on record.

CM-4340-CII-2022

3. This is an application under Section 151 of the Code of Civil Procedure, 1908 for fixing some actual date of hearing in the main case.

4. Notice of the application.

5. Mr. Neeraj Khanna, Advocate accepts notice on behalf of the non-applicant/respondent No.3 and states that he has no objection if the present application is allowed.

6. In view of the above and for the reasons stated in the application, the same is allowed. With the consent of the learned counsel for the parties, main appeal (FAO-1788-2011) is taken on Board today itself.

FAO-1788-2011

7. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'Tribunal') vide the impugned award dated 04.08.2010 in a motor vehicle accident which occurred on 23.07.2009.

8. Brief facts relevant to the present *lis* are that the deceased – Tejpal Joon – was a practicing Advocate in District Courts, Gurgaon. On 23.07.2009 he along with his elder brother Hawa Singh was returning to his house from District Courts Gurgaon on foot and at about 04.00 pm when he reached near Rajiv Chowk and was crossing National Highway-8, a truck bearing registration No.HR-37-A-2542 (hereinafter referred to as 'offending vehicle') which was being driven at a high speed and in a rash and negligent manner by Jag Mohan Singh (respondent No.1 herein), came from Jaipur side and hit the deceased. As a result of the same, he received multiple injuries and he was taken to Paras Hospital, Gurgaon where he succumbed to his injuries on the same day. The claim petition was filed by his widow and minor child.

9. Respondent Nos.1 and 2 (driver and owner of the offending vehicle) filed their joint written statement denying the factum of the involvement of the offending vehicle. Respondent No.3-Insurance Company

filed its separate written statement denying its liability to pay the compensation on the grounds that it was not informed about the accident and that the driver of the offending vehicle was not holding a valid and effective driving licence.

10. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the accident took place due to rash and negligent driving of vehicle No.HR-37-A/2542 by respondent No.1 causing death of Tejpal ? OPP
2. Whether the petitioners are entitled to any amount of compensation and if so to what amount and from whom ?

OPP
3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident ? OPR
4. Relief.

11. The Tribunal held it to be a case of contributory negligence holding the deceased negligent to the extent of 50% and awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹10,000/-
2	Annual Income	₹1,20,000/- [₹10,000 x 12]
3	Deduction - 1/3 rd	₹80,000/- [₹1,20,000 - ₹40,000]
4	Multiplier - 14	₹11,20,000/- [₹80,000 x 14]
5	Funeral expenses	₹10,000/-
6	Total Compensation	₹11,30,000/-
	Deduction towards contributory negligence to the extent of 50%	₹5,65,000/-
	Interest	6%

12. Learned counsel for the claimant-appellants would contend that the Tribunal has held to be a case of contributory negligence though it was never the plea raised by any of the respondents. Learned counsel would further contend that there was no issue framed by the Tribunal qua the contributory negligence, however, holding that when the accident took place the deceased was in the middle of the road and hence it was a case of contributory negligence. In support of his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **M. Nithya & Ors. vs. SBI General Insurance Company Limited [SLP (Civil) Nos.833-834 of 2023 decided on 03.01.2025]**.

13. Qua the quantum of compensation, the learned counsel for the claimant-appellants states that he does not challenge the income, deduction and the multiplier as applied by the Tribunal. He, however, states that no addition has been made towards future prospects which ought to have been 25% inasmuch as the deceased was admittedly 43 years of age at the time of the accident. It is further the contention of the learned counsel that the compensation awarded under the conventional heads as well as under the head 'loss of consortium' is not in accordance with the law laid down by 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]**.

14. *Per contra* learned counsels for respondent No.3-Insurance Company have vehemently contended that it was a case of contributory negligence as has rightly been held by the Tribunal. It is further the contention

of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

15. I have heard the learned counsel for the parties.

16. In the present case, neither the driver and owner of the offending vehicle nor the Insurance Company raised the plea of contributory negligence in their written statements. No issue was framed by the Tribunal as regards the contributory negligence. Without there being any pleadings qua contributory negligence and without any issue having been framed, a finding of contributory negligence has been rendered by the Tribunal.

17. Hon'ble Supreme Court in the case of **Rama Kt. Barman (Died) thr. LRs Vs. Md. Mahim Ali & Ors. [2024 SCC Online SC 4803]** has held as under :

“ 14. Apart from the fact that none of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court, none of parties was given any opportunity of leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties.”

The above proposition was also followed by the Hon'ble Supreme Court in a recent judgment dated 09.09.2025 in the case of **Deep Nursing Home & Anr. Vs. Manmeet Singh Mattewal & Ors. [2025 SCC Online SC 1934]**.

18. Further, in **M. Nithya's** case (supra), Hon'ble Supreme Court has held as under :

“ 7. It is pertinent to observe that the Tribunal noted that

the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained.”

19. In view thereof, in the absence of any pleading of contributory negligence having been raised by the owner and driver and the Insurance Company and without there being any issue framed in this regard by the Tribunal, possibly no finding qua contributory negligence could have been returned. Accordingly, the finding qua contributory negligence returned by the Tribunal is not sustainable in law and the same is set aside.

20. In the present case, admittedly, no appeal has been preferred by the Insurance Company. Since no challenge has been laid by the learned counsel for the claimant-appellants to the income, deduction and multiplier as applied by the Tribunal, the same are maintained accordingly.

21. The argument of the learned counsel for the claimant-appellants that no addition has been made towards future prospects deserves to be accepted. In the present case, the deceased was admittedly 43 years of age at the time of the accident, hence, 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.

22. Further, the compensation awarded under the conventional heads and under the head ‘loss of consortium’ is not 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), hence, the claimants would be entitled to ₹18,000/- (₹15,000+20% increase) towards loss of estate and ₹18,000/- (₹15,000+20% increase) towards funeral expenses and the claimants (widow and son of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹10,000/-
2	Annual Income	₹1,20,000/- [₹10,000 x 12]
3	Deduction - 1/3 rd	₹80,000/- [₹1,20,000 - ₹40,000]
4	Future Prospects - 25%	₹1,00,000/- [₹80,000 + ₹20,000]
5	Multiplier - 14	₹14,00,000/- [₹1,00,000 x 14]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 1] (ii) Spousal's	₹48,000/- ₹48,000/- (Total ₹96,000/-)
	Total Compensation	₹15,32,000/-

23. 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.

24. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors. [AIR 2025 SC 1713 = 2025 SCC OnLine SC 567]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimants within six weeks from today and the apportionment thereof shall be as per the direction of the Tribunal. The particulars of the bank account(s) alongwith the requisite documents(s) in support thereof shall be furnished by the claimants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

25. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal stands modified accordingly. Pending applications, if any, also stand disposed off.

12.11.2025
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO