



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4286-2012

Reserved on:- 10.09.2025

Pronounced on:- 22.09.2025

ASHIYA & ORS.

.....Appellants

vs.

JITENDER KUMAR & ORS.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kunal Phogat, Advocate
for the appellants.

Mr. S.S. Khurana, Advocate
for respondent No.1 and 2.

Mr. Preet Harinder Singh Pannu, Advocate
for respondent No.3-Insurance Company.

Mr. Farukh Abdullah, Advocate
for respondent No.4.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 31.05.2012 passed by the learned Motor Accident Claims Tribunal, Nuh in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Tribunal') for enhancement of compensation granted to the claimants to the tune of Rs.4,08,800/- along with interest @ 6% per annum, on account of death of Maukam in a Motor Vehicular Accident, occurred on 16.06.2010.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed



narration of the facts of the case is not required to be reproduced here for the sake of brevity.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

3. The learned counsel for the claimants-appellants contends that the amount assessed by the learned Tribunal is on the lower side and deserves to be enhanced. Therefore, he prays that the present appeal be allowed and amount of compensation be enhanced as per latest law.

4. He further contends that the learned Tribunal has erred in determining the salary of the deceased. In addition to this, the learned Tribunal has also erred in the application of multiplier and no future prospects is added to the salary of the deceased. He also contends that the married daughter (proforma defendant No.4-Ravina) of the appellant has not been granted any amount of compensation regardless of her being entitled for the same.

5. He further contends that the learned Tribunal has erred in not directing the Insurance Company to satisfy the award in the first instance along with liberty to recover the same from the owner of the offending vehicle.

6. Per contra, learned counsel for respondents No.1 and 2, however, vehemently argues that the award has rightly been passed and the amount of compensation, as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

7. Learned counsel for respondent No.3-Insurance Company contends that the learned Tribunal has awarded sufficient amount of compensation to the claimants/appellants. He further contends that the married daughter is not entitled to any amount of compensation following the



demise of her father. Therefore, the learned Tribunal has rightly assessed the compensation, hence, he prays for dismissal of the appeal.

8. I have heard learned counsel for the appellants and perused the whole record of this case with his able assistance.

SETTLED LAW ON COMPENSATION

9. Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation and Another** [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even

otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

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42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra and Charlie), which starts with an operative multiplier of



18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

10. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

*“52. As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in Rajesh². It has granted Rs.25,000 towards funeral expenses, Rs*



1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we



have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

** * * * **

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the



courts shall be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

11. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi² dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.



With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of



consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi². In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.

12. A perusal of the award shows that the deceased was stated to be of 35 years of age and was asserted to be earning Rs.7,000/- per month as a driver. However, in support of the said income, no substantial documentary evidence is brought on record. In view of the same, the learned Tribunal has determined the salary of the deceased by taking into account the minimum



wages of a skilled labour in the State of Haryana in the year 2012. Therefore, the learned tribunal has rightly assessed the income of the deceased as Rs.4,500/- and no interference is warranted by the Court in this regard.

13. A further perusal of the award reveals that no compensation has been granted to the married daughter (proforma defendant No.4-Ravina) of the deceased. The counsel for the respondent insurance company contends that the married daughter is not entitled to compensation following the demise of her father. This contention of the respondent does not hold suffice in the eyes of law.

14. In this regard, it is pertinent to refer to the recent judgment of the Hon'ble Supreme Court in ***Jitender Kumar v. Sanjay Prasad passed in Civil Appeal No. 7199 of 2025 (Arising Out of SLP(C)No. 27779 of 2023), decided on 22.05.2025***, wherein the Court held that married daughters are too entitled to claim compensation. The Court emphasized that the entitlement to compensation extends to both married sons and daughters, irrespective of whether they are financially dependent on the deceased or not. The Apex Court unequivocally held that the status of being married does not bar a daughter from receiving compensation in MACT cases. The relevant paragraphs of ***Jitender Kumar's case (supra)*** are reproduced as under:

*"13. In our considered opinion, the view on this issue cannot be faulted. The exposition of law in **Birender (Supra)** is clear, wherein it was observed as under:*

"14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and



earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only."

14. Such exposition came to be followed by this Court in Seema Rani and Ors. v. Oriental Insurance Co. Ltd. and Ors., 2025 SCC Online SC 283., wherein it was observed that the application for compensation, even by married sons and daughters, must be considered, irrespective of whether they are fully dependant or not. In the present case, it cannot be disputed that the claimant-appellant(s) became partner in the consultancy firm run by the deceased. Moreover, it is not in dispute that that the Flour Mill being run by the deceased, is still being run by the claimant-appellant(s). In such a factual circumstance, it cannot be said that the claimant-appellant(s) were financially dependent upon the deceased."

15. In view of judgment referred to above, it is abundantly clear that married daughter is equally entitled to compensation, as she too remain dependent on their parents. In our societal framework, parents continue to provide care and support not only to their married sons and daughters but also to their grandchildren. The assertion that, upon marriage, sons and daughters

are no longer dependent on their parents is a fallacy that fails to reflect the practical realities of familial bonds.

16. Consequently, it is evident that married daughter, just like their unmarried counterpart, remain within the fold of dependency and, therefore, is justifiably entitled to compensation.

17. A further perusal of the award reveals that learned Tribunal has erred in not adding any amount for future prospects to the income of the deceased. Therefore, in accordance with the settled law on compensation and having regard to the age of deceased, **40%** is to be added to the salary as future prospects.

18. Further perusal of the award reveals that the learned Tribunal has erred in application of the multiplier, taking into account the age of the deceased, the appropriate multiplier in this case should be 16 instead of 9 as per settled law. Moreover, the amount awarded for funeral expenses, loss of estate and loss of consortium is on the lower side and deserves to be enhanced. Therefore, the award requires indulgence of this Court.

CONCLUSION

19. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 31.05.2012 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made hereunder:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.4500/-
2	Future prospects @ 40%	Rs.1800/- (40% of 4500)
3	Deduction towards personal expenditure 1/5 th	Rs.1260/- (6300 X 1/5 th)
4	Total Income	Rs.5040 (6300-1260)

5	Multiplier	16
6	Annual Dependency	Rs.9,67,680/- (5040X12X16)
7	Loss of Estate	Rs.18,150/-
8	Funeral Expenses	Rs.18,150/-
9	Loss of Consortium Spousal: Rs.48,400/-x 1 Parental: Rs.48,400/-x 9 Filial: Rs.48,400 x 2	Rs.5,80,800/-
10	Total Compensation	Rs.15,84,780 /-
11	Deduction Amount Awarded by the Tribunal	Rs.4,08,800/-
12	Enhanced amount	Rs.11,75,980/- (15,84,780-4,08,800)

20. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation (2022) 5 Supreme Court Cases 107**, the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

21. Adverting to the contention raised by the learned counsel for the appellant/claimant, it has been urged that although the learned Tribunal has recorded a finding regarding violation of the terms and conditions of the insurance policy, it erred in not directing the insurance company to satisfy the award in the first instance with liberty to recover the same from the owner of the offending vehicle. This Court finds considerable merit in the aforesaid submission.

22. It is a well-settled proposition of law that even in cases where there is a breach of policy conditions, the principle of “pay and recover” can be invoked to balance the rights of the claimant and the insurer. The rationale underlying this principle is to ensure that an innocent third-party victim is not



deprived of just compensation on account of *inter se* disputes between the insurer and the insured.

23. The Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh & Ors. 2004 (3) SCC 297, decided on 05.01.2004**, held that even if there is a breach of conditions of the insurance policy, the insurer is under a statutory obligation to indemnify the liability towards third parties, with liberty to recover the same from the insured.

24. Further reference may be made to the recent pronouncement of the Hon'ble Supreme Court in **Sunita v. United India Insurance Co. Ltd., 2025 INSC 867**, wherein the Apex Court, while affirming the applicability of the doctrine of "pay and recover," observed as follows:-

"11. Then, the question which would arise is as to whether the liability could have been fastened upon the Insurer or not. In our considered view, not so, solely for the reason that the risk stood not covered, as no premium was paid.

12. The next question which arises for our consideration is whether the Insurance Company is liable to indemnify the compensation amount to the claimant-appellant and, thereafter, recover the same from the driver and owner of the vehicle.

13. Adverting to the facts in hand, from a bare perusal of the record, it is borne that the vehicle in question was insured with "Liability Only Policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein. However, even then, in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of "Pay and Recover" ought to have been invoked. As such, we are inclined to interfere with the above findings of the Courts below.



14. We must advert to the exposition of this Court in *National Insurance Co. Ltd. v. Baljit Kaur*, (2004) 2 SCC 1.. The deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle, lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger.

15. The above position has been followed by this Court in ***Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd.***, (2020) 20 SCC 632. wherein the injured person was travelling as a gratuitous passenger and was not covered under the Insurance Policy, the driver and owner of the vehicle was held liable for payment of compensation amount. This Court applied the principle of "Pay and Recover" and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle.

16. The aforementioned principle was adopted by this Court in various judgments of this Court in *Amrit Lal Sood v. Kaushalya Devi Thapar*, (1998) 3 SCC 744.; *New India Assurance Co. Ltd. v. C.M. Jaya*, (2002) 2 SCC 278.; *National Insurance Co. Ltd. v. Challa Upendra Rao*, (2004) 8 SCC 517.; *New India Assurance Co. Ltd. v. Vimal Devi*, 2010 SCC Online SC 49.; *National Insurance Co. Ltd. v. Saju P. Paul*, (2013) 2 SCC 41.; *Manuara Khatun v. Rajesh Kumar Singh*, (2017) 4 SCC 796.; and *Puttappa v. Rama Naik*, 2018 SCC Online SC 3496.

17. Applying the above expositions of law, the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same.

18. Therefore, in light of the attending facts and circumstances of the case, we are of the view that the



Insurance Company is liable to indemnify the compensation amount awarded by the Tribunal and recover the same only from the owner of the offending vehicle.”

25. In light of the authoritative pronouncement of the Supreme Court and having regard to the object of the benevolent legislation under the Motor Vehicles Act, this Court holds that the insurance company shall be liable to satisfy the award at the first instance and thereafter shall be entitled to recover the amount from respondent No. 2, the owner of the offending vehicle, in accordance with law.

26. The Insurance Company-respondent No.3 is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from the receipt of copy of this judgment. The Tribunal is directed to disburse the enhanced amount of compensation along with interest in the accounts of the claimants/appellants, as per ration settled by the learned Tribunal, vide its award dated 31.05.2012. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

27. Pending application (s), if any, also stand disposed of.

22.09.2025

Ayub

(SUDEEPTI SHARMA)
JUDGE

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