



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

(i) FAO-1046-2014 (O&M)

New India Assurance Co. Ltd.

...Appellant

VERSUS

Charanjit Kaur and others

...Respondents

(ii) FAO-6354-2015 (O&M)

Charanjit Kaur and others

...Appellants

VERSUS

Nandlal and others

...Respondents

Date of Decision: December 03, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Paul S. Saini, Advocate
 for the appellant (in FAO-1046-2014) and
 for respondent No.3 (in FAO-6354-2015).

Mr.Gurcharan Singh Bains and Mr.Vijay Sharma, Advocates
for respondents No.1 to 6 (in FAO-1046-2014) and
for the appellants (in FAO-6354-2015).

Mr.A.K.Goyat, Advocate
for respondents No.7 and 8 (in FAO-1046-2014) and
for respondent No.1 and 2 (in FAO-6354-2015).

ARCHANA PURI, J.

These are two rival appeals filed by the insurance company as
well as the claimants, to assail the Award dated 14.10.2013 passed by

learned Motor Accident Claims Tribunal, vide which, compensation was awarded, on account of death of Rattan Singh, in a motor vehicular accident.

FAO-1046-2017 has been filed by the insurance company, thereby, disputing the factum of the accident and furthermore, assailed the liability fastened upon the respondents, whereas, FAO-6354-2015 has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation.

For the convenience of the parties, the parties are referred to as making appearance before learned Tribunal.

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

That, on 11.09.2012, Rattan Singh was travelling in truck bearing registration No.PB-11AP-8185, as a cleaner. The said truck was driven by Balwinder Singh s/o Hazari Singh at a normal and moderate speed. When the said truck reached Maruti Academy School, Satruda, opposite highway Mhow Neemuch Road, Ratlam, at about 5.00 a.m., a truck bearing registration No.MP-44HA-0696, came from the opposite side. It was driven by respondent No.1-Nandlal, at a very high speed and without observing the traffic rules, in zig-zag manner and he struck his truck against the truck bearing registration No.PB-11AP-8185, which caused multiple and grievous injuries on the person of Rattan Singh, which proved fatal.

FIR No.268 dated 11.09.2012 under Section 304-A IPC was lodged by Balwinder Singh. It is categoric case of the claimants that the accident was caused due to rash and negligent driving of respondent No.1-Nandlal, who was driving the truck bearing registration No.MP-44HA-0696.

Upon notice, the respondents made appearance and filed respective replies.

Respondents No.1 and 2, i.e. driver and owner of the alleged offending vehicle, denied the accident for want of knowledge. The insurance company, in its reply, has raised various preliminary objections, thereby, disputing maintainability of the petition and also asserted about the truck bearing registration No.MP-44HA-0696, to have been falsely implicated. In fact, a plea was taken that the entire case is stage managed for the sole reason of obtaining compensation. The accident had taken place due to sole negligence, on the part of driver of the truck, as the rider was crossing the road, without caring for anything.

Further, on merits, the factum of the accident was denied.

After framing of the issues, the evidence was adduced. On appraisal of the evidence, learned Tribunal observed that it was a case of composite negligence and considering the same, the apportionment of the rashness and negligence, as such, was not worked upon by the Tribunal. However, it was observed that claimants could claim the compensation from any of the joint tortfeasors and therefore, the claimants can claim compensation from the respondents and the liability of the respondents, inter se, was further held to be joint and several.

Furthermore, learned Tribunal, while considering deceased Rattan Singh to be an unskilled worker, had assessed his earnings as Rs.4500/- per month. Considering the number of dependents to be 6, 1/4th was deducted towards 'personal expenses'. Considering the age of the deceased to be 35 years, multiplier of '16' was applied. Besides the same, Rs.1 lakh was awarded, on the count of 'loss of consortium' to claimant No.1 and further, Rs.25,000/- was awarded on the count of 'funeral expenses'. Further, an amount of Rs.50,000/- was awarded towards 'loss of love and affection' to

claimants No.2 to 6. Thus, the compensation awarded by learned Tribunal, is reproduced in tabular form, as herein given:-

Earnings	Rs.4500/- per month
Deduction 1/4th	Rs.4500-1125=Rs.3375/- annual whereof is Rs.40,500/-
Multiplier of ‘16’	Rs.40,500x16=Rs.6,48,000/-
Loss of consortium	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss of love and affection	Rs.50,000/-
Total	Rs.8,23,000/-

However, the ‘work on’ of the compensation aforesaid, do call for re-computation, as per prevalent law.

Before coming to the re-assessment of the compensation, let us consider about the factum and manner of taking place of the accident and affixation of liability, which is disputed by the insurance company.

Charanjit Kaur, widow of deceased Rattan Singh, stepped into witness box as CW-1 and she has categorically stated about her deceased husband to be working as cleaner on the truck bearing registration No.PB-11AP-8185 and that the said truck met with an accident on 11.09.2012 and her husband had received injuries, which proved fatal. CW-2 Surjit Kaur, who is mother of the deceased, also deposed on the similar lines. Besides the said witnesses, Balwinder Singh s/o Puran Singh, owner of truck bearing registration No.PB-11AP-8185, stepped into witness box as CW-3 and he stated about driving the said truck at normal speed, on the day of accident and it was hit by offending truck bearing registration No.MP-44HA-0696, which came from the opposite side.

Very correctly, learned Tribunal had made reference to the cross-examination of the said witness, wherein, this witness had admitted that he was not driving the truck bearing registration No.PB-11AP-8185, at the

relevant time. He asserted about himself to be owner of the truck and that the said truck, struck truck bearing registration No.MP-44HA-0696, from the backside.

In view of the same, also very appropriately, the contents of the FIR No.268 Ex.C1 has been considered by the Tribunal. Perusal of the said FIR reveals that it was registered by Balwinder Singh s/o Hazara Singh, who was driving the truck bearing registration No.PB-11AP-8185, of which deceased Rattan Singh was the occupant, at the relevant time. It clearly states about the death of Rattan Singh, in the accident in question. His post-mortem report has been duly proved.

However, it is pertinent to mention that none of the aforesaid witnesses are the eye-witness to the accident in question. May it be so, from the evidence adduced, one thing is certain that there is involvement of two trucks, in the accident in question. This is all the more important to consider, as respondent No.1-Nandlal, in the capacity being driver of the truck bearing registration No.MP-44HA-0696, was the most natural witness, who could depose about the rashness and negligence, on either driver of the two trucks, but however, he had not stepped into witness box. The FIR was registered against him. No doubt, Balwinder Singh s/o Hazara Singh, driver of the truck bearing registration No.PB-11AP-8185, has also not been examined, but this in itself, does not make up a ground for denial of compensation to the claimants, on account of death of Rattan Singh, more particularly, when death of Rattan Singh, as a result of the accident between the two trucks, as such, is amply established.

Such being the circumstances, as now submitted by learned counsel for the insurance company, thereby, imputing rashness and

negligence, on the part of the driver of truck bearing registration No.PB-11AP-8185 solely, as such, cannot be considered. May it be so, that there is change of manner of version of causing of the strike between the two trucks, but however, recitals of the FIR, are not conclusive. In the given circumstances, it was utmost important for respondent No.1-Nandlal, to have stepped into witness box, but however he had not done so.

In any case, considering the testimony of CW-3 Balwinder Singh, more particularly, his cross-examination, even if it is so taken that the truck bearing registration No.PB-11AP-8185, had struck the truck bearing registration No.MP-44HA-0696, from backside, then also, it is coming forth that all of a sudden, brakes were applied. If it be not so or need to further explain or substantiate this manner of accident, to be not so, it was required on the part of respondent No.1 to have stepped into witness box, but he had not stepped into witness box.

Considering the aforesaid fact and the evidence in totality, more particularly, where the involvement of two trucks in the accident, as such, is evident, learned Tribunal had appropriately considered it to be a case of composite negligence. '**Composite negligence**' refers to the negligence, on the part of two or more persons. Where a person is injured, as a result of negligence on the part of two or more wrong doers, it is said that the person was injured, on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured/legal heirs of the deceased, for payment of the entire damages and the injured person/legal heirs of the deceased, has the choice of proceeding against all or any of them. In such a case, the victim party, need not establish the extent of responsibility of each wrong-doer separately, nor it is necessary

for the court to determine the extent of liability of each wrong-doer separately.

In the case of composite negligence, a person who has suffered, had not contributed to the accident, but due to the outcome of combination of negligence, of two or more persons, in such case, the claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation, as liability of joint tortfeasors is joint and several.

In the case in hand, only the driver, owner and insurer of the truck bearing registration No.MP-44HA-0696, were impleaded as party. The driver, owner and insurer of truck bearing registration No.PB-11AP-8185, have not been impleaded as a party. In the light of the same, it has been specifically observed by learned Tribunal that the extent of negligence, on the part of driver of both the trucks, is not being determined, as it would not be proper to adjudicate this question, in the absence of driver, owner and insurer of truck bearing registration No.PB-11AP-8185. However, further observation was made that respondents shall be at liberty to initiate appropriate proceedings against the driver, owner and insurer of truck bearing registration No.PB-11AP-8185, to get determined their liability and to recover the amount to the extent of their liability from them. Also, it was observed that the respondents will have to satisfy the claim of the claimants and their liability was held to be, joint and several.

Though, the aforesaid observation is asserted to be erroneous, but however, the contention so raised, is bereft of merits. Very true, only the driver, owner and insurer of the truck bearing registration No.MP-44HA-0696, have been impleaded, as it was categorical claim of the claimants about the accident to have taken place, due to rash and negligent driving of truck

bearing registration No.MP-44HA-0696. But anyhow, it was on account of evidence, brought on record that the Tribunal had concluded about it to be the case of composite negligence. Such being the circumstances, on failure of the claimants to implead one of the joint tortfeasors, contributory liability, as such, cannot be fastened upon the claimants, to the extent of the negligence of non-impleaded joint tortfeasors. It is for the joint tortfeasors made liable to pay compensation to take proceedings to settle the equities, as against other joint tortfeasors, who had not been impleaded. It is open to the impleaded joint tortfeasor to sue the other wrong-doer, after the decree or award is given to realize, to the extent of others' liability. In any case, due to failure of impleadment of all joint tortfeasors, compensation, as such, cannot be reduced to the extent of negligence of non-impleaded tortfeasors. Non-impleadment of one of the joint tortfeasors is not a defence to reduce the compensation payable to the claimant.

In the given circumstances, the findings recorded by learned Tribunal, about the case in hand, to be a case of composite negligence, as such and the whole liability fastened upon the respondents to satisfy claim of the claimants, to be joint and several, as such, stand affirmed.

Now, comes the question of re-computation of the compensation. Before proceeding further to the extent of earnings, it is pertinent to mention that it is the pleaded case of the claimants that deceased was 35 years old and in the post-mortem report also, the age has been mentioned as 35 years, which was so taken by learned Tribunal, for the purposes of application of suitable multiplier for making the assessment of the compensation. However, it is pertinent to mention that during the course of evidence, documents have been tendered into evidence. The copy of

aadhaar card of Rattan Singh deceased, is Ex.C7. Close perusal of the same reveals that the year of birth of Rattan Singh was 1967. This document has been given amiss, while making assessment of age of the deceased. Considering this document, which was produced by the claimants themselves and also considering the date of accident to be 11.09.2012, at the relevant time, deceased Rattan Singh was about 45 years of age.

Thus, this assessment of the age, would also change the multiplier, applied by learned Tribunal.

Now, coming to the earnings of deceased, it is pleaded case of the claimants that deceased was working as cleaner/helper on the truck bearing registration No.PB-11AP-8185, and earning Rs.15,000/- per month. However, no satisfactory evidence, relating to the same came on record and on this account, the earnings of the deceased were assessed as Rs.4500/- per month. However, this extent of earnings is less than the prevalent minimum wages, at the relevant time. As per the prevalent notification, on 01.09.2012, the minimum wages were Rs.5200/- per month for unskilled worker. In the minimum, while making assessment of the compensation, this extent of wages ought to be taken into consideration. Thus, taking it to be so, the monthly earnings of deceased Rattan Singh are assessed as Rs.5200/-.

Also taking into consideration, the number of dependents, 1/4th is to be deducted, on the count of 'personal expenses'. To the residue amount, on the count of 'future prospects', addition has to be made to the extent of 25%, considering the deceased to be less than 50 years of age. Considering the age of the deceased, '14' is the suitable multiplier to be applied, instead of '16' as applied by learned Tribunal.

Learned Tribunal had awarded compensation, on the count of

‘loss of consortium’ to the extent of Rs.1,00,000/-, only to the widow of the deceased. However, as per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', each of the claimants/dependents are entitled to compensation, on the count of ‘loss of consortium’, be it ‘parental’, ‘spousal’ or ‘filial’ to the extent of Rs.48,400/- each and they are also entitled to compensation on the counts of ‘loss of estate’ and ‘funeral expenses’ to the extent of Rs.18,150/- on each count.

Even though, learned Tribunal had awarded an amount of Rs.50,000/- to claimants No.2 to 6, on the count of ‘loss of love and affection’, but however, it is pertinent to make reference to the decision rendered in *Magma’s case (supra)*, wherein, it is laid down that '**loss of love and affection is comprehended in loss of consortium**'. Hence, there is no justification to award compensation towards 'loss of love and affection', as a separate head.

In view of the aforesaid, the compensation payable to appellants-claimants, on account of death of Rattan Singh, is re-computed, as herein given:-

Income	Rs.5200x12=Rs.62,400/- per annum
Deduction of 1/4th	Rs.62,400-15,600=Rs.46,800/-
Addition of 25%	Rs.46,800+11,700=Rs.58,500/-
Multiplier of ‘14’	Rs.58,500x14= Rs.8,19,000/-
Loss of consortium	Rs.48,400x6= Rs.2,90,400/-
Loss of estate	Rs.18,150/-
Funeral expenses	Rs.18,150/-
Total	Rs.11,45,700/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.11,45,700-8,23,000=Rs.3,22,700/-**. On the enhanced amount of the compensation i.e.

Rs.3,22,700/-, the appellants-claimants, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal by them, till realization of the enhanced amount of compensation.

Out of the enhanced amount, as now worked upon, appellants-claimants No.1 is held entitled to Rs.1,00,000/-, whereas, appellants No.2 to 5 are held entitled to Rs.50,000/- each and appellant-claimant No.6 is held entitled to Rs.22,700/-.

The impugned Award dated 14.10.2013 stands modified, to the extent, as indicated aforesaid.

With the above observations, the appeal filed by the insurance company i.e. FAO-1046-2014 stands dismissed, whereas, FAO-6354-2015 stands allowed.

December 03, 2025	(ARCHANA PURI)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No