IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

133 **FAO-1446-2016 (O&M)**
Date of decision :19.08.2025

ASHA GARG AND OTHERS ... APPELLANTS

VERSUS

MRINAL KANTIDAS AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ashit Malik, Advocate
for the appellants.

Mr. Pradeep Kumar, Advocate
for respondent No. 2-Insurance Company.

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PARMOD GOYAL, J.

In appeal against award dated 26.10.2015 passed by Motor Accident Claims Tribunal, Gurugram (hereinafter referred as Tribunal) arising from accident dated 17.03.2013 on account of rash and negligent driving of offending vehicle bearing No. HR-26-BR-3356, filed by appellants-claimants, Insurance Company has also preferred cross objections. Appellants-claimants are aggrieved by award of Rs. 36,56,100/- as compensation in their favour by asserting that the same is on the lower side. On the other hand, case of cross objector-Insurance Company is that the compensation awarded to appellants-claimants is on higher side.

2. Following compensation was awarded by learned Tribunal by taking income of deceased to be Rs. 10,000/- considering him as unskilled worker, by adding 50% towards future prospects, deducting 1/3rd towards personal expenses and applying multiplier of 16 years as deceased was 33 years old at the time accident.

	Heads of claim	**Tribunal**
1.	Income	Rs. 10,000/- per month
2.	Add. 50% of increase	50% of Rs. 10,000/- = Rs. 15,000/-
3.	Deduction (father held not dependent)	1/3rd of Rs. 15,000/- = Rs. 5,000/- (Rs. 15,000/-5,000/-) =Rs. 10,000/-
4.	Annual	Rs. 10,000x12=Rs. 1,20,000/-
5.	Multiplier & total loss of income	Rs. 1,20,000x16= Rs. 19,20,000/-
6.	Loss of love, affection, care guidance for minor son	Rs. 1,00,000/-
7.	Loss of love and affection to parents	Rs. 1,00,000/-
8.	Loss of consortium and estate	Rs. 1,00,000/-
9.	Funeral expenses	Rs. 25,000/-
10.	Medical expenses	Rs. 14,11,100/-
11	Total	Rs. 36,56,100/-

3. Learned counsel for the appellants-claimants has argued that Tribunal has erred in considering income of deceased as Rs. 10,000/- being unskilled worker whereas from the evidence led by appellants, it is clearly made out that deceased was working as a businessman and was duly filing his income tax returns for income arising from said business. Learned counsel has made reference to evidence of PW2 as well as to Ex. P-30 and Ex. P-31 i.e. tax returns of deceased for assessment year 2011-12 and 2012-13. In the present case, accident had occurred on 17.03.2013 and deceased had died on 28.11.2013 after remaining under treatment at various hospitals. As far as medical expenses awarded by Tribunal are concerned neither claimant nor respondent-Insurance Company has raised any serious objection. Perusal of impugned award goes to show same was awarded after considering hospital and medicines bills placed as Ex. P-1 to Ex. P-29, Ex. P-32 to Ex. P-142, Ex. P-144 to Ex. P-195 and Ex. P-209 to Ex. P-258. Therefore, no interference with award of medical expenses to

the tune of Rs. 14, 11,100/- can be made. No compensation for expenses on transport, special diet and attendant was granted by Ld. Tribunal. Claimants are therefore, entitled for Rs. 25,000/- on account of expenses on transport, special diet and attendant.

4. While determining loss of dependency, learned Tribunal has taken deceased to be unskilled worker and had taken his monthly wages equivalent to minimum wages payable to unskilled workman. Income Tax returns Ex. P-30 & Ex. P-31 were rejected. As far as income tax return Ex. P-31 for the assessment year 2012-13 is concerned, admittedly, same was filed after the accident by family members and therefore, cannot be taken as proof of income of deceased. However, it is clearly made out that income tax return Ex. P-30 for the assessment year 2011-12 was duly filed by deceased prior to his death. As per Ex. P-30 taxable income of deceased was Rs. 2,22,162/- out of which he paid tax of Rs. 6402/-.

5. Learned counsel for the appellants has argued that the gross income of deceased was Rs. 3,21,614/- and, therefore, said income has to be taken as income of deceased. However, learned counsel for respondent No. 2-Insurance Company has argued that since appellants could not prove as to what type of business, deceased was conducting, therefore, mere filing of income tax return would not be of any help to the case of appellant. Learned Tribunal has also accepted the plea taken by Insurance Company against consideration of income tax return Ex. P-30 to determine the income of deceased.

6. On consideration, I find that reasons given by learned Tribunal as well as objections taken by learned counsel for Insurance Company cannot be accepted. Evidence of PW2 clearly goes to show that appellants have not only tendered the document i.e. income tax returns in the evidence as Ex. P-30 and Ex. P-31 and but has also examined official from income tax department, who had duly appeared as PW2 and has clearly stated that as per income tax return,

deceased was a businessman. Deceased had earned gross amount of Rs. 3,21,614/- for the assessment year 2011-12. Deceased had claimed deduction of Rs. 99,452/- and his taxable income was Rs.2,22,162/-, out of which Rs. 6500/- was paid as advance tax and against said tax, he had sought refund of Rs. 98/-. The evidence of PW2, therefore, clearly establishes that deceased was a businessman earning income from business. Therefore, learned Tribunal had wrongly rejected the evidence led by appellants, especially the evidence of PW2. The learned Tribunal ought to have taken income tax return Ex. P-30 in consideration. Claims under Motor Vehicles Act are summary in nature. The standard of proof is preponderance of probabilities and even if *prima-facie* material is available, the Courts are bound to take them in consideration. The evidence in the present case, that deceased was a businessman, filing income tax returns has gone unrebutted. Deceased had filed income tax return for the year 2011-12 prior to his death. Therefore, learned Tribunal has erred in concluding that deceased was an unskilled worker. Rather, from the evidence led by appellant, it is clear that deceased was a businessman and was earning Rs. 2,22,162 minus income tax of Rs. 6,402/- which works out to be Rs. 2,15,760/- as net income. There is no material as to how the deductions were claimed whether deductions were towards business expenses or on account of some other deductions is not clear. When no evidence has been led by appellants to show nature of deduction, the amount of deduction cannot be allowed to be considered as income of deceased. Accordingly, income of deceased has to be taken as Rs. 2,15,760 per annum.

7. This Court finds merit in contention raised on behalf of learned counsel for Insurance Company that learned Tribunal has erred in applying future prospects to the extent of 50% instead of 40% as deceased was aged about 33 years and was having fluctuating income from business. Accordingly, the future prospects in the present case have to be applied to the extent of 40%.

There is no error towards deductions of personal expenses in view of number of dependents. Learned Tribunal has rightly concluded that personal expenses have to be deducted to the extent of $1/3^{rd}$ as deceased was having 3 dependents and his father-appellant No.4 was not found to be dependent upon deceased. Accordingly, I do not find any error in deduction of $1/3^{rd}$ amount.

8. Learned counsel for the appellants has also argued that consortium should have been awarded with increment of 10% and not at the rate of Rs. 40,000/-. However, I do not find any merit in contention of learned counsel for the appellants-claimants that appellants-claimants are entitled to enhanced amount of consortium as death had occurred in 2013 and compensation was awarded in year 2015. The right to seek compensation accrued in 2013 and not at the time of award of compensation. Appellant Nos. 1, 2 and 3 are, therefore, entitled to Rs. 40,000/- each under the head of consortium, however, it is made clear that no compensation under the head of love and affection shall be payable to appellants as the same shall be covered by head of consortium. Appellants shall therefore, be entitled to total amount of compensation to the extent of Rs. 1,20,000/- on account of spousal, parental & filial consortium.

9. In view of above, appellants are entitled to following compensation:-

Income of deceased (As per Ex. P-30 ITR after deduction in income tax from his income	Rs. 2,22,162/- (Rs.2,22,162 – Rs. 6,402)	Rs. 2,15,760/-
Addition toward future prospects	40% (Rs. 21,5760/- +Rs. 86,304/-)	Rs. 3,02,064/-
Deduction on account of personal expenses of deceased	1/3 (Rs.3,02,064/- – Rs. 1,00,688/-)	Rs. 2,01,376/-
Multiplier (As deceased was aged about 33 years)	16	16
Loss of dependency	(Rs. 2,01,376/- x 12 months	Rs. 32,22,016/-

	x16 multiplier)	
Funeral Expenses		Rs. 15,000/-
Loss of Estate		Rs. 15,000-
Loss of Filial consortium (Claimant no. 3) Loss of Parental consortium (Claimant no. 2) Loss of Spousal consortium (Claimant no. 1)	Rs.40,000/- each (Rs. 40,000/-x3)	Rs. 1,20,000/-
Medical bills	As awarded by Tribunal and upheld	Rs. 14,11,100/-
Compensation for expences on account of transportation, attendant and special diet		Rs. 25,000/-
Total compensation award to claimant in appeal		Rs. 48,08,116/-
Enhanced amount of compensation	Rs. 48,08,116/- (awarded in appeal) – Rs. 36,56,100/- (awarded by ld. Tribunal)	Rs. 11,52,016/-

10. Claimants shall be entitled to enhanced compensation as per award along with 7.5% interest from date of filing till date of realization. Appeal and cross objections are disposed of in above terms.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

19.08.2025 **(PARMOD GOYAL)**
manoj **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No