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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-5460-2019 (O&M)**
Date of Decision : 24.03.2025

Shri Ram General Insurance Company Limited ... Appellant(s)

Versus

Lakhwinder Kaur & Ors ... Respondent(s)

2. **FAO-1074-2020 (O&M)**

Lakhwinder Kaur & Ors ... Appellant(s)

Versus

Bhupinder Singh & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajbir Singh, Advocate
for the appellant in **FAO-5460-2019** and
for respondent No.3 in **FAO-1074-2020**.

Mr. Vivek Suri, Advocate and
Mr. Dushyant Godara, Advocate
for respondent Nos.1 to 4 in **FAO-5460-2019** and
for the appellants in **FAO-1074-2020**.

ALKA SARIN, J. (Oral)

1. The present order shall dispose off the two above-noted appeals. The parties are being referred to as the Insurance Company, claimants and owner and driver of the offending vehicle (HR-37C-3186) for the sake of clarity. **FAO-5460-2019** has been filed by the Insurance Company and **FAO-1074-2020** has been filed by the claimants challenging the impugned award dated 24.05.2019 passed by the Motor Accident Claims

Tribunal, Patiala (hereinafter referred to as 'Tribunal') in a motor vehicle accident which occurred on 02.02.2018.

2. The Tribunal vide the impugned award awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Income per month	₹8,500/-
2	Deduction 1/3rd	₹2,833/-
3	Multiplicand	[₹8,500 – 2,833] = ₹5,667/-
4	Multiplier 15	[₹5,667 x 15 x 12] = ₹10,20,060/-
5	Future prospects 40%	₹4,08,024/-
6	Funeral expenses	₹15,000/-
7	Loss of estate	₹15,000/-
8	Loss of consortium	₹40,000/-
	Total Compensation	**₹15,13,084/-**
	Interest	**9% per annum**

3. Learned counsel for the Insurance Company would contend that the FIR was lodged by the father of the deceased and there was no mention of any eyewitness and no details of a Canter (offending vehicle) were given in the FIR. It is further the contention that in the absence of all the details in the FIR, the Tribunal erred in holding that it was a case of rash and negligent driving by the driver of the offending vehicle. It is further the contention of the learned counsel that the said eyewitness had also not taken the deceased to the hospital.

4. *Per contra* the learned counsel for the claimants would contend that in the present case, though the details of the offending vehicle were not given in the FIR, however, Jagdeep Singh, the eyewitness, had stepped into the witness box as CW2 and he had explained that he had witnessed the

accident. He had further explained that he had informed the Police on the next day of the accident and that on the day of the accident he did not inform the Police as there were a lot of people who gathered at the spot. The learned counsel for the claimants has further relied upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Chamundeswari & Ors. [2021 (4) RCR (Civil) 494]** to contend that in matters relating to the motor accident claims, the Tribunal has to give weightage to the evidence produced before it over the contents of the First Information Report (FIR). Qua the quantum of compensation, the learned counsel has contended that the amount of compensation awarded is on the lower side inasmuch the income of the deceased has wrongly been assessed as ₹8,500/- per month. However, the deceased was a driver of a Transport Vehicle and his driving licence was also produced on the record as Ex.C1. The wife of the deceased – Lakhwinder Kaur – had stepped into the witness box as CW1 and filed her affidavit in examination-in-chief as Ex.CW1/A wherein she had clearly stated that her husband was driving a transport vehicle and hence his income ought to have been assessed as that of a skilled worker. The learned counsel for the claimants has further contended that though he does not challenge future prospects and the multiplier as applied by the Tribunal, however, the Tribunal has wrongly applied deduction of 1/3rd, which ought to have been 1/4th as there are four claimants. It is further the contention of the learned counsel that the amount awarded under the conventional heads and under the head 'loss of consortium' are not as per 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. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

5. Qua the enhancement of compensation in FAO-1074-2020, the learned counsel for the Insurance Company has vehemently argued that the amount of compensation awarded by the Tribunal is highly excessive and that there is no further scope of any enhancement.

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

7. In the present case the argument of the learned counsel for the Insurance Company that since the details of the offending vehicle were not given in the FIR, hence, the claim petition ought to have been dismissed deserves to be rejected.

8. Hon'ble Supreme Court in the case of **Parameshwar Subray Hegde Vs. New India Assurance Co. Ltd. & Anr [Civil Appeal No.2223 of 2025 arising out of SLP (C) No.27072 of 2024 decided on 10.02.2025]** has held that even mere mis-description of the make of the vehicle would not be treated as a ground for inconsistency. Further, the Hon'ble Supreme Court in the case of **Chamundeswari** (supra) has held as under :

> *"8. It is clear from the evidence on record of PW–1 as well as PW–3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW–1 & PW–3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only*

due to the negligence of the driver of Eicher van. It is to be noted that PW–1 herself travelled in the very car and PW–3, who has given statement before the police, was examined as eye–witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the judgment, relied on by the appellant's counsel in the case of Oriental Insurance Company Limited v. Premlata Shukla and Others, 2007 (13) SCC 476 , this Court has held that proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report. In the judgment in the case of Nishan Singh and Others v. Oriental Insurance Company Limited, 2018 (6) SCC 765, this Court has held, on facts, that the car of the appellant therein, which crashed into truck which was proceeding in front of the same, was driven negligently by not maintaining sufficient distance as contemplated under Road Regulations, framed under Motor Vehicles Act, 1988. Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the appellant, would not render any assistance in support of his case."

9. In the present case, the claimant – Lakhwinder Kaur – herself had stepped into the witness box as CW1 and the eyewitness had also stepped into the witness box as CW2. The said eyewitness – CW2 – has clearly stated that the accident had taken place due to the rash and negligent driving of the driver of the offending vehicle. During the cross-examination, nothing could be elicited to belie the statement of CW2. In view of the evidence led by the claimants, the argument of the learned counsel for the Insurance Company cannot be accepted.

10. Coming to the quantum of compensation, the argument of the learned counsel for the claimants that the income ought to have been assessed as that of a skilled worker deserves to be accepted. The wife of the deceased – Lakhwinder Kaur – had stepped into the witness box as CW1 and had stated that her husband was a driver of transport vehicle and his driving licence was also placed on the record as Ex.C1 which shows that the licence was for driving a transport vehicle. In view thereof, this Court deems it appropriate to assess the income of the deceased by treating him as a skilled worker as ₹9,300/- per month i.e. as per the minimum wages prevailing at the time of the accident.

11. In the present case, since there is no challenge laid by the learned counsel for the claimants to the future prospects and the multiplier as applied by the Tribunal, hence, the same are accordingly maintained. However, the Tribunal has erroneously applied a deduction of 1/3rd inasmuch as there were four claimants and hence 1/4th deduction ought to have been applied. Further, the amount awarded under the conventional heads and under the head 'loss of consortium' are 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) and 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 (wife, one daughter and parents of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. The interest component awarded by the Tribunal is maintained. Accordingly, the reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly Income	₹9,300/-
2	Annual Income	₹1,11,600/- [₹9,300 x 12]
3	Deduction 1/4th	₹83,700/- [₹1,11,600 – 27,900]
4	Future Prospects - 40%	₹1,17,180/- [₹83,700 + 33,480]
5	Multiplier - 15	₹17,57,700/- [₹1,17,180 x 15]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 1] (ii) Filial [₹48,000/- x 2] (iii) Spousal's	 ₹48,000/- ₹96,000/- ₹48,000/- (Total ₹1,92,000/-)
	Total Compensation	**₹19,85,700/-**

12. 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.

13. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 INSC 361 : Civil Appeal No._____ of 2025 arising out of SLP (C) No.4484 of 2020 decided**

on 18.03.2025], 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 percentage directed by the Tribunal and the share of the minor claimant – Navdeep Kaur – shall be kept in fixed deposit by the Bank concerned. 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.

14. In view of the above discussion, the appeal (**FAO-5460-2019**) filed by the Insurance Company is dismissed and the appeal (**FAO-1074-2020**) filed by the claimants is allowed and accordingly the impugned award passed by the Tribunal stands modified to the above extent. Pending applications, if any, also stand disposed off.

24.03.2025 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

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