

2025:PHHC:019489



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

248

FAO-7452-2014 (O&M)

Date of Decision : 10.02.2025

ORIENTAL INSURANCE CO. LTD.

.... Appellant

VERSUS

SHANKUNTLA DEVI & ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.P. Gupta, Advocate for the appellant.

Mr. Rakesh Dhiman, Advocate for respondents No.1 and 2.

Mr. P.R. Yadav, Advocate for respondent No.4.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the award dated 19.02.2014 passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal').

2. In the present case the accident took place on 27.10.2008 at about 7-7:30 am. The injured/deceased – Om Parkash – was going for a morning walk from his residence at H-Block, Ansal Palam Vihar, Gurgaon when all of a sudden a commercial vehicle (Trailer) bearing registration No.HR-37-4761 came from behind and knocked down the injured/deceased. The accident took place close to the house and his son rushed to the spot of the accident. The injured/deceased received multiple injuries for which he remained admitted in the hospital for a prolonged period and eventually he

died on 25.01.2011. Initially a claim petition was filed for the injuries received by the injured/deceased. However, subsequently the same was withdrawn with liberty to file afresh since Om Parkash died on 25.01.2011.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹10,500
2.	Loss of salary of 26 months	[₹10,500 x 26] = ₹2,73,000
3.	Deduction 1/3 rd	[₹10,500 - ₹3,500] = ₹7,000
4.	Annual income	[₹7,000 x 12] = ₹84,000
5.	Multiplier ‘9’	[₹84,000 x 9] = ₹7,56,000
6.	Medical bills	₹4,57,393
7.	Transportation and funeral	₹25,000
8.	Loss of consortium	₹50,000
	Total Compensation	₹15,61,363 (Rounded off to ₹15,61,500)
	Interest	@ 7.5% per annum

4. Learned counsel for the appellant-Insurance Company would contend that firstly in a case where the claim petition is filed under Section 166 of the Motor Vehicles Act, 1988 it is incumbent upon the claimants to prove that it was a case of rash and negligent driving and in the present case there was no such evidence. It is further the contention that Om Parkash did not die because of injuries received by him in the year 2008 and he actually died in the year 2011 as a result of his heart condition. Learned counsel would further contend that the Tribunal while assessing the compensation has applied the multiplier method and at the same time had also awarded loss of income from the year 2008 to 2011.

5. *Per contra*, learned counsel for claimant-respondents No.1 and 2 would contend that in the present case the categorical case set up by claimant-respondents No.1 and 2 was that the offending vehicle was being driven in a rash and negligent manner and it was the specific stand of the son of deceased, namely, Nikhil Sharma who stepped into the witness box as PW-3. In his cross-examination nothing could be elicited that it was not a case of rash and negligent driving and no evidence was led to the contrary. Learned counsel would further contend that Dr. Raman Sethi, who was posted at Paras Hospital, Gurugram, had stepped into the witness box as PW-6 wherein he had given the complete details of the hospitalization of the deceased and had also stated that Om Parkash died as a result of old injuries as well as of the heart problem. Learned counsel has further pointed to his cross-examination wherein nothing could be elicited to the effect that the death of Om Parkash was not a result of the old injuries. Qua the compensation, learned counsel for the claimant-respondents No.1 and 2 would contend that in case the loss of salary is not to be given applying the multiplier method, the Tribunal ought to have made addition of @ 10% towards future prospects. Learned counsel relies upon the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908 to contend that even in the absence of an appeal or a cross-appeal an order can be passed in favour of the respondents. It is yet further the contention that the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are on the lower side. In support of his contentions the learned counsel for the claimant-respondents No.1 and 2 has relied upon the

judgments of 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]**.

6. Heard.

7. In the present case the argument of the learned counsel for the appellant-Insurance Company that it was not a case of rash and negligent driving as there was no such evidence deserves to be rejected. The son of the deceased, namely, Nikhil Sharma, who stepped into the witness box as PW-3 stated in his Examination-in-Chief that the accident occurred due to the negligence of the driver of the Trailer (the offending vehicle). In his lengthy cross-examination nothing could be elicited that it was not a case of rash and negligent driving. It had further come in the cross-examination that the width of the road was about 25-30 feet, and two vehicles could pass at the same time. In the absence of any evidence to the contrary, no fault can be found with the findings returned by the Tribunal. The second argument of the learned counsel for the appellant-Insurance Company that the death of Om Parkash was not due to the old injuries suffered by him also deserves to be rejected in view of the statement of Dr. Raman Sethi who stepped into the witness box as PW-6. The said doctor stated that post his discharge from the previous hospital, the deceased was admitted in the Paras Hospital for the first time on 16.01.2009 due to the injuries suffered by him i.e. traumatic

raw area right foot and left leg. He was discharged on 17.01.2009. He was administered antibiotics and blood transfusion was also given to him. Thereafter he was again admitted in the said hospital on 22.01.2009 for the same injuries and was discharged on 29.01.2009. The original record and the discharge summary were all produced by the said Doctor. It was further stated that the deceased was again admitted as an indoor patient from 27.04.2009 to 28.04.2009 due to some heart problem. Thereafter he was admitted on 21.01.2011 and remained admitted upto 25.01.2011 and ultimately, Om Parkash expired on 25.01.2011 due to the old injuries as well as a heart problem. It has clearly been stated that one of the reasons for his death was the old injuries. In the cross-examination nothing could be elicited from the said witness to even remotely suggest that the only reason for the death was the heart condition of Om Parkash. In view thereof, the argument of the learned counsel for the appellant-Insurance Company stands rejected. The third argument of the learned counsel for the appellant-Insurance Company that the Tribunal has erred in granting loss of salary as well as in applying the multiplier method deserves to be accepted. Once it was being treated as a death case and a multiplier method was applied, there was no occasion for granting loss of salary for the period the deceased remained admitted in the hospital. However, the Tribunal did not make an addition of @ 10% towards the future prospects nor the amounts awarded under the conventional heads as well as under the head loss of consortium are in consonance with the judgments of the Hon'ble Supreme Court.

8. In view of the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra), this Court deems it appropriate to make an addition of 10% towards future prospects. Further, the amount awarded under the conventional heads as well as under the head ‘loss of consortium’ are on the lower side. Hence, 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), the claimant-respondents No.1 and 2 would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses. The claimants, being the widow and the son of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium. Since there is no challenge to the income of ₹10,500, the deduction of ₹3,500, the multiplier of ‘9’ and the medical bills of ₹4,57,363 as granted by the Tribunal, the same are maintained.

9. Accordingly the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹10,500
2.	Deduction 1/3 rd	[₹10,500 - ₹3,500] = ₹7,000
3.	Annual income	[₹7,000 x 12] = ₹84,000
4.	Future prospects @10%	[₹84,000 + ₹8,400] = ₹92,400
5.	Multiplier ‘9’	[₹92,400 x 9] = ₹8,31,600
6.	Medical bills	₹4,57,393
7.	Funeral expenses	₹18,000
8.	Loss of estate	₹18,000
9.	Loss of consortium (i) Parental (ii) Spousal’s	₹48,000 ₹48,000 Total = ₹96,000
	Total Compensation	₹14,20,993
	Amount awarded by the Tribunal	₹15,61,500
	Difference	₹1,40,507

10. The interest @ 7.5% as awarded by the Tribunal is maintained and the same shall be payable from the date of filing of the claim petition till its realization. The amount shall be apportioned between the claimants as directed by the Tribunal.

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

10.02.2025

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*