IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-5834-2016 (O&M)
Reserved on : 27.08.2025
Date of Pronouncement : 12.09.2025

The Oriental Insurance Company Limited ......Appellant

Vs.

Smt. Mathri Devi and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Sehaj Mahajan, Advocate, for
Mr. Raj Kumar Bashamboo, Advocate,
for the appellant.

Mr. Aman Arora, Advocate, for
Mr. Mukesh Yadav, Advocate,
for respondents No.3 & 4.

****

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 23.10.2015 passed in the claim petition filed under Sections 166/140 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal'), wherein the appellant-Insurance company was held liable to pay the compensation to the claimants/respondents No.1 and 2 to the tune of Rs.14,37,200/- along with interest @ 9% per annum on the ground of quantum of compensation to be on the higher side.

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

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

narration of the facts of the case is not required to be reproduced and is skipped herein for the sake of brevity.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

3. Learned counsel for the appellant/Insurance company contends that the learned Tribunal erred in assessing the income of the deceased and has awarded excessive amount under the conventional heads, while calculating compensation. Therefore, he prays that the present appeal be allowed and award be modified/reduced.

4. *Per contra*, learned counsel for respondents No.3 and 4 argues on the lines of the award passed by the learned Tribunal.

5. I have heard learned counsel for the parties and perused the whole record of this case.

6. The relevant portion of the award dated 23.10.2015 passed by the learned Tribunal is reproduced as under:-

> *"19. To prove this issue, learned counsel for the petitioners took me to the testimony of PW2 Smt. Mathri Devi. Learned counsel for the petitioners contended that it is clear from the statement of PW2 that deceased Amar Singh was earning Rs.20,000/- per month from the salary as well as agriculture and he was 23 years of age at the time of death.*
>
> *20. On the other hand, learned counsel for the respondents have submitted that income of the deceased has not been proved.*
>
> *21. Although, PW2 Smt. Mathi has deposed that deceased Amar Singh was earning Rs.20,000/- per month from his salary as well as by doing the agricultural work. But this tribunal is of the view that except the bald statement of the petitioner-Smt. Mathi Devi there is no evidence that the deceased Amar Singh was earning Rs.20,000/- per month. The State Government has issued notification/circulars time to time for fixing the minimum wages to be paid daily wagers. In the present case, death occurred 21.11.2014, therefore, this court can take*

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

judicial notice of the notification/circulars issued by the State Government and accordingly fixed the monthly income of the deceased Amar Singh as Rs.8, 100/- per month. As minimum wages fixed for the year 2014-2015 was Rs.8,100/- per month. Keeping in view the settled law in the case of <u>Rajesh and others Versus Rajbir Singh & anothers 2013 (4) Law Herald (SC) 3006</u>, 50% of the income assessed is added and so his monthly income comes to Rs.12,150/- (Rs.8100+Rs.4050/). The petitioner while appearing as PW2 has deposed that they were dependent upon the income of the deceased. The deceased was unmarried and it is expected that deceased Amar Singh was spending 50% of his income for his personal expenses. Accordingly, 1/2 of the monthly income assessed by this tribunal is deducted towards personal expenses and so after deducting 1/2 of his income, his monthly dependency comes to Rs.6,075/- and annual dependency comes to Rs.72,900/- (Rs.6075x12). As per PMR Ex.P7, the age of deceased was 24 years at the time of his death. As per the settled law, multiplier of 18 is to be applied in the present case while assessing the amount of compensation under the head of loss of earning capacity. Accordingly, after applying multiplicand of 18, the total amount comes to Rs.13,12,200/-.

22. In addition to the amount awarded above petitioners are also entitled to get Rs.25,000/- under the head of funeral expenses.

23. In view of the settled law, this tribunal also considers it appropriate to award Rs.1,00,000/-in favour of the petitioners on account love and affection. In this manner the petitioners would be entitled to total compensation of Rs. 14,37,200/-."

7. A perusal of the impugned award reveals that learned Tribunal had assessed the income of the deceased on the basis of prevailing government notifications for daily wage earners, in the absence of proof of the alleged monthly income of Rs.20,000/-. Hence, the computation of income, as undertaken by the learned Tribunal, warrants no interference.

8. Further, coming to the application of multiplier. The deceased was stated to be 23 years old at the time of alleged accident. However,

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

according to the post mortem report, the deceased was 24 years old. It is well settled principle of law that there is no inhibition in taking age according to the post mortem report. Reference may be made to judgment passed in **Sunita v. Vinod Singh, 2025 INSC 366**, wherein Hon'ble the Supreme Court reiterated this principle. The relevant portion of the judgment is reproduced as under:-

> *"11. The amount arrived at by the High Court of the monthly income being Rs.5,819/- (Rupees Five Thousand Eight Hundred and Nineteen) as against the claim of Rs.10,000/- (Rupees Ten Thousand) appears to be on the lower side as the total earning of the deceased from family pension itself ought to have been considered which itself would come to Rs.5,137/- (Rupees Five Thousand One Hundred and Thirty-Seven) to which the notional wages as a home maker had to be added, which we find is reasonable as has been taken by the High Court at Rs.2,500/- (Rupees Two Thousand Five Hundred). Thus, the monthly income would come to Rs.7,637/- (Rupees Seven Thousand Six Hundred and Thirty- Seven), which we are inclined to round off at Rs.7,000/- (Rupees Seven Thousand). Coming to the multiplier factor which is dependent on the age, there is sufficient indication that the deceased was aged about 45 years as per the Post-Mortem Report which is a scientific assessment of the age of the deceased. The purported discrepancy in the age with regard to that of the claimant and the deceased is erroneous for the reason that when the claim was filed, appellant no.1 was aged about 30 years and a difference of 15 years between the daughter-in-law and the mother-in-law cannot be said to be totally devoid of reality given the contextual and prevalent societal norms in vogue at the time of marriage of the deceased which could have been at least 25 to 30 years prior to her death i.e., in or about the 1970s.* ***Moreover, in the absence of material indicating to the contrary, there is no inhibition to accept the age of the deceased as per the Post-Mortem Report.*** *Thus, we are inclined to grant her the benefit of multiplier of 14 taking her age as 45 years. With regard to the loss of love and affection, Pranay Sethi (supra) grants Rs.40,000/- (Rupees Forty Thousand) per head with escalation of 10% every three years for loss of consortium which has been interpreted in Magma*

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

> *General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 to include spousal, parental, and filial consortium. Thus, there being five claimants the amount shall be [Rs.48,000/- x 5] which comes to Rs.2,40,000/- (Rupees Two Lakhs and Forty Thousand) payable under the head of loss of love and affection."*

As a sequel of above discussion, the deceased was held to be 24 years old, therefore, the multiplier of 18 applied by the learned Tribunal is correct and does not require indulgence of the Court.

9. As regards the deduction towards personal and living expenses, since the deceased was unmarried and left behind only two dependents, the learned Tribunal rightly deducted 50% (i.e. 1/2) of the income, as per the settled law. Hence, no interference is warranted in this regard.

10. However, the learned Tribunal has erred in applying an addition of 50% towards future prospects. As per the settled position of law laid down in ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680]**, in case of self-employed persons below 40 years of age, the permissible addition is 40% and not 50% towards future prospects.

11. As regards the conventional heads, namely funeral expenses and loss of consortium, the compensation granted by the Tribunal is reasonable and in consonance with prevailing judicial precedents. Hence, there is no ground to interfere with or modify the same.

12. Furthermore, a perusal of the impugned award reveals that no amount of compensation has been granted by the learned Tribunal under the head of "**Loss of Estate**", which, as held in ***Pranay Sethi's case (supra)***, is a mandatory conventional head of compensation. This Court in **FAO-195-2006**, titled **Mamata and others v. Happy and others**, decided on

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

29.05.2024, while examining the scope of the appellate jurisdiction under Section 107 CPC read with Order XLI Rule 33 CPC, has held as follows:-

> *"11. **RELEVANT PROVISONS UNDER THE CODE OF CIVIL PROCEDURE, 1908***
>
> > *Section 107 :- Powers of Appellate Court.— (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—*
> >
> > *(a) to determine a case finally;*
> >
> > *(b) to remand a case;*
> >
> > *(c) to frame issues and refer them for trial;*
> >
> > *(d) to take additional evidence or to require such evidence to be taken.*
> >
> > *(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.*
> >
> > ***Order XLI Rule 33 of the Code of Civil Procedure, 1908:-***
> >
> > ***33. Power of Court of Appeal**.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit be*

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

[Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

12 to 18 XXX XXX XXX

19. As per Section 107 of Code of Civil Procedure, 1908 which refers to the powers of the Appellate Court, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein, and the Motor Vehicle Act 1988 since being a beneficial legislation, the evidence led by the parties cannot be ignored by the Appellate Authority.

20 to 25 XXX XXX XXX

CONCLUSION

26. The Appellate Courts for the purpose of doing complete justice between the parties and completely adjudicating upon all the disputes, after appreciating the whole evidence on record, have power under Section 107 read with Order XLI Rule 33 of the Code of Civil Procedure, 1908 to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

27. Motor vehicle statute is a beneficial legislation. Generally the victims/claimants/legal-representatives are not aware of their right to compensation and it is Advocates who

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

decide under which provision of the statute the claim petition is to be filed. Before deciding the claim petitions, after appreciating the evidence on record, it is the bounden duty of the Court to apprise the parties of their legal rights as to under which provision they can get the maximum of benefit/compensation. The Judges should apply their judicial mind after appreciating the evidence on record, gravity of offence, gravity of loss, conduct of parties and over all facts and circumstances of each case and after that decide the same. The Court should not go into the technicalities that under which provision of statute case is to be filed, specially in the motor accident cases. If at any stage after appreciating the evidence, since it is original jurisdiction of the Court and the case is at initial stage, normally a person of ordinary prudence can calculate the loss of near and dear one's/relationship, the Judge feels that case of the claimant falls under a particular section he should apprise the parties regarding the same. The Courts should not apply straight jacket formula in every case and are presumed actually to do the justice by applying their judicial mind to the facts and circumstances of each and every case. The beneficial intent of the legislation ought to be borne in mind and procedural and technical formalities cannot be invoked to defeat the purpose of the legislation.

28. The Courts have to be very cautious and careful while accepting the prayer of the claimants/appellants to convert the claim petition filed under Section I63-A to Section 166 of the Motor Vehicles Act, 1988. Under Section 107 read with Order XLI Rule 33 of CPC the general rule is that an appeal is persistence of a suit and, therefore, an Appellate Court can do, while the appeal is pending, what the original Court could have done while the suit was pending. Thus, as per Section 107 Order XLI Rule 33 of CPC, an Appellate Court is empowered to

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

re-appreciate the evidence. While hearing the appeal it is very important for a judge to apply his judicial mind. The Appellate Authority can re-appreciate the evidence before it. The grant of just and fair compensation is a statutory responsibility of the Court.

29. Over all conclusion of the above is that the Appellate Court has power to convert the petition under Section 163-A to Section 166 of the Motor Vehicles Act, 1988 to give justice to the claimants."

13. It is manifest from the above discussion that although respondents/claimants No.1 and 2 have not preferred any appeal seeking enhancement of compensation, and the present appeal has been instituted solely by the appellant-Insurance Company challenging the quantum of compensation, the settled principle of law is that an appeal is a continuation of the original proceedings. Consequently, the appellate court is vested with ample jurisdiction to mould relief and to award just and proper compensation, even in the absence of a cross-appeal by the claimants.

14. In exercise of such appellate powers, this Court cannot overlook the beneficial nature of the Motor Vehicles Act, 1988, which has been consistently interpreted as a piece of social welfare legislation intended to provide just compensation to victims of motor accidents and their dependents. The statutory duty of the Court is to ensure that the claimants are not deprived of legitimate entitlement merely due to procedural technicalities such as the absence of a cross-appeal.

15. Accordingly, in the interest of justice, and to secure the ends of a fair adjudication, this Court deems it appropriate to award a further sum of

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

₹18,150/- under the head "Loss of Estate" in favour of respondents/claimants No.1 and 2.

16. It is well settled by the Hon'ble Supreme Court in ***K. Ramya v. National Insurance Co. Ltd., 2022 (4) RCR (Civil) 435*** that the Motor Accident Claims Tribunals are vested with latitude to determine "just compensation" and are not shackled by rigid arithmetical rules or strict standards of evidence as in civil suits for damages. Interference by the Appellate Court is warranted only when the award of compensation is manifestly excessive, arbitrary, or contrary to settled principles.

17. In view of the law laid down by Hon'ble the Supreme Court in ***Pranay Sethi 's case (Supra)***, the compensation is re-calculated as under:-

Sr. No.	***Heads***	***Compensation Awarded***
1	Monthly Income	Rs.8,100/-
2	Future prospects @ 40%	Rs.3,240/- (40% of 8,100)
3	Deduction towards personal expenditure 1/2	Rs.5,670/- {(8,100 + 3,240) X 1/2}
4	Total Income	Rs.5,670/- (11,340 – 5,670)
5	Multiplier	18
6	Annual Dependency	Rs.12,24,720/- (5,670 X 12 X 18)
7	Funeral Expenses	Rs.25,000/-
8	Loss of consortium	Rs.1,00,000/-
9.	Loss of Estate	Rs.18,150/-
	Total Compensation	**Rs.13,67,870/-**
	Amount Awarded by the Tribunal	**Rs.14,37,200/-**
	Reduced amount	**Rs.69,330/-**

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document

18. In view of the above, the appeal is **partly allowed**. The impugned award dated 23.10.2015 is modified to the extent that the addition towards future prospects shall stand reduced from 50% to 40%, in consonance with the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***. In addition thereto, an amount of **Rs.18,150/-** is awarded under the head '**Loss of Estate**', as per the conventional heads recognized therein. Except for the aforesaid modification, the remaining findings contained in the award of the learned Tribunal are hereby affirmed. The award shall stand modified accordingly.

19. The statutory amount of Rs.25,000/- deposited by the appellant-Insurance Company at the time of admission of the appeal is ordered to be refunded to it.

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

(SUDEEPTI SHARMA)
JUDGE

12.09.2025
Virender

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

VIRENDRA SINGH ADHIKARI
2025.09.19 11:10
I attest to the accuracy and
integrity of this document