

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****236****FAO-8698-2014 (O&M)****Date of Decision : 28.01.2025**

Satpal Kaur and Others

....Appellants

VERSUS

Buta Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajbir Singh, Advocate for the appellants.

Mr. Manish Bansal, Advocate for

Ms. Mansi Bansal, Advocate for respondent Nos.1 and 2.

Mr. Punit Jain, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation as well as the finding whereby contributory negligence of Harpreet Singh (hereinafter referred to as the 'deceased') was held to be 50% by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as the 'Tribunal') vide award dated 15.07.2014.

2. The brief facts relevant to the present *lis* are that on 15.12.2012 the deceased – Harpreet Singh – alongwith Dharamjit Singh was going to Patiala in a Maruti Zen Car bearing registration No.PB-31-D-6131, which was being driven by the deceased and Dharamjit Singh was sitting as a passenger. They were being followed by Kirpal Singh and Rajvir Singh in

their Jeep bearing registration No.PB-13-W-3200. At about 06.00 am, when they reached near bypass of village Nadampur towards Patiala, a truck bearing registration No.PB-13-V-9767 (hereinafter referred to as the 'offending vehicle'), owned by respondent Nos.1 and 2 and driven by respondent No.1, was parked in the middle of the road without any indicators or parking lights. On account of the darkness, the deceased could not notice the offending vehicle parked in the middle of the road as a result of which he hit the offending vehicle. Both the occupants of the Maruti Zen car died on the spot. FIR was registered. The claim petition was filed by the claimant-appellants averring therein that the deceased was 20 years of age and had completed his pre-sea training from Indus Seafarers Training Academy, Chennai (under Omega Maritime Management Services Private Limited) approved by Director General of Shipping, Government of India and had obtained a certificate-cum-seafarers identity document from Government of India and was also selected for ship training and was to get job in Indian Merchant Navy. In a written statement jointly filed by respondent Nos.1 and 2 the accident was denied. However, it was admitted that the offending vehicle was owned by respondent Nos.1 and 2. Respondent No.3-Insurance Company also filed it's written statement raising various preliminary objections. On merits it was stated that the driver of the offending vehicle was not holding a valid and effective driving licence and that the offending vehicle was not being driven as per provision of the Motor Vehicles Act, 1988.

3. From the pleadings of the parties the following issues were framed :

- 1. Whether death of Harpreet Singh took place as a result of motor vehicle accident on 15.12.2012 at about 06.00 am in the area of village Nadampur bypass on Bhawanigarh-Patiala road due to rash and negligent driving of respondent Buta Singh of truck bearing registration No.PB-13-V-9767 ? OPA
- 2. If issue No.1 is proved, whether the applicants are entitled to compensation, if so, to what amount and from whom ? OPA
- 3. Whether respondent No.1 was holding a valid and effective driving licence at the time of accident ? OPR-1
- 4. Relief.

4. The Tribunal on issue No.1 though held that the accident stood proved, however, held that the deceased – Harpreet Singh – driver of the car, had not been driving his vehicle with care and caution and hence, held it to be a case of contributory negligence to the extent of 50%. The Tribunal in the awarded the following compensation holding appellant No.1 entitled to the compensation and appellant Nos.2 and 3, who are father and sister of the deceased, were not given any share in compensation. Hence, the present appeal by the claimant-appellants.

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.15,000/-
2	Future prospects – 30%	[Rs.15,000 + 4,500] = Rs.19,500/-
3	Annual income	[Rs.19,500 x 12] = Rs.2,34,000/-
4	Deduction – 50%	[Rs.2,34,000 – 1,17,000] = Rs.1,17,000/-
5	Multiplier of 18	[Rs.1,17,000 x 18] = Rs.21,06,000/-

6	Loss of estate	Rs.10,000/-
7	Funeral expenses	Rs.25,000/-
	Total Compensation	Rs.21,41,000/-
	Interest	9% per annum

5. Learned counsel for the claimant-appellants would contend that the Tribunal, merely on the premise that the Maruti Zen car was not being driven carefully and with caution keeping in view the inclement weather and the time when the accident took place, held it to be a case of contributory negligence. Learned counsel for the claimant-appellants has relied upon a judgment of the Hon’ble Supreme Court in the case of **Smt. K. Anusha & Ors. vs. Regional Manager, Shriram General Insurance Co. Ltd. [2021(4) RCR (Civil) 569]** to contend that to establish contributory negligence, some act or omission, which materially contributed to the accident to damage, has to be attributed to a person against whom the contributory negligence is alleged. Learned counsel for the claimant-appellants would further contend that despite all the certificates of the deceased having been appended, his income was assessed as Rs.15,000/- per month. It is further the contention that the Tribunal has made an addition of 30% towards loss of future prospects. The deceased in the present case was 20 years of age and hence an addition of 40% ought to have been made towards loss of future prospects. Further, the amounts awarded under the conventional heads as well as under the head ‘loss of consortium’ are also not in accordance with the law laid down by Hon’ble Supreme Court. It has further been contended that though the father and sister of the deceased were

not held entitled to compensation, however, they would be entitled to loss of filial consortium. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**, **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]**.

6. *Per contra* learned counsel for respondent No.3 would contend that sufficient amount of compensation has already been awarded. It is further the contention that it was clearly a case of contributory negligence as the deceased, who was driving the ill-fated car, did not take full care and precaution.

7. Heard.

8. In the present case the accident took place on 15.12.2012 at 06.00 am. The driver of the offending vehicle, who stepped into the witness-box, merely denied the factum of the accident. It is an admitted fact that the driver of the offending vehicle was even convicted in a criminal case vide judgment dated 01.10.2015. It has nowhere come in the evidence of the respondents that the offending vehicle was parked on the side or there were any indicators which were switched on by the driver of the offending vehicle while parking it in the middle of the road. Hon'ble Supreme Court in the case of **Smt. K. Anusha** (supra) has held as under :

“ 13. Therefore, the entire reasoning of the High Court on Issue No.1 is riddled with inherent contradictions. To establish contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged. In *Pramodkumar Rasikbhai Jhaveri vs. Karmasey Kunvargi Tak and Others*, (2002) 6 SCC 455 this Court quoted a decision of the High Court of Australia in *Astley v. Austrust Ltd.*, (1999) 73 ALJR 403, to hold that “where, by his negligence, one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty”. In fact, the statement of law in *Swadling v. Cooper*, 1931 AC 1, that “the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute negligence....” , was also quoted with approval by this Court. Therefore, we are compelled to reverse the finding of the Tribunal and the High Court on the question of contributory negligence.”

9. There is not an iota of evidence on the record to even remotely suggest that there was some act or omission on the part of the deceased, the driver of the Maruti Zen car, which contributed to the accident. In view thereof, the findings returned by the Tribunal qua the contributory

negligence cannot be sustained and are accordingly set aside.

10. The argument of learned counsel for the claimant-appellants that the income of the deceased has wrongly been assessed as Rs.15,000/- deserves to be accepted. The deceased in the present case was 20 years of age and had completed his pre-sea training from Indus Seafarers Training Academy, Chennai. Ex.C1 to Ex.C3 were the certificates of the courses undergone of Maritime Management Services Private Limited. As per Ex.C11, the deceased had completed training course in personal safety and social responsibilities at Indus Seafarers Training Academy Chennai. As per Ex.C12, the deceased had completed training course in Fire Prevention and Fire Fighting at Indus Seafarers Training Academy, Chennai and further as per Ex.C13 the deceased had completed six months pre-sea general purpose rating course at Indus Seafarers Training Academy, Chennai. Hon'ble Supreme Court in the case of **Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & Anr. [2014(4) RCR (Civil) 543]** had assessed the income of the deceased, who was 19 years of age and was a student of medicine, as Rs.25,000/- per month for an accident which took place in the year 2002. In para 9 it was held as under :

“ 9. We have heard the learned counsel for the parties. In our considered view, the deceased was 19 years old and was pursuing his medical degree with good marks at the time of the accident. With respect to the future income of students pursuing professional courses we refer to Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr. 2010 (4) RCR (Civil) 917: 2010 (6) Recent Apex

Judgments 9R.A.J.) 276: (2010) 10 SCC 254, wherein this Court held as under:-

“ 14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs.3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs.60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs.60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis....”

The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of

medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs.18,000/- per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case. The deceased was a diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs.25,000/- p.m. i.e. Rs.3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi and Ors., 2010(1) RCR (Civil) 93 : 2009(6) Recent Apex Judgments (R.A.J.) 689 : (2009) 13 SCC 123, and applying the appropriate multiplier of 13, keeping in mind the age of the parent of the deceased, as per the guidelines laid down in Sarla Verma case (supra), we arrive at a total loss of dependency at Rs.26,00,000/-[(Rs.3,00,000/- minus 1/3 X Rs.3,00,000/-)X 13].”

Further, Hon’ble Supreme Court in the case of **Basanti Devi & Anr. Vs.**

Divisional Manager, The New India Assurance Company Ltd. & Ors.

[2022(1) RCR (Civil) 516], where the deceased was a Bachelor of Engineering in Computer Technology, had taken the income as Rs.20,000/- per month. The accident in the present case took place in the year 2012. Therefore, this Court deems it appropriate to assess the income of the deceased as Rs.25,000/- per month.

11. In the present case, there is no challenge to the deduction and multiplier as applied by the Tribunal and hence the same are maintained. However, the Tribunal has made an addition of 30% towards loss of future prospects. The deceased in the present case was more than 20 years of age and hence in view of the law laid down by Hon'ble Supreme Court in case of **Pranay Sethi** (supra), an addition of 40% ought to have been made towards loss of future prospects. Further, the amount awarded by the Tribunal under the conventional heads is not accordance with the law and 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-appellants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses. The Tribunal has not awarded any amount towards loss of consortium. Though the Tribunal has held that the father and sister of the deceased would not be entitled to compensation, however, they would be entitled to loss of filial consortium. Accordingly, the appellants i.e. mother, father and sister would be awarded Rs.48,000/- each (Rs.40,000+20% increase) towards loss of filial consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.25,000/-
2	Annual income	[Rs.25,000 x 12] = Rs.3,00,000/-
3	Deduction 50%	[Rs.3,00,000 – 1,50,000] = Rs.1,50,000/-
4	Future prospects @ 40%	[Rs.1,50,000 + 60,000] = Rs.2,10,000/-
5	Multiplier of 18	[Rs.2,10,000 x 18] = Rs.37,80,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	[Rs.48,000 x 3] = Rs.1,44,000/-
	Total	Rs.39,60,000/-

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. Appellant No.1-mother of the deceased would be entitled to enhanced amount of compensation as mentioned above and appellant Nos.2 and 3 i.e. father and sister of the deceased would only be entitled to Rs.48,000/- each towards filial consortium.

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

28.01.2025
jk

(ALKA SARIN)
JUDGE

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