

**IN THE HIGH COURT OF PUNJAB AND HAR YANA AT CHANDIGARH****236-1****FAO-8708-2014 (O&M)****Date of Decision : 28.01.2025**

Amarjit Kaur and Ors.

....Appellants

VERSUS

Buta Singh and Ors.

....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 challenging the award dated 15.07.2014 passed by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as the 'Tribunal') aggrieved by the quantum of compensation as well as the finding whereby 50% amount of compensation has been deducted on account of contributory negligence of Harpreet Singh, driver of the Maruti Zen car bearing registration No.PB-31-D-6131, in which Dharamjit Singh (hereinafter referred to as the 'deceased') was a passenger.

2. The brief facts relevant to the present *lis* are that on 15.12.2012 the deceased – Dharamjit Singh – alongwith Harpreet Singh was going to Patiala in a Maruti Zen Car bearing registration No.PB-31-D-6131 which was being driven by the Harpreet Singh and the deceased - 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, Harpreet Singh could not notice the offending vehicle parked in the middle of the road as a result of which it hit the offending vehicle. Both the occupants of the Maruti Zen car died on the spot. FIR was registered. 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 Dharamjit Singh took place as a result of rash and negligent driving of respondent Buta Singh of truck bearing registration No.PB-13-V-9767 on 15.12.2012 at about 06.00 am in the area of village Nadampur bypass on Bhawanigarh-Patiala road ? 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 Harpreet Singh, driver of the Maruti Zen 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 present case had awarded the following compensation holding appellant No.1 entitled to the compensation and appellant No.2 and proforma respondent No.4, 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.6,250/-
2	Future prospects – 30%	[Rs.6,250 + 1,875] = Rs.8,125/-
3	Annual income	[Rs.8,125 x 12] = Rs.97,500/-
4	Deduction – 50%	[Rs.97,500 – 48,750] = Rs.48,750/-
5	Multiplier of 18	[Rs.48,750 x 18] = Rs.8,77,500/-
6	Loss of estate	Rs.10,000/-
7	Funeral expenses	Rs.25,000/-
	Total Compensation	Rs.9,12,500/-
	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, wrongly held it to be a case of contributory negligence especially when the deceased was only a passenger in the said car and could not in any manner have contributed to the accident. Learned counsel for the claimant-appellants has relied upon a judgment of Hon'ble Supreme Court in 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. 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 24 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 the 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 person 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 driver of the Maruti Zen car, in which the deceased in the present case was travelling as a passenger and could not have in any manner contributed to the accident. In view thereof, the finding returned by the Tribunal qua the contributory negligence cannot be sustained and is accordingly set aside.

10. In the present case, there is no challenge to the income, 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 24 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 consortium. Accordingly, the appellants i.e. mother, father and sister would be entitled to 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.6,250/-
2	Annual income	[Rs.6,250 x 12] = Rs.75,000/-
3	Deduction 50%	[Rs.75,000 – 37,500] = Rs.37,500/-
4	Future prospects @ 40%	[Rs.37,500 + 15,000] = Rs.52,500/-
5	Multiplier of 18	[Rs.52,500 x 18] = Rs.9,45,000/-
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.11,25,000/-

11. 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 No.2 and proforma respondent No.4 i.e. father and sister of the deceased would only be entitled to Rs.48,000/- each towards filial consortium.

12. 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