295

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-74-2022 (O&M)
Date of Decision : 20.05.2025

Tammana & Ors ... Appellant(s)

Versus

Hassan Mohamad & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Utsav Sharma, Advocate and
Ms. Saroj Kumari, Advocate for
Mr. Sandeep K. Sharma, Advocate for the appellants.

Ms. Malkit Kaur, Advocate for respondent Nos.1 to 3.

Mr. Rahul Pathania, Advocate for respondent No.4.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the appellants aggrieved by the impugned award dated 16.04.2021 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'Tribunal'). The parties are being referred to as claimants, owner, driver, and the Insurance Company for the sake of clarity.

2. Brief facts relevant to the present *lis* are that on 30.12.2017 at about 10.00 am, the deceased – Mithun – was on his way from village Lahli to Hisar on his motorcycle bearing Registration No.HR-99-T(AF). Jeet Singh son of Raje, father of the deceased, and his younger son Deepak were following him on a separate motorcycle and when they reached near Village Basana, a Mahindra Scorpio bearing Registration No.HR-50-C-7600 (hereinafter referred to as 'offending vehicle) being driven by the driver, in a

rash and negligent manner, came from the side of village Basana and rammed into the motorcycle of the deceased. As a result of this, the deceased fell and received grievous injuries. After the accident, the offending vehicle also turned turtle. Registration number of the offending vehicle was noted by Jeet Singh (PW1). The deceased was taken to the Civil Hospital, Rohtak where he was declared brought dead. On the statement of Jeet Singh, FIR No.498 dated 30.12.2017 was registered under Sections 279, 304-A of the Indian Penal Code, 1860 at Police Station Kalanaur. The claim petition was filed by the widow, minor daughter and parents of the deceased.

3. A joint written statement was filed by the driver and owner of the offending vehicle who alleged that the accident occurred due to the rash and negligent driving of the deceased himself. The Insurance Company raised various preliminary objections. It was further the plea taken that the motorcycle of the deceased was on the wrong side of the road when it hit the offending vehicle.

4. On the basis of the pleadings, the following issues were framed:

> 1. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. Mahindra Scorpio bearing registration No.HR-50-C-7600 by respondent No.1 ? OPP
>
> 2. If issue No.1 is proved, whether Mithun son of Jeet Singh had died due to the injuries sustained by him in the above-said accident, if so to what amount of compensation and from whom, the claimants are entitled to ? OPP

3. Whether there was willful violation of the terms and conditions of the insurance policy, if so to what effect ? OPR-4

4. Relief.

5. The Tribunal vide the impugned award dated 16.04.2021 held it to be a case of contributory negligence to the extent of 50% and had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹9,000/-
2	Future prospects 40%	[₹9,000 + 3,600] = ₹12,600/-
3	Deduction 1/4th	[₹12,600 – 3,150] = ₹9,450/-
4	Annual income	[₹9,450 x 12] = ₹1,13,400/-
5	Multiplier of 17	[₹1,13,400 x 17] = ₹19,27,800/-
6	Contributory Negligence @ 50%	[₹19,27,800 – 9,63,900] = ₹9,63,900/-
7	Funeral expenses	₹15,000/-
8	Loss of estate	₹15,000/-
9	Loss of consortium	₹40,000/-
10	**Total Compensation**	**₹10,33,900/-**
	Interest	**6% per annum**

6. Aggrieved by the quantum of compensation as well as the finding qua the contributory negligence, the present appeal has been preferred by the claimants.

7. Learned counsel for the claimants would contend that there was no evidence led by the driver and owner of the offending vehicle as well as the Insurance Company qua contributory negligence nor was any issue framed regarding the same. In support of his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **M. Nithya &**

Ors. Vs. SBI General Insurance Company Limited [SLP(Civil) Nos.833-834 of 2023 decided on 03.01.2025].

8. Qua the enhancement of compensation, the learned counsel for the claimants states that he does not challenge the income, deduction, future prospects as well as the multiplier as applied by the Tribunal. He, however, submits that the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are not as per the law laid down by the Hon'ble Supreme Court. In support of his contentions, the learned counsel for the claimant-appellants 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]; N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

9. Learned counsel for the respondents would contend that since the deceased was found to be riding the motorcycle on the wrong side of the road, hence, the finding regarding contributory negligence cannot be faulted with. Qua the enhancement of compensation, the learned counsel have vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

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

11. In the present case, though a plea had been raised by the Insurance Company that the deceased was riding the motorcycle on the wrong side of the road, however, no evidence was produced except for

placing on record a copy of the site plan (Ex.P5). There was no issue framed by the Tribunal qua contributory negligence. Hon'ble Supreme Court in the case of **M. Nithya** (supra) has held as under :

> *"7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributary negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributary negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributary negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained."*

12. The copy of the site plan (Ex.P-5) was tendered in evidence and no one stepped into the witness box to prove the same. There is no cogent evidence to even remotely suggest that the accident was caused partly due to the negligence of the deceased. Further, in the absence of any issue regarding contributory negligence, the finding qua contributory negligence

cannot be sustained and the same is accordingly set aside.

13. In the present case no appeal has been preferred by the Insurance Company. Since no challenge has been laid down by the learned counsel for the claimants to the income, future prospects, deduction as well as multiplier as applied by the Tribunal, the same are accordingly maintained. The amounts 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 (widow, daughter and parents of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. The rate of interest as awarded by the Tribunal is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**	
1	Monthly Income	₹9,000/-	
2	Annual Income	₹1,08,000/-	[₹9,000 x 12]
3	Deduction 1/4th	₹81,000/-	[₹1,08,000 - 27,000]
4	Future Prospects - 40%	₹1,13,400/-	[₹81,000 + 32,400]
5	Multiplier - 17	₹19,27,800/-	[₹1,13,400 x 17]
6	Loss of estate	₹18,000/-	
7	Funeral expenses	₹18,000/-	
8	Loss of consortium (i) Parental [₹48,000/- x 2] (ii) Filial (iii) Spousal's	 ₹96,000/- ₹48,000/- ₹48,000/- (Total ₹1,92,000/-)	
	Total Compensation	**₹21,55,800/-**	

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

15. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 INSC 361 : Civil Appeal No.4299 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 directed by the Tribunal and the share of the minor claimant (appellant No.2 herein) 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.

16. In view of the above, the present appeal is allowed and the impugned award stands modified to the extent stated above. Pending applications, if any, also stand disposed off.

20.05.2025 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

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