IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

262 **FAO-2763-2017**

Judgment reserved on 07.08.2025
Judgment pronounced on 02.09.2025

NATIONAL INSURANCE CO. LTD. ... APPELLANT

VERSUS

KULDEEP KAUR AND ORS ...RESPONDENTS

AND

FAO-6868-2017 (O&M)

KULDEEP KAUR AND OTHERS ... APPELLANTS

VERSUS

BALWINDER KUMAR ALIAS SONU AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Vinod Gupta, Advocate and
Mr. Didar Singh, Advocate
for the Insurance Company.

Mr. Anil Kumar Spehia, Advocate
for the claimants.

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PARMOD GOYAL, J.

1. This common order shall dispose of two FAOs, one preferred by claimants and another preferred by the respondent-Insurance Company, against the award dated 23.12.2016 passed by the Court of Motor Accident Claims Tribunal, Jalandhar (hereinafter referred as 'Tribunal') whereby claim petition preferred by claimants was allowed and claimants were held entitled to total

compensation of Rs. 11,45,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

2. On the one hand, claimants are aggrieved by amount of compensation awarded to them on the ground that it is not as per law as future prospects, deduction on account of personal expenses and multiplier as well as compensation awarded under other heads, have not been awarded properly. It is the case of the claimants that Tribunal has erred in not granting compensation towards future prospects, especially when deceased was 20 years old. Similarly, Tribunal has erred in taking 50% as personal expenses, when the claimants were 3 in number i.e. mother and minor sisters. Award of multiplier of 17 was stated to be erroneous as deceased was 20 years and multiplier of 18 has been sought. It is asserted that no proper compensation towards loss of estate and consortium has been awarded as well as towards loss of love and affection towards claimants.

3. On the other hand, appellant-Insurance Company has challenged award passed by Motor Accident Claims Tribunal on the ground that learned Tribunal had not taken in consideration the fact that it was tractor alone which was insured with insurance company whereas accident was caused by tractor-trolley and no separate premium for trolley was paid.

4. From the pleadings of respective parties, the following issues were framed:-

> "1. *Whether Jaspal alias Jaspal Singh died in a motor vehicle accident which took place on 27.8.2015 at about 8.40 p.m. in the area near Bus Stand Shahkot District Jalandhar on account of rash and negligent driving of Balwinder Kumar alias Sonu respondent no.1 being driver of tractor trolley bearing registration No.PB-08-CB-3990?OPP*
>
> *2. Whether the claimants being legal representatives of deceased Jaspal alias Jaspal Singh are entitled to*

compensation, if so, how much and from whom? OPP

3. *Whether the respondent no.1-Balwinder Kumar being driver of tractor trolley bearing registration No.PB-08-CB-3990 was not holding a valid and effective driving licence at the time of alleged accident? OPR No.3.*

4. *Whether the present claim petition is bad for non-joinder and mis-joinder of necessary parties? OPR*

5. *Relief.*"

5. Issue Nos. 1 and 2 were decided in favour of claimants. Issue No. 3 was decided in favour of respondent No. 3. Issue No. 4 was also decided against the respondents and claimants were awarded total compensation of Rs. 11,45,000/- along with interest @ 7.5% per annum.

6. Following compensation has been awarded to claimants:

Loss of dependency	Rs. 10,20,000 (Rs. 1,20,000/- annual income – Rs. 60,000/- personal expences = 60,000/- x 17 multiplier
Loss of love and affection	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-
Total	Rs. 11,45,000/-

7. The finding on issue No. 1 regarding rash and negligent driving on the part of respondent No. 1-driver was also challenged on the ground that no number of tractor was mentioned in FIR and tractor was also involved in another case against which FAO No. 1862 of 2017 titled as National Insurance Company Limited Vs. Manjit Kaur and others is pending and driver of motorcycle, who was also injured was not examined by the claimants. It was asserted that learned Tribunal has failed to take in consideration the fact that tractor was registered for agricultural purposes and was being used for commercial purposes and, therefore, appellant-insurance company is not liable to indemnify driver and owner of offending vehicle. It was asserted that driver was having license of

LMV whereas tractor was being used for commercial purposes and therefore, respondent-driver was not entitled to drive commercial vehicle under the license held by him.

8. Claimants have claimed that deceased Jaspal @ Jaspal Singh had died in motor vehicle accident dated 27.08.2015, which took place at about 8.40 p.m. near Bus Stand Shahkot, Jalandhar on account of rash and negligent driving of respondent No. 1 by driving tractor make Sonalika bearing No. PB-08-CB-3990. It was the case of claimants that on 27.08.2015, deceased, who was pillion rider on motorcycle bearing Registration No. PB-08-CQ-3315 and was driven by Kiran Kumar alias Kalu, was coming back from village Bajwara Kalan, on correct side of the road at normal speed. When they reached near bus stand Shahkot, in the meantime, tractor bearing Registration No. PB-08-CB-3990 loaded with bricks and driven by respondent no. 1 in a rash and negligent manner at high speed, without blowing any horn, came from behind and struck against motorcycle, on which deceased was pillion rider. On account of collision with tractor, both persons on the motorcycle had fallen on the road and had sustained serious injuries. Deceased Jaspal @ Jaspal Singh was crushed under the tyres of the tractor-trolley and died in the Civil Hospital, Jalandhar. Kiran Kumar was admitted in Civil Hospital Nakodar. The accident was witnessed by Baljinder son of Jagir and on his statement, FIR No. 210 dated 28.08.2015 under Sections 304-A, 279, 337, 338 and 427 IPC with police Station Shahkot was registered. In order to prove accident to be result of rash and negligent driving of respondent No. 1, claimants had examined Baljinder Singh-author of FIR as PW2, who reiterated manner of accident as was stated by him in the FIR and stated by claimants in their claim petition.

9. Non examination of driver of ill fated motorcycle cannot be held to be fatal to the case of claimants as FIR was lodged on the statement of PW-2

who claimed to have witnessed the accident and had lodged FIR promptly on 28.08.2015 regarding accident dated 27.08.2015 which occurred at 8.40 p.m. His evidence is consistent and nothing could be shown from his cross examination either that he was not present or he had not witnessed the accident. It is quality of evidence and not quantity which matters. Non examination of driver of motor cycle in view of eye witness account is of no help to the case of insurance company. Similarly, involvement of tractor in another pending case alone by itself cannot be taken to conclude false involvement. There is no material available to conclude that owner and driver were colluding in this case and in other case lodged in another matter. A vehicle can be involved in two accidents and this fact by itself is not sufficient to conclude false involvement.

10. Learned Tribunal has found evidence of PW-2 to be trustworthy. Admittedly, in the present case, respondent-driver Balwinder Kumar alias Sonu had not stepped into the witness box. Similarly, after the investigation, he was duly challaned and facing trial for causing accident. Considering evidence of PW-2, failure of respondent driver to contradict manner of accident and fact that it is respondent-driver, who is facing criminal trial for causing accident, the learned Tribunal concluded that accident was caused by respondent No. 1 by his rash and negligent driving. Non examination of driver of ill fitted motorcycle cannot be held to be fatal to case of claimants as FIR was lodged on the statement of PW-2 who claimed to have witnessed the accident and had lodged FIR promptly.

11. I do not find any error in the conclusion drawn by learned Tribunal. No material could be shown by insurance company as to doubt the veracity of statements of claimants' witnesses.

12. Learned Tribunal after considering evidence of the parties,

especially that of owner of insured vehicle i.e. Sarabjit Singh further concluded that tractor was not being used for commercial purposes as being asserted by appellant-Insurance Company. No doubt, in cross-examination, RW-1-owner of offending vehicle Sarabjit Singh admitted that tractor was being used for taking vegetables and bricks. However, learned Tribunal had rightly concluded that mere fact that tractor was being used for carrying vegetables and bricks, cannot be made basis to conclude that it was being used for commercial purposes. Owner of tractor is within his rights to use tractor-trolley for transporting vegetables and bricks for his own purposes. Such use cannot be held to be commercial use unless it is specifically proved without further proof.

13. No evidence is available to conclude that tractor was being used for commercial purpose. Learned Tribunal has rightly rejected plea of insurance company in this regard.

14. Insurance Company has also challenged that respondent-driver of offending vehicle was not holding valid driving license, however, this issue was not pressed by insurance company before the Tribunal as noted by Tribunal in the impugned award. However, learned counsel for the insurance company has argued that Tribunal has wrongly not considered issue No. 3, especially when vehicle was being used for commercial purposes, therefore, the driving license of respondent No. 1 authorizing him to drive LMV, cannot be held valid for driving tractor trolley, which was being used for commercial purposes. However, I do not find any merit in the contentions raised by Insurance Company. Admittedly, the learned Tribunal has specifically found that tractor-trolley was not being used for commercial purposes and it was being used for own purposes by owner of the offending vehicle.

15. In view of this finding, which cannot be said to be perverse, it cannot be concluded that driver of offending vehicle was not competent to drive

tractor, which as per definition given in Motor Vehicles Act is a light motor vehicle and would be covered by license, which driver-respondent No. 1 was holding. Since tractor is also LMV, therefore, respondent no. 1 was holding valid driving license. The argument raised on behalf of insurance company-appellant that only tractor was insured and no premium was paid for trolly, is rightly rejected by learned Tribunal. There is no evidence that trolley alone has caused the accident. It was tractor, which had hit the motorcycle of deceased from back. Therefore, the argument raised on behalf of appellant-insurance company is without any merit. There is no merit in the appeal preferred by insurance company.

16. Learned counsel for the claimants-appellants has challenged award of compensation by learned Tribunal. The learned Tribunal had taken income of deceased to be Rs. 10,000/- per month as was being claimed by claimants. It was the case of claimants that the deceased was working as conductor with St. Manu's Convent School Shahkot and was getting salary of Rs. 6,900/- per month. They have also claimed that an amount of Rs.3,100/- was being earned by deceased by working as part-time driver with M/s Grover Flour and Oil Mills Sabzi Mandi Shahkot, District Jalandhar. Since claimants have duly examined PW-3 from St. Manu's Convent School and PW-4 proprietor of M/s Grover Flour and Oil Mills, who have duly stated that deceased was working with respective concerns and was earning Rs. 6,900/- and Rs. 3,100/- respectively. In view of the evidence on record, no fault with conclusion drawn by learned Tribunal can be found regarding income of deceased.

17. Learned Tribunal, keeping in view that deceased was 20 years old and unmarried, had deducted 50% towards his personal expenses and thereafter applied multiplier of 17 granting total compensation of Rs.10,20,000/- for loss of dependency. As far as deduction of personal expenses to the extent of 50% is

concerned, no fault can be found as deceased was bachelor. Merely, because deceased had unmarried sisters, therefore, the personal expenses being incurred being an unmarried person would not decrease in present case of unmarried person. The award of dependency @ 50% is mandated by Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(6) SCC 121***.No special case is made out to deduct 1/3 of amount instead of 50%. However, in the present case, learned Tribunal has failed to take into consideration the aspect of future prospects while determining the loss of dependency. As the deceased was earning income from salary, therefore, he was entitled to future prospects while working in private sector. Therefore, the claimants are entitled to addition of future prospects to the extent of 40% in view of judgment of the Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.*** Similarly as deceased was 20 years old multiplier of 18 instead of 17 needs to be awarded and applied. The learned Tribunal has failed to award future prospects. Accordingly, after applying future prospects and deliberating award of compensation under heads loss of estate, funeral expenses, loss of love and affection towards minor sister and filial consortium to claimant No. 1, the award is liable to be modified.

18. In the present case, since deceased was 20 years old, therefore, the Tribunal ought to have granted multiplier of 18 instead of 17, claimants are entitled to following compensation:-

Income of Deceased	Rs.10,000/- per month (as per salary certificates)	Rs.10,000/- per month
Future Prospects	40%	Rs.14,000/- (10,000+4,000)
Deduction	50%	Rs.7,000/-
Multiplier	18	18
Loss of Dependency	7,000 x 18 (multiplier) x 12 months	Rs.15,12,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-

Loss of Estate	Rs.15,000/-	Rs.15,000/-
Love and Affection to sisters	Rs.3,0000/- each	Rs.60,000/-
Filial Consortium to Claimant No.1	Rs.40,000/-	Rs.40,000/-
Compensation awarded by the Tribunal	Rs 11,45,000/-	
Compensation awarded in Appeal	Rs 15,88,000/	
Enhancement in Compensation	Rs. 15,88,000/- awarded in appeal – Rs. 11,45,000/- awarded by Tribunal	Rs. 4,97,000/-

19. Claimants are, therefore, held entitled to enhanced compensation of Rs. 4,97,000/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till realization. The apportionment of shares shall be as per award. The compensation be paid to the claimants, directly through their bank accounts.

20. The appeal preferred by the claimants is allowed. The appeal preferred by the insurance company is, accordingly, dismissed.

21. Pending miscellaneous application(s), if any, shall also stand disposed of.

02.09.2025 **(PARMOD GOYAL)**
manoj **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No