IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 23.09.2025

FAO-3428-2017(O&M)

Bharti AXA General Insurance Company Limited

...Appellant(s)

Vs.

Suman alias Suman Lata & Others

...Respondent(s)

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CROSS OBJECTIONS NO.19-CII-2018
IN FAO-3428-2017

Bharti AXA General Insurance Company Limited

...Cross Objector(s)

Vs.

Suman alias Suman Lata & Others

...Respondent(s)

***

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjeev Goyal, Advocate
Mr. Aksshay Sharma, Advocate
for the appellant-Insurance Company.

Mr. Sandeep Kotla, Advocate
for the claimants/cross-objectors/respondents No.1 to 4.

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NIDHI GUPTA, J.

FAO-3428-2017

Present appeal has been filed by the Insurance Company laying challenge to the Award dated 29.07.2016 passed by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the learned Tribunal') whereby MACT Case No.35 dated 19.05.2015 filed by the claimants/respondents No.1 to 4 herein under Section 166 of the Motor Vehicles Act (hereinafter "the Act"), has been allowed and the claimants have been awarded compensation of Rs.22,46,610/-.

CROSS OBJECTIONS NO.19-CII-2018:

Present Cross-Objections have been filed by the claimants seeking enhancement of compensation of Rs.22,46,610/- awarded by the learned Tribunal vide Award dated 29.07.2016 passed in MACT Case No.35 dated 19.05.2015 filed under Section 166 of the Act. The 4 claimants are the widow, 2 minor children, and mother of deceased Ravinder Kumar.

Both, the present Appeal and Cross-Objections are being disposed of by this common order as they arise out of the same accident dated 09.04.2015; same impugned Award dated 29.07.2016; and parties, facts and offending vehicle in both, are identical. However, each matter is individually considered on merits. For the sake of brevity, the parties are being referred to and facts are being drawn from FAO-3428-2017 titled as "Bharti AXA General Insurance Co. Ltd. Vs. Suman @ Suman Lata & Others".

2. The ld. Tribunal upon appraisal of pleadings and oral & documentary evidence adduced before it had concluded that deceased Ravinder Kumar had died due to the injuries suffered by him in the motor vehicular accident that took place on 09.04.2015 due to the rash and negligent driving of motorcycle bearing registration No.HR-20N-5740 (hereinafter referred to as "the offending vehicle") by respondent No.5. The offending vehicle was owned by respondent No.6 and insured by the

appellant. The learned Tribunal had held the respondent No.5/driver and respondent No.6/owner of the offending vehicle liable to pay the compensation and the appellant being insurer of the offending vehicle was held liable to indemnify the respondents No.5 and 6 for this compensation.

3. The pleaded case of the claimants in the Claim Petition before the Tribunal as recorded in Para 1 of the impugned Award is as follows:-

> *"The present claim petition has been filed by the claimants for seeking compensation on account of death of Ravinder Kumar, who was husband of claimant no.1, father of claimants no.2 & 3 and son of claimant no.4, in a motor vehicle accident. In respect of particulars of the accident, it is stated that on 09.04.2015, Ravinder Kumar was coming from Mandi Adampur to his village Chabarwal on his motorcycle bearing registration no. HR-22F/5465. Vinod son of Indraj, resident of village Chabarwal was following him on his motorcycle. When at about 7.00 p.m., he (Ravinder Kumar) reached near Vishwas School, Mandi Adampur, a motorcycle bearing registration no. HR-20N/5740 was going ahead of the motorcycle of Ravinder Kumar, which was being driven by respondent no. 1 in rash, negligent, careless and zig, zag manner, and respondent no. 1 rashly, negligently and without giving any indication suddenly applied brakes, due to this, motorcycle of Ravinder Kumar struck into the motorcycle of respondent no. 1. Due to this impact, Ravinder Kumar fell down on the road alongwith his motorcycle and received serious, grievous and multiple injuries on his person. This accident was witnessed by Vinod son of Indraj resident of village Chabarwal, who was following the motorcycle of Ravinder Kumar. Ravinder Kumar was*

immediately shifted to General Hospital, Adampur and thereafter to Sarvodaya Hospital, Hisar where he was treated but succumbed to the injuries on 11.4.2015. This accident occurred due to sole rash and negligent driving of respondent no.1."

4. Learned counsel for the appellant-Insurance Company submits that the learned Tribunal has erred in not holding the deceased liable for contributory negligence as it has ignored the fact that it is the own pleaded case of the claimants that the deceased had struck his motorcycle into the offending motorcycle from behind. It is submitted that as per Rule 23 of the Rules and Road Regulation 1999, it is mandatory to maintain safe distance from the vehicle in front. Clearly, the deceased was not following the said Rule and has hit into the offending motorcycle from behind. As such, it was the deceased who had caused the accident; and he was therefore, liable for contributory negligence. However, the Tribunal has ignored this fact.

5. Ld. Counsel submits that the Ld. Tribunal while passing the impugned Award wrongly and illegally held that the alleged accident had taken place due to the rash and negligent driving of the motorcycle No. HR-20N-5740 being driven by Pawan/respondent No.5, whereas respondent No.1 to 4/claimants miserably failed to adduce cogent and convincing evidence to prove the negligent driving of Pawan. The Ld. Tribunal lost sight of the fact that as per the claim petition itself the claimants alleged that the deceased had struck the motorcycle behind the motorcycle of Pawan, when he applied the brakes. The ld. Tribunal merely on the ground that the FIR

was registered against Pawan had held him negligent; whereas it is the deceased who caused the alleged accident by driving his motorcycle in a rash and negligent manner and struck his motorcycle behind the motorcycle of Pawan.

6. It is submitted that even the site plan Ex.R5 prepared by the Police indicates that the deceased was negligent himself, due to which he lost his life. As per the site plan, the place of accident is shown on the side of road, and the deceased hit the offending vehicle from behind and as such it was the duty of deceased himself to maintain safe distance from the other vehicle. Hence the responsibility of causing the accident of deceased be re-fixed and there is no fault of the offending motorcycle.

7. Learned counsel further submits that as per the claimants, the age of the deceased was 36 years at the time of accident. As such, multiplier of 15 ought to have been applied, whereas the ld. Tribunal has applied multiplier of 16. Even income of the deceased has been taken on the higher side. Even exorbitant amount has been awarded under the conventional heads. It is accordingly prayed that impugned Award be modified as above.

8. Per contra, learned counsel for the claimants controverts the submissions of the appellant-Company and submits that the Tribunal has awarded future prospects @ 30%; whereas the same should be 40%. Interest @ 9% is also on the lower side and the same should be 18%. Also, not even a single penny has been awarded under the head of transportation

and expenses incurred during the hospitalisation period. Nothing has been awarded for attendant, special diet, etc. Even income of the deceased has been taken on the lower side as Rs.10,000/- per month; whereas the same should be Rs.40,000/- per month as the claimants had duly proved that the deceased was only 35 years of age and was hale and hearty person and used to do agricultural work and also dealing in sale and purchase of milch animals. Learned counsel accordingly prays that the impugned compensation be enhanced to Rs.50 lakh with interest @ 18% per annum.

9. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find some merit in the submissions advanced on behalf of each of the parties.

10. I am not convinced by the submission of the appellant-Insurance Company in respect of contributory negligence on part of the deceased. Ld. Counsel has made reference to Rule 23 however Rule 24 is also relevant. Rules 23 and 24 of the Rules and Road Regulation 1999, read as follows: –

> ***"23. Distance from vehicles in front***.- *The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from the other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.*
>
> ***24. Abrupt brake***.- *No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons".*

11. Thus, no doubt, Rule 23 stipulates that safe distance be maintained with the vehicle in front, however, as per Rule 24, it is

simultaneously stipulated that driver of a vehicle shall not suddenly/abruptly apply the brakes. In the present case, it is the consistent case of the claimants that the driver of the offending motorcycle had suddenly applied brakes as a result of which the deceased had hit into the offending motorcycle from behind.

12. Moreover, it is admitted fact on record that the width of the road at the place of occurrence was about 15-20 feet and there was no other vehicle on the road at the time of accident. These facts find mention in the evidence of eyewitness Vinod Kumar PW6. The evidence of the claimants went unrebutted as admittedly, the respondent No.5 had not stepped into the witness box to deny the allegations of the claimants. Even there was nothing on record to show that any evidence was led by respondent No.5 to the effect that he had been falsely implicated in the case or that he had made any complaint to any authority. Even the Police after thorough investigation of the case had found respondent No.5 to be guilty of causing the accident as is evident from the Report under Section 173 Cr.P.C. (Ex.P15). As such, the argument of the appellant-Insurance Company in respect of contributory negligence on part of the deceased stands rejected.

13. As regards quantum of compensation, it was the pleaded case of the claimants that the deceased was doing agricultural work and dealing in sale and purchase of milch animals and was earning Rs.40,000/- per

month. It had also been stated by claimant No.1/widow in her evidence that deceased was owner of 19 acres of land. Even this evidence of the claimants went unrebutted. In this circumstance, I find no error in the income of Rs.10,000/- as assessed by the learned Tribunal. However, no ground is made out to enhance the same as, the claimants have not faced any loss of income as the agricultural land as also the milch animals are still available to the claimants for business.

14. Further, the age of the deceased was determined to be 36 years on the basis of his Post-Mortem Report. As such, in terms of the judgment of Hon'ble Supreme Court in "**Sarla Verma Vs. Delhi Transport Corporation" (2009) AIR (SC) 3104 Law Finder Doc ID # 188882,** addition of 40% was to be made towards future prospects. However, the learned Tribunal has wrongly made an increase of only 30% towards future prospects. The learned Tribunal has further applied multiplier of 16; however, as per Constitution Bench judgment of Hon'ble Supreme Court in **"National Insurance Company Ltd. VS. Pranay Sethi & Others" Law Finder Doc ID # 918174,** multiplier of 15 was to be applied. As there were 4 claimants, deduction of 1/4th towards personal expenses has been correctly made. Accordingly, the Appeal as well as the Cross-Objections are **partly allowed**, and awarded compensation is reassessed in the following manner as per the structured formula laid down by the Hon'ble Supreme Court: -

Head	**Compensation awarded by Tribunal**	**Amount reassessed by this Court**
Income	Rs. 10,000/– p.m.	Rs.10,000/– p.m.
Future prospects	@30% = Rs.10,000/- + Rs.3000/- = Rs.13000/-	@40% = Rs.10,000/- + Rs.4,000/- = Rs.14,000/-
Deduction of 1/4th	Rs.13,000 – Rs.3250/- = Rs.9750/-	Rs.14,000/- - Rs.3,500/- = Rs.10,500/-
Multiplier	Rs. 9750/–× 16×12 = Rs. 18,72,000/–	Rs.10,500x15x 12 = Rs.18,90,000/-
Loss of Estate	Nil	Rs.18,500/-
Funeral expenses	Rs.25,000/-	Rs. 18,500/–
Loss of consortium (widow)	Rs.1 lakh	Rs.48,000/- x 4 = Rs.1,92,000/-
Love and affection (children)	Rs.1 lakh	Nil
Treatment charges	Rs.1,49,610/-	Rs.1,49,610/-
Total	**Rs.22,46,610/-**	**Rs.22,68,610/-**
Interest	9% per annum	7.5% per annum

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

23.09.2025 **(Nidhi Gupta)**
Sunena **Judge**

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