IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

246-B **FAO-3852-2017 (O&M)**
Date of Decision : 21.05.2025

SUSHMA RANI AND ORS. .... Appellants

VERSUS

SHAREEN KAUR AND ORS. .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Kumar Bamal, Advocate for the appellants.

Mr. Sachin Ohri, Advocate and
Mr. Sachin Gupta, Advocate for respondent No.4.

ALKA SARIN, J. (ORAL)

CM-15498-CII-2023

1. This is an application for final disposal of the main appeal.

2. Learned counsel for respondent No.4-Insurance Company states that he has no objection if the present application is allowed.

3. In view of the above, the present application is allowed.

4. With the consent of the learned counsel for the parties, the main appeal is taken on Board today itself for final disposal.

FAO-3852-2017

5. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal'), vide impugned award dated 23.09.2016.

6. The parties hereinafter are being referred to as the driver, the

owner, the claimant-appellants and the Insurance Company for the sake of clarity.

7. The claim petition had been filed on account of death of Purushotam Gautam in an accident which took place on 26.01.2012. It was averred in the claim petition that on 26.01.2012 the deceased, namely, Purushotam Gautam along with his brother-Shri Dayanand Gautam, Bhabhi-Sunita and nephew-Dev Gautam were coming from Gurgaon after performing the marriage of Priyanka (the daughter of his brother, namely, Dayanand). At about 8:15 am when they reached near Village Garhi Kalan, P.S. Gannaur, District Sonepat, due to heavy fog, the driver Purushotam Gautam could not notice the vehicle bearing registration No.HR-38-Q-0338 (hereinafter referred to as 'the offending vehicle') which was wrongly and negligently parked in the middle of the road without any parking signal or light. Hence the car being driven by Purushotam Gautam (since deceased) struck against the offending vehicle. All the occupants in the car, being driven by Purushotam Gautam, suffered multiple and grievous injuries. In this accident, Purushotam Gautam and Dev Gautam died on the spot. It was further averred that the claimant-appellants were totally dependent upon the deceased. FIR No.43 dated 26.01.2012 under Sections 279, 337, 304-A Indian Penal Code, 1860 was registered as Police Station Gannaur.

8. The legal representatives of Shri Sukhvinder Singh (the driver of the offending vehicle) i.e. respondents No.1 to 3 herein filed their written statement stating therein that deceased-Sukhvinder Singh was changing the tyre of his vehicle Qualis bearing registration No.HR-38-Q-0338 standing on

the left side of the road due to puncture. Deceased-Sukhvinder Singh was going from Ballabgarh, Faridabad to Amritsar along with his family members i.e. mother-Balwant Kaur, Bhabhi-Sindur Kaur and Sister-Pinki @ Satwant Kaur and when they reached near Gannaur to Samalkha side, the said vehicle got punctured and Sukhvinder Singh (since deceased) was changing the tyre when the vehicle came and hit from behind. In the said accident, Sukhwinder Singh, his sister-Pinki @ Satwant Kaur and Purushotam Gautam died on the spot. FIR No.43 dated 26.01.2012 under Sections 279, 337, 304-A Indian Penal Code, 1860 was registered as Police Station Gannaur.

9. Written statement was also filed by respondent No.4-Insurance Company denying the factum of the accident and denying that the accident took place due to wrong parking of the offending vehicle. It was further stated that Purushotam Gautam was driving the car in a rash, negligent and careless manner resulting in the accident.

10. On the basis of the pleadings of the parties the following issues were framed :

> 1. Whether Purushotam Gautam son of Shri Ram Chander Gautam died in a road side accident on 26.01.2012 on account of rash and negligent of vehicle Qualis bearing No.HR-38-Q-0388 driven by deceased Sukhvinder Singh, predecessor-in-interest of respondents No.1 to 3, as alleged in the petition ? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so to what amount and from whom ? OPP

3. Whether Sukhvinder Singh deceased driver of vehicle Qualis bearing No.HR-38-Q-03888 was not holding a valid and effective driving licence on the date of accident ? OPR

4. Relief.

11. The Tribunal, holding it to be a case of contributory negligence to the extent of 50%, had awarded the following compensation :

Sr. No.	**Heads**	**Compensation Awarded**
1.	Monthly income	₹5,000
2.	Annual income	[₹5,000 x 12] = ₹60,000
3.	Deduction @ 1/3rd	[₹60,000 - ₹20,000] = ₹40,000
4.	Future prospects 30%	[₹40,000 + ₹12,000] = ₹52,000
5.	Multiplier of '14'	[₹52,000 x 14] = ₹7,28,000
6.	Funeral expenses	₹25,000
7.	Loss of estate	₹5,000
8.	Love and affection	₹1,00,000
9.	Loss of consortium	₹1,00,000
	Total Compensation	₹9,58,000
	Amount to be paid to the claimants @ 50%	[50% of ₹9,58,000] = ₹4,79,000
	Interest	**@ 8.00% per annum**

Aggrieved by the same the present appeal has been preferred by the claimant-appellants.

12. Learned counsel for the claimant-appellants would contend that there is not an iota of evidence on the record, which was led by the

respondents, to show that the offending vehicle was not parked in a negligent manner in the middle of the road. It is further the contention that no eyewitness appeared on behalf of the respondents to state or to prove that it was a case of contributory negligence. Learned counsel for the claimant-appellants 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]** to contend that in the absence of any specific issue regarding contributory negligence, no finding qua the same can be sustained. It is still further the contention of the learned counsel that the income of the deceased had been assessed as ₹5,000 per month which is on the lower side. The deceased-Purushotam Gautam had retired from the Indian Army and, otherwise also, had done Bachelor of Arts (B.A.) and his degree was produced on the record as Ex.P-4. Hence, the deceased ought to have been treated as a skilled worker. Learned counsel would contend that though the claimant-appellants do not dispute the addition @ 30% made towards future prospectus, multiplier of '14' and deduction @ 1/3rd as applied by the Tribunal, however, the amount awarded under the conventional heads is not in consonance with the law laid down by the Hon'ble Supreme Court. The amounts awarded under the head 'loss of consortium' is also on the lower side. 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] and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

13. *Per contra*, learned counsel for respondent No.4-Insurance Company would contend that it was a clear case of contributory negligence inasmuch as, admittedly, it was a foggy morning in January and unless the driver was driving the car at a high speed and in a rash and negligent manner, the intensity, with which the accident took place, would not be possible.

14. Heard.

15. The present is an unfortunate case where two members of the family i.e. Purushotam Gautam and his nephew-Dev Gautam both died in the accident and parents of Dev Gautam sustained grievous injuries qua which separate appeals being FAO-6798-2015 titled as 'Sunita Gautam V/s Shareen Kaur and others' and FAO-6800-2015 titled as 'Dayanand Gautam V/s Shareen Kaur and others' for enhancement of compensation have been filed. The Tribunal, while dealing with the claim of contributory negligence raised by the Insurance Company, had held that though there was heavy fog and the vehicle was parked in the middle of the road, however, the accident could not have taken place had the deceased-Purushotam Gautam not been driving at a high speed. A perusal of the paper book and the record reveals that there was no evidence led by the respondents to even remotely suggest that the deceased was driving at a high speed and in a rash and negligent manner. Admittedly, the accident took place in January on a foggy morning and, as observed by the Tribunal, Sukhvinder Singh, the driver of the

offending vehicle, had parked the vehicle in the middle of the road without any proper signage. In the absence of any evidence and in the absence of any specific issue having been framed, the finding recorded qua the contributory negligence cannot be sustained. The 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."

Keeping in view the law and the observation made above, the finding qua contributory negligence is set aside.

16. The argument of the learned counsel for the claimant-appellants that the deceased in the present case ought to have been treated as a skilled worker, in the absence of any evidence qua his income and on the basis of the fact that his degree (Ex.P-4) showing that he had done Bachelor of Arts was produced and proved on the record, deserves to be accepted. Though it was pleaded that the deceased had taken premature retirement from the Indian Army and was earning ₹30,000 per month, however, there is no evidence on the record led by the claimant-appellants regarding the same. The degree granted to the deceased on his completion of Bachelor of Arts (B.A.) was produced and proved on the record as Ex.P-4. The Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors. [2021(4) RCR (Civil) 492]** has held as under :

"10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically

deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. <u>In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality</u>. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 *has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/-. As an amount of Rs.10,99,700/- is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/-. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru*

Ram & Ors., 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/-each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited, (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record.

The minimum wages of a skilled worker at the time of the accident were approximately ₹5,400 per month. Accordingly, by applying some guesswork, the income of the deceased is assessed as ₹6,000 per month. Since there is no dispute with regard to the addition @ 30% made towards future prospectus, multiplier of '14' and deduction @ 1/3rd as applied by the Tribunal, the same are maintained.

17. Further, the amounts awarded under the conventional heads and under the head 'loss of consortium' are not in consonance with 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). Hence, the claimant-appellants would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 +

20% increase) towards funeral expenses. The claimant-appellants, being widow and the children of the deceased, would also be entitled to ₹48,000 (₹40,000 + 20% increase) each towards loss of consortium.

18. Accordingly, the reworked compensation, to which the claimant-appellants are held entitled to, is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹6,000
2	Annual income	[₹6,000 x 12] = ₹72,000
3	Deduction @1/3rd	[₹72,000 - ₹24,000] = ₹48,000
4	Future prospects 30%	[₹48,000 + ₹14,400] = ₹62,400
5	Multiplier of '14'	[₹62,400 x 14] = ₹8,73,600
6	Funeral expenses	₹18,000
7	Loss of estate	₹18,000
8	Loss of consortium (i) Spousal (ii) Parental	 ₹48,000 ₹96,000 [₹48,000 x2] Total = ₹1,44,000
	Total Compensation	**₹10,53,600**

19. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.50% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

20. 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 respondent No.4-Insurance Company in the bank account(s) of the claimant-appellants within a period of six weeks from today. The compensation amount of the minor claimant-appellants shall be kept in a fixed deposit by the Bank concerned. The particulars of the bank account(s) along with the requisite documents in support thereof shall be furnished by the claimant-appellants to respondent No.4-Insurance company within a period of two weeks from today and needful shall be done by respondent No.4-Insurance Company after verification thereof within a period of four weeks thereafter along with up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

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

21.05.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No