IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

342 **FAO-5256-2022 (O&M)**
Date of Decision : 17.07.2025

Urmila and Others ....Appellant

VERSUS

Magma HDI General Insurance and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aakash Singla, Advocate for the appellant.

Mr. Nigam Bhardwaj, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

CM-17480-CII-2022

1. Notice of the application.

2. Mr. Nigam Bhardwaj, Advocate, accepts notice on behalf of respondent No.1, which is the only contesting respondent, and states that he has no objection if the present application is allowed.

3. For the reasons stated in the application, the same is allowed. The delay of 185 days in filing the present appeal is condoned.

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4. Notice of motion.

5. Mr. Nigam Bhardwaj, Advocate, accepts notice on behalf of respondent No.1.

6. Present appeal has been filed by the claimant-appellants challenging the award dated 03.01.2022 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal'). The

parties are being referred to as the claimants, driver and owner of the offending vehicle and the Insurance Company for the sake of clarity.

7. The brief facts relevant to the present *lis* are that the claimant-appellants had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 averring therein that on 03.03.2019 one Narinder Kumar and his friend Sukhvir Singh had come near Inder Bai Juice Bar/shop on Khanna-Samrala road, Khanna to eat a burger. At about 08.00 pm, a tractor-trolley bearing registration No.PB-11BK-1071 (hereinafter referred to as the 'offending vehicle'), which was being driven by respondent no.2 herein, came from the side of Samrala. Respondent No.2 stopped the offending vehicle all of a sudden on the main road in front of Inder Bai Juice Bar/shop as a result of which a motorcycle, which was being driven by Surinder Singh (hereinafter referred to as the 'deceased') behind the offending vehicle, struck against it from behind. The deceased suffered multiple injuries. The driver of the offending vehicle sped away from the spot. The deceased was taken to Civil Hospital, Khanna by aforesaid Narinder Kumar and Sukhvir Singh, where he succumbed to his injuries. FIR No.57 dated 04.03.2019 under Sections 283, 427 and 304-A of the Indian Penal Code, 1860 was registered at Police Station City Khanna.

8. On notice, the driver and owner of the offending vehicle filed their joint written statement denying the involvement of the offending vehicle in any accident. It was further averred that the offending vehicle was insured with the Insurance Company i.e. respondent No.1 herein.

9. The Insurance Company also filed a separate written statement denying the involvement of the offending vehicle in the accident. It was further averred that cheque qua premium paid towards insurance policy was dishonoured. An amended written statement was also filed by the diver and owner of the offending vehicle wherein they raised a plea that they paid the premium in cash to the agent of the Insurance Company.

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

1. Whether Surinder Singh died in the motor vehicular accident occurring due to rash and negligent driving of vehicle no. PB-11BK-1071 by respondent no.1 ? OPP

2. Whether the claimants are entitled to compensation, if so to what extent and from whom ? OPP

3. Whether respondent no.1 was not holding a legal and valid driving licence at the time of the accident ? If so, its effect ? OPR-3

3-A. Whether the vehicle in question was insured with respondent no.3 under a valid Insurance policy ? OPR-1&2

3-B. Whether the Insurance cover note has become void on account of dishonour of the cheque issued by respondent no.2 towards the payment of premium ? OPR-3

4. Whether there is breach of any condition of the Insurance Policy by respondent no.2 ? OPR-3

5. Relief.

11. The Tribunal vide the impugned award held the deceased to have contributed to the accident to the extent of 30% and awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹8,500/-
2	Future prospects @ 25%	[₹8,500 + 2,125] = ₹10,625/-
3	Loss of dependency after applying a deduction of 1/3rd and a multiplier of 13	₹11,05,000/-
4	Funeral expenses	₹16,500/-
5	Loss of estate	₹16,500/-
6	Loss of consortium	₹44,000/-
7	Loss of parental consortium	[₹44,000 x 2] = ₹88,000/-
	Total Compensation	₹12,70,000/-
	Compensation after deduction on account of 30% contributory negligence	**₹8,89,000/-**
	Interest	**8% per annum**

12. Learned counsel for the claimant-appellants would contend that the Tribunal has erred in returning the finding qua the contributory negligence inasmuch as 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 was framed regarding the same. 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 without there being any specific issue regarding contributory negligence and without there being any evidence led by the Insurance Company, it could not be held to be a case of contributory negligence. Learned counsel for the claimant-appellants would further contend that he does not challenge the income, deduction, multiplier and the addition of future prospects as assessed by the Tribunal. However, the amounts awarded by the Tribunal under the conventional heads as well as under the head ‘loss of consortium’ are not in accordance with the law laid down by the Hon’ble Supreme Court in 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 the Insurance Company has contended that since the motorcycle hit the offending vehicle from behind therefore, no fault can be found with the findings returned by the Tribunal regarding contributory negligence.

14. Heard.

15. In the present case, though a plea had been raised by the Insurance Company that the deceased was riding the motorcycle at a fast speed and hit the offending vehicle from behind, however, no evidence was led qua the same. There was no issue framed by the Tribunal qua contributory negligence. 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."*

16. In the present case 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 pleadings and issue regarding contributory negligence, the finding qua contributory negligence cannot be sustained and the same is accordingly set aside.

17. 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 claimant-appellants to the income, deduction, multiplier and

future prospects 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)* 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 and children of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. No other argument has been raised by learned counsel for the claimant-appellants. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded	
1	Monthly Income	₹8,500/-	
2	Annual Income	₹1,02,000/-	[₹8,500 x 12]
3	Deduction - 1/3rd	₹68,000/-	[₹102000 - 34000]
4	Future Prospects - 25%	₹85,000/-	[₹68000 + 17000]
5	Multiplier - 13	₹11,05,000/-	[₹85000 x 13]
6	Loss of estate	₹18,000/-	
7	Funeral expenses	₹18,000/-	
8	Loss of consortium (i) Parental [₹48,000/- x 2] (iii) Spousal's	 ₹96,000/- ₹48,000/- (Total ₹1,44,000/-)	
	Total Compensation	**₹12,85,000/-**	

18. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 8% per annum as

awarded by the Tribunal from the date of filing of the claim petition till the realization of the entire amount.

19. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 INSC 361 : 2025 SCC OnLine SC 567]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimant-appellants within six weeks from today and the apportionment thereof shall be as per the percentage directed by the Tribunal. 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.

20. 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.

(ALKA SARIN)
17.07.2025 **JUDGE**
jk

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