



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-542-2018 (O&M)
Date of Decision : 05.05.2025

New India Assurance Company Limited ... Appellant(s)
Versus
Mangi Devi & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Gupta, Advocate for the appellant.
Mr. Sumit Gupta, Advocate for respondent Nos.1 to 7.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the quantum of compensation awarded vide the impugned award dated 06.09.2017 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as ‘Tribunal’).
2. Since the factum of the accident is not in dispute and only the quantum is being challenged, the facts are not being reproduced herein for the sake of brevity.
3. In the present case the Tribunal had awarded the following compensation :

Sr. No.	Heads	Calculation
1.	Monthly Income	₹10,520/-
2.	Deduction 1/5 th	₹8,416/- [₹10,520 – 2,104]
3.	Annual Income	₹1,00,992/- [₹8,416 x 12]
4.	Multiplier ‘15’	₹15,14,880/- [₹1,00,992 x 15]
5.	Future prospects @ 50%	₹7,57,440/- [₹4,208 x 12 x 15]

6.	Funeral and conveyance expenses	₹25,000/-
7.	Loss of love and affection	₹1,00,000/-
8.	Loss of consortium	₹1,00,000/-
	Total Compensation	₹24,97,320/-
	Interest	9% per annum

4. Learned counsel for the appellant-Insurance Company would contend that in the present case the Tribunal has applied Deputy Commissioner rates instead of minimum wages and, hence, the income of the deceased as assessed is on the higher side. It is further the contention of the learned counsel for the appellant-Insurance Company that as per the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, an addition of 40% ought to have been made towards future prospects instead of 50%. The learned counsel for the appellant-Insurance Company further states that he does not challenge the multiplier as the deceased was 36 years of age and the Tribunal has rightly applied the multiplier of '15'. It is further the contention of the learned counsel for the appellant-Insurance Company that in the present case the father of the deceased is not dependent since there is no evidence on the record to show that he was dependent on the deceased and, hence, 1/4th deduction ought to have been applied instead of 1/5th.

5. *Per contra*, the learned counsel for respondent Nos.1 to 7/claimants has contended that this is a case where the amount of compensation would have to be reworked inasmuch as 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 **Pranay**

Sethi (supra), 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]. It is further the contention of the learned counsel that while assessing the income of the deceased, the Deputy Commissioner rates have rightly been applied by the Tribunal. It is further the contention of the learned counsel that the deceased was 36 years of age at the time of the accident and has left behind four minor children aged 3 to 11 years, his wife aged 32 years and his parents, and they have their whole lives ahead of them. The learned counsel for respondent Nos.1 to 7/claimants has further contended that even though no cross-objection or appeal has been preferred by the respondent Nos.1 to 7/claimants, however, as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908, the Court has power to pass an order notwithstanding that an appeal or cross-objection has not been filed by the claimants/respondents especially in view of the fact that the Motor Vehicles Act, 1988 is a beneficial piece of legislation. In support of his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Surekha & Ors. vs. Santosh & Ors. [2021 (1) PLR 795]**.

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

7. In the present case the argument of the learned counsel for the appellant-Insurance Company that the income ought to have been assessed as per the minimum wages prescribed under the Minimum Wages Act, 1948 and not as per the Deputy Commissioner rates deserves to be rejected.

8. In the case of **Shri Ram General Insurance Company Ltd. & Ors. vs. Beant Kaur & Ors. [2019 (3) SCT 684]** a detailed discussion has

been made on the applicability of the minimum wages prescribed as per the Minimum Wages Act, 1948 as well as the case law applicable thereto. In para 15 it has been held as under :

“15. It has been held in a plethora of judgements by the Hon'ble Supreme Court that it is the duty of the tribunal/Court to award 'just compensation'. Motor Vehicles Act is admittedly a beneficial legislation, therefore to circumscribe the scope of assessment of income of the deceased/injured to the minimum wages as may be notified under the Minimum Wages Act would not be justified. Needless to say, assessment of income in cases where no specific documentary evidence is led in support of the claim, such assessment would be dependent upon the facts and circumstances of each case. There may be instances where oral evidence alongwith other supporting evidence on record may inspire confidence. There has to be a sound evaluation of the oral evidence and supporting circumstances in the factual matrix of each particular case. The Tribunal/Court while keeping in view the minimum wage fixed under the Minimum Wages Act as the basic criterion at the outset would proceed to determine whether income of the deceased/injured is to be assessed at any higher level keeping in view the evidence on record. This in my considered view, would be the correct approach to follow in such cases.”

9. Hon'ble Supreme Court in the case of **Jakir Hussein vs. Sabir & Ors. [(2015) 7 SCC 252]** has held as under :

“14. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as

to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning Rs.4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns Rs.128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at Rs.150/- per day (Rs.4,500/- per month i.e. Rs.54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at Rs.51,000/- for a period of one year and five months. We have to enhance the same to Rs.76,500/- (Rs.4,500 X 17 months)."

10. In the case of **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]** Hon'ble Supreme Court has held as under :

"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as

a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to 150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month.

We, therefore, accept his statement that his monthly earning was Rs.4500/-.”

11. In the present case the deceased was 36 years of age and has left behind four minor children aged 3 to 11 years, his wife aged 32 years and his parents. Hon’ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors. [2021(4) RCR (Civil) 492]** has held that a certain amount of guesswork can be done in motor accident claim cases while assessing the income in the absence of any definite proof regarding income. Para 10 of the said judgment reads 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. 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. 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.”

12. The notification issued periodically qua the minimum wages is merely a yardstick, however, the same cannot be the only factor for assessing compensation payable to the claimants in motor accident claim cases. The Court has to strike a balance between inflated and unreasonable demands of the victim and equally untenable claim of the opposite party saying that nothing is payable. However, at the same time, the award has to be just so as to ensure that the claimants are adequately restored to the position prior to the accident. In the present case, as noticed above, there are four minor children aged 3 to 11 years who have their whole life ahead of them. Two of the children's formal education was yet to begin and the formal education of the other two would have still been at the initial stage. The compensation cannot in any manner compensate for the loss suffered by them due to the untimely death of their father, however, the amount awarded should be adequate to mitigate the financial difficulties the family is likely to face. Keeping in view the tender age of the children and their whole life ahead of them as also the fact that there is no mandate of law as to application of the rates prescribed under the Minimum Wages Act, 1948,

which at best can only be a yardstick, this Court does not deem it appropriate to interfere in the assessment of the income as made by the Tribunal. Hence, the income of the deceased is maintained as ₹10,520/- per month.

13. The argument of the learned counsel for the appellant-Insurance Company that the deduction also ought to be 1/4th as the father cannot be considered as a dependent on the deceased deserves to be rejected in view of the law laid down by the Hon'ble Supreme Court in the case of **Sadhana Tomar & Ors. Vs. Ashok Kushwaha & Ors. [Civil Appeal No.3763 of 2025 arising out of SLP(C) No.6986 of 2023 decided on 24.01.2025]** wherein it has been held as under :

“13. This Court has clarified in the case of Meena Devi v. Nunu Chand Mahto [(2023) 1 SCC 204], that the objective of granting compensation under the Motor Vehicles Act, 1988, is to ensure that just and fair compensation is paid to the aggrieved party. Another question which arose for our consideration, as for the purpose of loss of dependency, the deduction of annual income should be 1/3rd or 1/4th, as there are five claimants. The Tribunal did not consider appellant Nos.4 and 5, namely, the father and the younger sister, respectively, of the deceased as dependents, stating therein that the father was not dependent on the income of the deceased and since the father is alive, the younger sister is also not dependent on the income of the deceased. This Court in Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234], observed that a legal representative is one, who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent or child.

14. Recently in *N. Jayasree v. Chola mandalam MS General Insurance Company Ltd.* [(2022) 14 SCC 712], this Court observed that :

“16. In our view, the term “legal representative” should be given a wider interpretation for the purpose of Chapter XII of the MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, the MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realisation of compensation.”

(Emphasis supplied)

15. In our view, in furtherance of the above exposition of law, the appellant Nos. 4 and 5 being the father and younger sister of the deceased, both not financially independent, would fall under the definition of legal representatives for the purpose of claiming the compensation under the Motor Vehicles Act, 1988, and they were considered as dependents upon the income of the deceased, as he was doing wholesale business of selling fruits to meet the day-to-day expenses of the family. Therefore, the deduction made towards the personal expenses of the deceased should be 1/4th as the number of dependent family members is five.”

14. The argument of the learned counsel for the appellant-Insurance Company that an addition of 50% has been made towards future prospects which ought to be 40% as per the law laid down by the Hon'ble Supreme Court in the case of **Praney Sethi** (supra) deserves to be accepted. Since the deceased did not fall in the category of Salaried Class, hence, an addition of 40% would have to be made towards future prospects and the same is accordingly modified. Since no challenge has been laid down by the learned counsel for the appellant-Insurance Company to the multiplier of '15' as applied by the Tribunal, hence, the same is also maintained.

15. It is trite that as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908 the Court has power to pass an order notwithstanding that the claimants/respondents have not preferred any cross-objection or appeal. Order 41 Rule 33 CPC reads as under :

“33. Power of Court of Appeal - The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.”

16. Hon'ble Supreme Court in the case of **Surekha** (supra) has held as under :

“3. By now, it is well-settled that in the matter of

insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”

17. In view thereof, keeping in view the fact that the amounts awarded towards 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), the same needs to be reworked out. 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 (wife, four minor children and the parents of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly Income	₹10,520/-
2	Annual Income	₹1,26,240/- [₹10,520 x 12]
3	Deduction 1/5 th	₹1,00,992/- [₹1,26,240 – 25,248]
4	Future Prospects - 40%	₹1,41,389/- [₹1,00,992 + 40,397]
5	Multiplier - 15	₹21,20,835/- [₹1,41,389 x 15]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 4] (ii) Filial [₹48,000/- x 2] (iii) Spousal's	₹1,92,000/- ₹96,000/- ₹48,000/- (Total ₹3,36,000/-)
	Total Compensation	₹24,92,835/-

18. In view of the above discussion, the present appeal stands

disposed off and the impugned award passed by the Tribunal is modified to the aforesaid extent. Pending applications, if any, also stand disposed off.

05.05.2025

Yogesh Sharma

(ALKA SARIN)
JUDGE

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