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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5653-2018 (O&M)
Date of Decision : 25.09.2025

THE NEW INDIA ASSURANCE COMPANY LTD. … Appellant

VERSUS

RAJNI SHARMA & ORS … Respondents

FAO-2467-2019 (O&M)

RAJNI SHARMA .... Appellant

VERSUS

JAIKAR SINGH AND ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinod Gupta, Advocate
for the appellant in FAO-5653-2018 and
for respondent No.3 in FAO-2467-2019.

Ms. Tarranum Madan, Advocate for
Mr. Aditya Partap, Advocate
for respondent No.1 in FAO-5653-2018 and
for the appellant in FAO-2467-2019.

Mr. Vishal Aggarwal, Advocate
for respondents No.2 and 3 in FAO-5653-2018 and
for respondents No.1 and 2 in FAO-2467-2019.

ALKA SARIN, J. (ORAL)

CM-3137-CII-2024

1. This is an application for vacation of the stay order dated 27.09.2018 passed by this Court.

2. Learned counsel for the parties are *ad idem* that instead of deciding the present application, the appeals being FAO-5653-2018 and FAO-2467-2019 may be decided.

3. In view thereof and with the consent of learned counsel for the parties, the appeals being FAO-5653-2018 and FAO-2467-2019 are taken on Board today itself for hearing.

FAO-5653-2018 and FAO-2467-2019

4. The present order shall dispose of the above noted two appeals being FAO-5653-2018 having been filed by the Insurance Company and FAO-2467-2019 having been filed by the claimant impugning the award dated 15.05.2018 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal'). The parties are referred to as the Insurance Company, the owner, the driver and the claimant for the sake of clarity.

5. Brief facts relevant to the present *lis* are that on 23.02.2015 Nitin Kumar along with one Amit and Prateek (deceased son of the claimant herein) started their journey from Delhi to Karnal in a vehicle make TATA Nano bearing registration No.AP-31-BY-3108 which was being driven by Nitin Kumar. At about 8:00 pm, when they reached in front of Ford Motors GT Road within the area of Village Kambopura, Police Station Madhuban, District Karnal, their car hit the offending canter bearing registration No.CH-03-Y-2005 which was wrongly parked by its driver on the main road without any indicator or signage. On account of the said accident, Nitin Kumar, Amit and Prateek received multiple injuries and they were taken to General Hospital, Karnal. However, all three succumbed to their injuries. The claimant

herein, namely, Rajni Sharma filed the claim petition claiming compensation for the death of her son, namely, Prateek. An FIR was also registered being FIR No.60 dated 24.02.2015 under Sections 279, 283 and 304-A IPC at Police Station Madhuban, Karnal. The driver and the owner filed their joint written statement in which they denied the factum of the accident and stated that a false FIR had been registered. It was further the stand taken that the vehicle was insured with the Insurance Company and further that the accident took place due to the rash and negligent driving of the driver of the car TATA Nano. It was still further the stand that the car struck against an unknown vehicle on GT Road and the canter had falsely been implicated. The Insurance Company filed its written statement raising various preliminary objections. It was stated in the written statement that the driver was not holding a valid and effective driving licence. It was further the stand that the vehicle was being plied in violation of the terms and conditions of the insurance policy and the provisions of the Act. Further the factum of the accident was also denied.

6. The Tribunal in the case of Rajni Sharma (the claimant herein), keeping in view the age of the deceased as 23 years, had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Annual income	₹1,85,300
2.	Deduction @ 50%	[₹1,85,300 - ₹92,650] = ₹92,650
3.	Future prospects 40%	[₹92,650 + ₹37,060] = ₹1,29,710
4.	Multiplier of 18	[₹1,29,710 x 18] = ₹23,34,780
5.	Funeral expenses	₹15,000
6.	Loss of estate	₹15,000
	Total Compensation	**₹23,64,780**
	Rate of Interest	**@ 6% per annum**

7. Aggrieved by the same the present two appeals have been preferred - one by the Insurance Company being FAO-5653-2018 seeking recovery rights on the ground that there was no route permit for plying the vehicle in Karnal where the accident took place and the route permit only pertained to Chandigarh as also on the ground that it was a case of contributory negligence; and the second appeal being FAO-2467-2019 has been filed by the claimant seeking enhancement of the compensation.

8. Learned counsel for the Insurance company would contend that the canter was plying in Karnal whereas the route permit was only for Chandigarh hence relying on the case of **Gohar Mohammed V/s Uttar Pradesh State Road Transport Corporation & Ors. [(2023) 4 SCC 381]** learned counsel contends that recovery rights ought to have been granted. It is further the contention that since the offending vehicle was parked when the accident took place, it was the driver of the TATA Nano who was at fault for hitting a stationary vehicle.

9. Learned counsel for the owner and the driver would contend that in the present case no issue was framed regarding the route permit and as such it cannot be held that the offending vehicle was being plied on a route for which there was no valid permit.

10. Learned counsel for the claimant would contend that it cannot be held to be a case of a contributory negligence as the accident took place at 8:00 pm on GT Road where there were no streetlights. The canter was parked on the road without any indicator or hazardous lights being switched on. Learned counsel would further contend that the driver did not even step into

the witness box hence the evidence of the claimants went unrebutted qua the fact that the offending vehicle was parked on the road without any indicator or signage. It is still further the contention of the learned counsel for the claimant that though the claimant-appellants do not challenge the income as assessed, the deduction, the addition made towards future prospects and the multiplier applied by the Tribunal, however, the amount awarded under the conventional heads i.e. loss of estate and funeral expenses are not in accordance with the law laid down by 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]** and that no amount has been awarded under the head loss of consortium.

11. Heard.

12. Dealing with the argument of the learned counsel for the Insurance Company that the vehicle was not having a valid permit for plying in Karnal as the route permit (Ex.R5) was valid only for Chandigarh, the same deserves to be accepted in view of the law laid down by the Hon'ble Supreme Court in the case of **Gohar Mohammed** ***supra.*** Their Lordships, while dealing with the issue of route permit, have held as under :

> *'8. Having heard learned counsel for the parties and on perusal of the material available on record, it clearly reveals that on the date of accident, the appellant did not*

> *have a valid and effective permit to ply the offending vehicle on the route where accident took place. Having extensively gone through the fact−finding exercise, it is categorically recorded by MACT that the appellant was neither able to produce/prove the original permit nor was able to prove the information received under RTI Act. Even if RTI information is considered by which it is not clear as to when the disputed permit was issued and by whom. The alleged permit was issued on 28.07.2012, i.e., on Saturday and no explanation is on record as to why deposit of fee was asked on the next day i.e. Sunday. Moreover, assuming that permit was valid as per letter of Transport Authority, but it does not of any help to the appellant since the vehicle was being plied on a route different than specified in permit. The appellant has failed to give any explanation to refute the observations made by MACT to ply the vehicle on Roorkee bypass to Haridwar via Meerut which did not fall within the route of permit issued by Transport Authority. The said findings of fact have been affirmed by the High Court by the impugned order.'*

In the present case admittedly the route permit (Ex.R5) was valid only for Chandigarh and the accident took place in Karnal. Though a faint argument has been raised by the learned counsel for the owner and the driver that the offending vehicle was also issued national permit, however, no such permit was ever brought on the record. In view thereof, this argument of the learned counsel for the Insurance Company is accepted. Since the offending vehicle had the route permit to ply only in Chandigarh and the accident took place in Karnal, the Insurance Company is held entitled to recovery rights.

13. The second argument of the learned counsel for the Insurance Company that it was a case of contributory negligence deserves to be rejected. In the present case cogent evidence was led by the claimant that the canter was parked on the road and the accident took place at 8:00 pm on the GT Road where there were no streetlights. In the absence of any hazardous lights or any indicator especially when the canter was parked on the road, no contributory negligence can be attributed to the driver of the TATA Nano car. Even otherwise the said argument cannot be raised in the present case as the deceased was a passenger and could not have contributed to the accident in any manner. The argument hence stands rejected.

14. Since there is no challenge to the income as assessed, the deduction, the addition made towards future prospects and the multiplier applied by the Tribunal, the same are maintained. The amount awarded under the conventional heads is on the lower side and no amount has been awarded under the head 'loss of consortium'. Hence, 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 claimant 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, being the mother of the deceased, would also be entitled to ₹48,000 (₹40,000 + 20% increase) towards loss of consortium.

15. Accordingly, the reworked compensation to which the claimant is entitled to is as under :

Sr. No.	Heads	Compensation Awarded
1.	Annual income	₹1,85,300
2.	Deduction @ 50%	[₹1,85,300 - ₹92,650] = ₹92,650
3.	Future prospects 40%	[₹92,650 + ₹37,060] = ₹1,29,710
4.	Multiplier of 18	[₹1,29,710 x 18] = ₹23,34,780
5.	Funeral expenses	₹18,000
6.	Loss of estate	₹18,000
7.	Loss of consortium (i) Filial	₹48,000
	Total Compensation	**₹24,18,780**

16. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The Insurance Company shall pay the enhanced amount and shall have the recovery rights, as determined above.

17. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [AIR 2025 SC 1713]**, after calculation of the enhanced amount, the same be transferred by Insurance Company in the bank account of the claimant within a period of six weeks from today. The particulars of the bank account along with the requisite documents in support thereof shall be furnished by the claimant to Insurance company within a period of two weeks from today and needful shall be done by 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.

18. In view of the above discussion, both the appeals being FAO-5653-2018 and FAO-2467-2019 are disposed off and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

25.09.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

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