



IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

FAO-1693-2003

DAYA CHAND AND OTHERS

...APPELLANTS

VERSUS

BIJENDER AND OTHERS

...RESPONDENTS

|    |                                                                                                       |            |
|----|-------------------------------------------------------------------------------------------------------|------------|
| 1. | Judgment reserved on                                                                                  | 07.05.2026 |
| 2. | Judgment pronounced on                                                                                | 11.05.2026 |
| 3. | Judgment uploaded on                                                                                  | 11.05.2026 |
| 4. | Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced. | FULL       |
| 5. | The delay, if any of the pronouncement is full judgment and reason thereof.                           | NA         |

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Argued by: Mr. Kulvir Narwal, Advocate  
for the appellant.

Mr. Ravinder Arora, Advocate and  
Mr. Vipul Sharma, Advocate  
for respondent No.3-Insurance Company.

YASHVIR SINGH RATHOR. J.(Oral)

1. This appeal has been instituted against the Award dated 18.02.2003 for enhancement of compensation awarded in MACT case No.20 of 2001 decided by the Motor Accident Claims Tribunal, Rohtak (**for short “Tribunal”**) in a petition under Section 166 of Motor Vehicles Act, 1988,



vide which a sum of Rs.6,59,800/- has been assessed as compensation to the claimants alongwith interest at the rate of 9% per annum from the date of filing of claim petition till realization on account of death of Satbir Singh in a motor vehicular accident which allegedly took place due to rash and negligent driving by respondent No.1 while driving offending truck bearing No.HR-46-C-0126 (**for short 'offending vehicle'**), owned by respondent No.2, which was insured with respondent No.3. However, the Tribunal had come to the conclusion that it was a case of contributory negligence and out of the total compensation of Rs.6,59,800/- as assessed by the Tribunal, only 50% of the amount was ordered to be paid to the claimants.

2. From the pleadings of parties, following issues were framed by the learned Tribunal:-

1. *Whether respondent no.1 has driven truck No.HR-46C-0126 rashly and negligently on 20.07.2001 in the area of village Ghillor Kalan Distt. Rohtak and caused the accident causing death of Satbir Singh? OPP*
2. *Whether the petitioners, being the legal heirs and representatives of the deceased, are entitled to any compensation from the respondent. If so, to what amount and from whom? OPP*
3. *Whether respondent no.1 was not holding a valid and effective driving licence and that the respondents no.1 & 2 have breached any terms and conditions of the insurance policy, as alleged. If so, to what effect? OPR-3.*
4. *Relief.*

3. Thereafter, the parties led evidence in support of their case.



4. After hearing the parties and on going through the material on the file, learned Tribunal assessed a sum of Rs.6,59,800/- as compensation to the claimants, on account of death of Satbir Singh alongwith interest at the rate of 9% per annum from the date of filing of claim petition till realization, payable by respondents No.1 to 3, jointly and severally. However, the Tribunal came to the conclusion that it was a case of contributory negligence and out of the total compensation of Rs.6,59,800/- as assessed by the Tribunal, only 50% of the amount was ordered to be paid to the claimants.

5. Feeling aggrieved, the appeal in hand has been preferred. The material on file has been perused and parties have been heard.

6. It is pertinent to mention that the record of the present appeal and the Tribunal has got burnt in a fire incident in the High Court Registry and the present appeal has to be decided on the basis of the facts and evidence discussed by the Tribunal in the impugned award.

7. Learned counsel for the appellants argued that the Tribunal has held the driver of the offending vehicle as well as the vehicle in which deceased was travelling, to be rash and negligent while driving their respective vehicles and after holding that the vehicle in which deceased was travelling has also contributed to the accident, 50% of the amount has been deducted out of the compensation assessed by the Tribunal which is against law. Learned counsel contends that the deceased was a third party and in the case of joint tort feasons, it is open to the claimants to recover the entire compensation from one of the joint tort feasons and the claimants can sue



both the joint tort feasons or any of the joint tort feasons and to recover the entire compensation as the liability of joint tort feasons is joint and several. In support of his contention, learned counsel has cited Law Finder Doc ID #669171,"**Khenyei Vs. New India Assurance Co. Ltd. and others**".

8. Learned counsel next contended that income of the deceased has been assessed on lower side as deceased was village Sarpanch, an agriculturist and was also running a diary. He was also doing property dealing business and he used to earn Rs.15,000/- per month. Learned counsel further contended that merely because claimants were unable to produce documentary evidence to prove the monthly income of the deceased does not justify adoption of minimum wages while assessing the monthly income and some amount of guesswork has to be applied while assessing the monthly income. Learned counsel next contended that future prospects have also not been added and 40% of the amount should have been added to the monthly income of the deceased towards future prospects as he was 36 years of age. Learned counsel further contended that deceased has left behind 5 dependents and the Tribunal has deducted one third of the income towards personal expenses but 1/4th of the income has to be deducted towards personal and living expenses. Likewise, no compensation has been awarded under conventional heads i.e. 'loss of estate' and compensation awarded under 'loss of consortium', and 'funeral expenses' is also on lower side and he prayed that compensation be suitably enhanced and appeal be accepted. In support of his contentions, learned counsel for the appellants has relied upon



2009(6) SCC 121 **Sarla Verma and others Vs. Delhi Transport Corporation and Another**, 2017 (16) SCC 680 **National Insurance Co. Ltd Vs. Pranay Sethi and Other**, 2018 (4) R.C.R. (Civil) 333 **Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others**, (2021) 11 SCC 780 **United India Insurance Co. Ltd. Vs. Satinder Kaur**.

9. On the other hand, learned counsel for respondent No.3 argued that the award in question is well-reasoned and justified and adequate compensation has been assessed by the Tribunal and no interference in the same is called for and appeal in hand is liable to be dismissed.

10. After hearing the parties and on going through the material on file, I am of the considered opinion that the finding on Issue No.1 so far as the amount of compensation has been deducted on account of contributory negligence is liable to be set aside.

11. One of the eye-witness of the accident namely PW4 Sajjan Singh was examined, who deposed that he is salesman at Kishan Filling Station, Ghillor Kalan. On 20.07.2001 in the evening, he was returning from Sukhpura Chowk Rohtak to Ghillor in a jeep. When they were one kilometre away from the Ghillor Kalan Petrol pump, at about 09.30 PM, one truck No.HR-46-C-0126 being driven by its driver Bijender/respondent No.1 was seen coming from the opposite side at a high speed in a rash and negligent manner. The truck was being driven in a zig-zag manner and it dashed into car No.DL-2CN-8659 in which two persons were travelling which was coming from Gohana side due to which the car turned back. They stopped the



jeep and with the help of passengers travelling in the jeep, both the injured were removed from the car. In the meanwhile, Ashok Kumar Constable of Police Force Ghillor Kalan also reached there and with his help, both the injured were taken to PGI, Rohtak for treatment while the driver of the truck escaped from the spot taking advantage of the darkness. Thereafter, he had lodged the report with the police. During cross-examination, he admitted that the accident in question had taken place in the middle of the road which was a head on collision. The driver of truck namely Bijender has also stepped into witness-box as RW1 and during cross-examination, he admitted that the accident took place as right sides of both the vehicles had struck against each other.

12. In this view of the matter, the Tribunal came to the conclusion that it was a case of contributory negligence. The Tribunal assessed the total compensation to be Rs.6,59,800/- but after deducting 50%, claimants were awarded a compensation of Rs.3,29,900/-. However, the deceased, who was travelling in the Maruti car No.DL-2CN-8659 was a third party qua drivers and owners of both the offending vehicles. Even if, the accident had taken place due to contributory negligence of driver of truck as well as driver of the Maruti car, it was open for the claimants to recover the entire amount of compensation from one of the joint tort feasons. In **Khenyei's case (supra)**, it has been held that in the case of composite negligence, the claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several. It has



been further held that it will not be appropriate for the Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award.

13. Hon'ble Supreme Court has also drawn distinction between contributory negligence and composite negligence and has held that there is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons.

14. In the present case also, the car was being driven by one Randhir in which deceased was travelling and the offending truck was being driven by respondent No.1-Bijender and accident in question took place due to rash and negligent driving on their part and since deceased was a third party, claimants are entitled to sue both or any of the joint tort feasons and to recover the entire compensation as liability of respondent No.1 and said Randhir, driver of car, against whom claim petition has not been filed is joint and several. Learned Tribunal thus gravely erred in deducting 50% of the amount of



compensation out of the total compensation assessed by it and finding to that extent is reversed.

15. Claimant Smt. Bala, while appearing as PW1, deposed that deceased was 36 years of age and was village Sarpanch. He was an agriculturist and was also running a diary. He was also doing property dealing business. She deposed that he used to earn Rs.15,000/- per month. The matriculation certificate of deceased Ex.P2 has been led in evidence, which shows that his date of birth was 10.05.1964 and the accident had taken place on 20.07.2001, which shows that deceased was above 37 years of age.

16. To prove the income, Jamabandi for the year 1997-1998 Ex.P4 has also been produced, which shows that in Rectangle No.38, Killa No.81 (8-0), he along with his two brothers owned half share i.e. 160/771 share and as such, he was owner of a very small share in a land. Learned Tribunal after going through the material on file assessed his monthly income to be Rs.5,100/-, which in my opinion is not on lower side and accordingly, his income is taken as Rs.5,100/- per month.

17. However, no future prospects have been added to the monthly income of the deceased. Deceased was 37 years of age as per matriculation certificate Ex.P2 and as such, 40% amount has to be added to the monthly income of the deceased towards future prospects in view of law laid down in **Pranay Sethi's case (supra)**, which takes his income to **Rs.7,140/- per month (Rs.5,100/- + Rs.2,040/-)**.



18. Deceased has left behind five dependents including his parents, wife and two minor children. However, in view of law laid down in **Sarla Verma's case (supra)**, father cannot be termed as dependent upon his deceased son and he is thus not entitled to any compensation except on account of filial consortium. As such, deceased has thus left behind four dependents and accordingly, 1/4th of the income has to be deducted towards personal and living expenses as per law laid down in **Sarla Verma's case (supra)** and after deducting the same, the monthly loss of dependency comes out to Rs.5,355/- and the annual loss of dependency comes out to **Rs. 64,260/- (Rs.5,355/- X 12)**.

19. As per guidelines laid down in **Sarla Verma's case (supra)**, multiplier of 15 has to be applied as deceased was 37 years of age and after applying the same, the compensation comes to **Rs.9,63,900/- (Rs.64,260/- X 15)**.

20. In addition to this, claimant No.3 (wife of the deceased) is held entitled to a sum of **Rs.70,000/-** under conventional heads i.e. **Rs.40,000/-** towards 'loss of consortium', **Rs.15,000/-** towards 'loss of estate' and **Rs.15,000/-** on account of 'funeral expenses', as per law laid down in **Pranay Sethi's case (supra)**. Likewise, remaining claimants No.1, 2, 4 and 5 who are parents and minor children of deceased are also held entitled to a sum of **Rs.40,000/- each** on account of 'loss of filial and parental consortium', in view of law laid down in **Nanu Ram's case (supra)** and



Satinder Kaur’s case (supra), which takes the compensation to Rs.11,93,900/-.

21. Accordingly, the compensation to be awarded to the appellants/claimants is assessed as under:-

| S.No. | Under Head                                                                   | Compensation awarded by the High Court |
|-------|------------------------------------------------------------------------------|----------------------------------------|
| 1.    | Monthly income of deceased                                                   | Rs.5,100/- per month                   |
| 2.    | Age of deceased                                                              | 37 years                               |
| 3.    | Future prospects @ 40%                                                       | Rs.2,040/-                             |
| 4.    | Total income                                                                 | Rs.7,140/- per month                   |
| 5.    | Number of dependents                                                         | 4                                      |
| 6.    | Deduction towards personal expenses of the deceased (1/4th)                  | Rs.1,785/-                             |
| 7.    | Monthly loss of dependency                                                   | Rs.5,355/-                             |
| 8.    | Annual loss of dependency                                                    | Rs. 64,260/- (Rs.5,355/- X 12)         |
| 9.    | Multiplier                                                                   | 15                                     |
| 10.   | Compensation on account of Loss of dependency                                | Rs.9,63,900/- (Rs.64,260/- X 15).      |
| 11.   | Compensation under conventional heads to claimant No.3-wife                  | Rs.70,000/-                            |
| 12.   | Compensation to remaining claimants (parents and minor children of deceased) | Rs.1,60,000/- (Rs.40,000/- each)       |
|       | <b>Total Compensation</b>                                                    | <b>Rs.11,93,900/-</b>                  |
|       | <b>Interest</b>                                                              | <b>9%</b>                              |

22. Resultantly, the appeal in hand is partly accepted with costs and appellants/claimants are held entitled to a sum of Rs.11,93,900/- as compensation. The enhanced compensation thus comes out to Rs.8,64,000/- (Rs.11,93,900/- - Rs.3,29,900/-) over and above the compensation awarded by the Tribunal payable alongwith interest at the rate of 9% per annum from



the date of filing of claim petition i.e. 31.08.2001, till realization payable by respondents, jointly and severally. Out of the enhanced compensation, a sum of Rs.1,00,000/- each along with proportionate interest be paid to claimants No.2, 4 and 5 (mother and children of the deceased), a sum of Rs.40,000/- along with proportionate interest be paid to claimant No.1 (father of the deceased) while remaining amount be paid to claimant No.3 (wife) along with proportionate interest.

23. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of directions issued by the Hon'ble Supreme Court in Writ Petition (Civil) No.534 of 2020 titled ***Bajaj Allianz General Insurance Company Versus Union of India and others***, decided on 16.03.2021 and Insurance Company shall comply with the directions as issued under Clause (F) of the said judgment.

24. Pending misc. application(s), if any, shall also stand disposed of.

**(YASHVIR SINGH RATHOR)**  
**JUDGE**

**11.05.2026**

Priyanka Thakur

Whether speaking/reasoned. : Yes/No

Whether reportable. : Yes/No