



**110 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1767-2022 WITH
FAO-3430-2022 (O&M)
Date of Decision: 11.03.2026

1. FAO-1767-2022

SUSHILA AND OTHERS

....Appellants

Versus

BODH RAJ AND ANOTHER

...Respondents

2. FAO- 3430-2022

UNITED INDIA INSURANCE CO. LTD

....Appellant

Versus

SUSHILA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ashwani Arora, Advocate
for appellants in FAO-1767-2022 and
for respondent Nos.1 to 5 in FAO-3430-2022.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.2 in FAO-1767-2022 and
for appellant in FAO-3430-2022.

Parmod Goyal, J. (Oral)

Present appeal has been preferred by the appellants-claimants being the wife, two minor sons and parents of the deceased- Navin @ Naveen Shah (hereinafter referred to as the '**deceased**'), who died in motor vehicular accident which took place on 01.01.2018, on account of rash and negligent driving by respondent No.1 while driving ambulance bearing registration No. PB-65-F-5398.

2. Being aggrieved by the impugned award dated 29.11.2021, passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter re-

ferred to as '**Tribunal**'), vide which the appellants-claimants were found entitled to total compensation of Rs.1,13,00,675/-, the appellants-claimants are seeking enhancement of compensation awarded by the Tribunal as the same is not accordance with their entitlement.

3. In the present case the main grouse of the appellants – claimants is with regards to income of deceased which was taken by the learned Tribunal for calculating dependency. Admittedly, the deceased was permanently employed with northern railways as a Locopilot. Appellants/claimants duly examined PW3, Sanjeev Kumar, Senior Clerk, Divisional Railway Manager, Ambala Cantt. where deceased was working, who duly proved that last drawn gross salary of the deceased was Rs.77,893/- per month with deduction of Rs.12,267/- on account of income tax, employee share in monthly provident fund, society membership fund, KKKREC (Karamchari Kalyal Kosh) and voluntarily provident fund. Apart from placing last salary certificate for the year 2017-2018 as Ex.P18, the appellants/claimants had also placed on record income tax return for the assessment year 2017-18 as Ex.P15. The income tax return Ex.P15 shows average income for financial year 2016-2017 of deceased as on 31.03.2017, whereas in the present case, deceased had died on 01.01.2018 and as per December salary certificate his gross income was Rs.77,893/-. It is therefore, contended on behalf of appellants-claimants that learned Tribunal has erred by not taking last drawn salary to be income of deceased.

4. I find merit in the contention raised on behalf of appellants-claimants that learned Tribunal ought to have taken gross income as stated in

salary certificate for the month of December, 2017 instead of taking average income as on 31.03.2017. Accordingly, the gross income of deceased is taken as Rs.77,893/- per month to calculate the loss of dependency.

5. The next question which requires determination is as to what allowances have to be deducted from the gross income of deceased. Admittedly, deceased was getting number of allowances. Learned counsel for insurance company has specifically argued that since train allowance and cell allowance amounting to Rs.1,800/- and Rs.105/- respectively which were for the personal needs of the deceased, needs to be deducted from the gross salary to calculate loss of dependency. However, in view of judgment of Hon'ble Supreme Court in **National Insurance Company Vs. Nalini & Ors.**, 2024 SCC OnLine SC 2252 which was duly relied upon by this Court in FAO-2562-2008 titled as **Ritu Yadav Vs. Daya Ram & Ors.**, decided on 15.09.2025, all the allowances needs to be added for determining income of deceased unless it is concluded by learned Tribunal or learned Appellate Court that allowances were not used for the benefit of family. No such conclusion can be drawn from the nature of allowances which insurance company wants to get deducted from gross income. Accordingly, income tax payable which comes to Rs.69,443/- as per Income Tax Act,1961 applicable for assessment year 2018-19 needs to be deducted from gross salary of Rs.77,893 x 12 – 69,443 = Rs.8,65,273/12 which comes to Rs.72,106/- per month. Accordingly, monthly income of deceased is taken to be Rs.72,106/- for the purposes of calculating loss of dependency. Since deceased was aged 40 years 7 months old, multiplier of '15' ought to be taken. The appellants-claimants shall also be entitled to future prospects to the extent of 30% as he

was in a permanent job and since the deceased is survived by five dependents, therefore, deduction to the extent of 1/4th needs to be made towards personal expenses. In the present case the appellants-claimants shall also be entitled to compensation of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- each towards spousal, filial and parental consortium.

6. Accordingly, the reworked compensation payable to appellants-claimants is as under :-

Income of deceased	Rs.72,106/- per month	Rs.72,106/- per month
Deduction	1/4 th (72106 - 18027)	Rs.54,079/-
Future Prospects	30% (54079 + 16224)	Rs.70,303/-
Multiplier	15	15
Total loss of dependency	Rs.70,303 x 12 x 15	Rs.1,26,54,540/-
Loss of estate		Rs.15,000/-
Funeral expenses		Rs.15,000/-
Spousal consortium to Claimant No.1		Rs.40,000/-
Parental consortium to Claimant Nos.2 & 3	Rs.40,000 x 2	Rs.80,000/-
Filial consortium to Claimant Nos.4 & 5	Rs.40,000 x 2	Rs.80,000/-
Compensation awarded by Tribunal	Rs.1,13,00,675/-	
Compensation awarded in appeal		Rs.1,28,84,540/-

Enhancement compensation	of	Rs.1,28,84,540/- (awarded in appeal) - Rs.1,13,00,675/- (awarded by Tribunal)	Rs.15,83,865/-
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7. Appellants-claimants shall be entitled to enhanced compensation along with 7.5% interest from the date of filing of claim petition till realization of entire amount. Apportionment and liability to pay compensation shall be as per award.

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8. This cross appeal has been filed by respondent No.2 i.e. the insurance company as the recovery rights have been given to the Respondent No. 2. It is the contention of the insurance company, that it is not liable to pay at first instance since there was no registration certificate of the vehicle or driving licence of the driver. The failure to produce driving licence and registration certificate by driver/owner of offending vehicle has made respondent No.2 entitled to avoid its liability to indemnify owner of offending vehicle. However, liability to pay compensation at the first instance with right to recover same is not out of contractual consequence of insurance policy but in view of the fact that Motor Vehicles Act, 1988 is a beneficial legislation. A device has been made by the Courts to mitigate victims of motor accidents.

9. In view of the facts and circumstances of the present case, no special circumstances are shown as to absolve insurance company from running away to discharge its duties under Motor Vehicles Act, 1988. It is held that insurance company has no liability to indemnify owner of offending vehicle, therefore, shall be entitled to recover amount paid to

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claimants from driver/owner with interest. Accordingly, in above terms appeal preferred by insurance company is dismissed.

10. Pending application(s), if any, is/are disposed of accordingly.

11.03.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No