

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****FAO-966-2024(O&M)****Date of decision: 18.03.2026****Shaista & Another****...Appellant(s)****Vs.****Usman & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Manoj Pundir, Advocate
Mr. Puneet Munjal, Advocate
for the appellants.

*********NIDHI GUPTA, J.****CM-3773-CII-2024**

This is an application under Section 5 of Limitation Act read with Section 151 CPC for condonation of delay of 76 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit of the appellant No.1, the same is allowed subject to all just exceptions and delay of 76 days in filing present appeal is condoned.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4,30,000/- awarded by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter 'the learned Tribunal') vide Award dated 09.08.2023 passed in MACP Case No.402 of 2019 filed under Section 166 of the Motor Vehicles Act



(hereinafter “the Act”). The 2 claimants are the parents of deceased Sajia, who was 5 years old at the time of accident.

2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the deceased Sajia had died due to the injuries suffered by her in a motor vehicular accident that took place on 22.09.2019 due to the rash and negligent driving of Truck bearing registration No.HR-58B-1417 (hereinafter “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. The said compensation has been awarded along with interest @ 7.5% per annum. Respondents No.1, 2 and 3 were held jointly and severally liable for payment of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation by submitting that the Tribunal has assessed income of the deceased on the lower side as only Rs.25,000/- per annum. It is submitted that the Hon’ble Supreme Court in **Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari, (SC) : Law Finder Doc ID # 2772904**, has taken income of the minor child therein as a skilled worker as per the relevant Minimum Wage Notification. Therefore, income of the deceased child herein also ought to be assessed as per the Minimum Wage Notification. Further, multiplier of 18 ought to have been applied. The amounts granted under the conventional



heads also deserve to be enhanced. Interest should have been awarded @ 12%. 40% increase should have been granted towards future prospects.

4. No other argument is made on behalf of the appellants. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

5. Age of the deceased was proved to be 5 years at the time of accident, on the basis of her Post-Mortem Report (Ex.P1). Keeping in view, the said fact, Id. Tribunal had relied upon judgment of Hon'ble Supreme Court in "**Kishan Gopal & Another Vs. Lal & Others**" 2014(1) SCC 244 (SC), and, assessed notional income of the deceased to be Rs.30,000/- per annum. The contention of the appellants that the income ought to have been determined as per the Minimum Wages of a skilled labourer in terms of the judgment of the Hon'ble Supreme Court in **Hitesh Nagjibhai (supra)**, is incorrect as in the said relied-upon case, the minor child therein had received injuries/permanent disability; whereas the present is a death case. The Tribunal has rightly relied upon judgment of the Hon'ble Supreme Court in **Kishan Gopal supra** facts of which are similar to that of the present case inasmuch as in **Kishan Gopal supra** also Claim Petition was filed under Section 166 of the Act; and deceased therein was 10 years old; and his income was assessed as Rs.30,000/- per annum.

6. As deceased was 5 years old, multiplier of 15 has been correctly applied. Learned Tribunal has further awarded Rs.15,000/-



towards funeral expenses and Rs.40,000/- towards filial consortium; thereby granting total compensation of Rs.4,30,000/-. I find no error in the same. It may be pointed out that in similar circumstances, Hon'ble Supreme Court in **Rajendra Singh and others vs National Insurance Company Limited and others, 2020 (3) RCR (Civil) 26** – wherein deceased was 12 years old and the Court had awarded compensation of Rs.2.95 lacs; and of this Court in **Shashi Bala vs Sudarshan Kumar and others, 2015 ACJ 1728** – wherein deceased was 17 years old and compensation of Rs.5.00 lacs was awarded.

7. It may be pointed out that in the present case, the appellants have proved that the accident in question had taken place due to rash and negligent driving of the respondent No.1 by placing reliance upon the testimony of PW3 Nazim eyewitness, on whose statement FIR No.261 dated 22.09.2019 was registered under Sections 279, 337 and 304-A IPC at Police Station Sadar Yamuna Nagar. It is however imperative to point out that respondent No.1 has been acquitted by the learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri vide judgment dated 18.10.2025 for the following reasons: -

“16. Initially, criminal machinery was set into motion on the application moved by the complainant PW7 Nazim. He is most material witness of the present case being complainant/ eye witness, but he did not support the case of the prosecution. He has specifically deposed that on 22.09.2019, he along with



Gulfan, Usmani and Sajiya were going to village Hussainpur on his motorcycle bearing No.HR02AS-0680. When they reached near Yamuna bridge, an unknown vehicle hit their motorcycle, in which Gulfan and Sajiya died on the spot. He has specifically deposed that he had not seen the number of vehicle and driver of the vehicle. He has seen the accused present in the court and he is not that person who caused the accident. He has seen statement Ex. PW7/A and he has not given this statement to the police. He has never given any statement to the police against the accused. Police obtained his signatures on blank papers. PW3 Gulista @ Usmani, injured/eye witness has also deposed that he has seen the accused for the first time in the court and the above said accused did not cause any accident in her presence. Police obtained her signatures on blank papers. PW8 Salim, relative of deceased has also deposed that he can not tell who caused the accident and he did not identify the accused. He had only identified dead bodies of deceased Gulfan and Sajiya. On bare perusal of testimonies of above said witnesses, it is clearly evident that they have failed to prove that accused was driving the offending truck on the date of occurrence of incident. There is nothing in their statements to connect the accused with the alleged offences as the complainant/ eye witness has specifically deposed that he had not seen the number of the vehicle and driver of the vehicle. He has seen the accused present in the court and he is not that person who caused the accident. Therefore, non-supporting the case of the prosecution by complainant/ eye witness creates doubt on the case of the prosecution. None of the



prosecution witnesses have supported the case of the prosecution...". (Emphasis added)

8. This Court cannot be a deaf-mute spectator to the two contradictory versions given by the claimant side. No doubt, proceedings under the Act have to be decided on the preponderance of probabilities. However, this Court cannot shut its eyes in an ostrich like manner, to the starkly diametrically opposite stance taken by the claimants' side in the criminal trial. Thus, no credence can be attributed to the contrary statements made by the claimants' side before the learned Tribunal. It would appear that the claimant side had deposed falsely before the learned Tribunal only with the view to get the compensation. In this situation, reference may be made to a judgment of this Court in **"Shri Ram General Insurance Company Limited Vs. Jeeto Devi & Others"** FAO-2231-2014 decided on **03.12.2019**, wherein it is held as under:-

*"(6) This Court cannot loose sight of the judgment rendered by this Court in the case of **United India Insurance Company Limited versus Kamla Devi and others 2010(53) RCR (Civil) 651**, wherein it was specifically held that in case an eye witness gives totally different version before the Court conducting trial in criminal case from the statement made by the said eye witness before the Tribunal, the testimony of such a witness is unworthy of being accepted and the evidence should be simply rejected. In fact, the learned Single Bench came down heavily on such witness and held that the said witness is also liable for perjury."*



9. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts, findings, and legal position. Thus, no ground whatsoever is made out for enhancement of compensation.
10. In view of the above, present appeal stands **dismissed**.
11. Pending application(s) if any also stand(s) disposed of.

18.03.2026

Sunena

(Nidhi Gupta)**Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No