FAO-2496-2021 (O&M)

125 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on : 12.02.2026

FAO-2618-2019 (O&M)

Reliance General Insurance Company Limited ….Appellant

Versus

Anil Kumar & ors. ….Respondents

FAO-2496-2021 (O&M)

Anil Kumar & anr. ….Appellants

Versus

Satish Kumar & anr. ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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Present :- Mr. Sunil Kumar, Advocate
for the appellant- **FAO-2618-2019**
for respondent No.2- **FAO-2496-2021**

Mr. K.K.Saini, Advocate for
Mr. Raj Kumar Sharma, Advocate
for the appellant- **FAO-2496-2021**
for respondents No.1 & 2- **FAO-2618-2019**

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PANKAJ JAIN, J. (ORAL)

1 By way of instant order, I intend to dispose off two cross appeals directed against award dated 18.02.2019 passed by Motor Accident Claims

Tribunal, Bhiwani under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the 1988 Act').

2 **FAO-2496-2021** is at the behest of the claimants seeking enhancement of compensation on account of death of their father, Dharambir, in a motor vehicular accident dated 13.11.2016, in which he lost his life at the age of 52 years. The claimants seek enhancement in terms of the ratio of law laid down by Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009, Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298 and Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018.***

3 Tribunal awarded compensation of Rs.20,76,000/- to the claimants observing as under :-

> *"14. Keeping in view all facts and circumstances of the case income of the deceased is presumed to be 27,000/- per month. Age of deceased was about 52 years. In view of the judgment of Hon'ble Supreme Court in case of National Insurance Company Limited versus Pranay Sethi and others, reported in 2017 (4) RCR (Civil) 1009, 15% of the income is to be added for future prospectus. Therefore, income of Dharambir (since deceased), at the time of his death, is presumed to be 27,000+4,000=31,000/-, which comes to 31,000 x 12= 3,72,000/- per annum. Both the petitioners are major sons of the deceased and it can not be said that they were dependents on the deceased. Therefore, half of the income of the deceased is liable to be deducted towards his personal expenses. Accordingly, loss of income comes to 1,86,000/- per annum. Since age of Dharambir (since deceased) was more than*

50 years, multiplier of 11 is applicable. By applying the multiplier of 11, total loss of income comes to ₹1,86,000×11=20,46,000/-only.

15. Besides, a sum of 15,000/- for loss of estate and a sum of 15,000/- for loss of funeral expenses are also allowed to the petitioners. Therefore, it is concluded that petitioners are entitled to receive compensation of 20,46,000+15,000 +15,000= 20,76,000/- on account of death of their father Dharambir in a road side accident recoverable from the respondents jointly and severally."

4 **FAO-2618-2019** is at the behest of the insurance company. The sole issue raised is with respect to findings recorded by Tribunal on issue No.1. As per the appellant-insurance company, the Tribunal erred in rejecting the plea raised by the insurer with respect to contributory negligence of the deceased.

5 Counsel for the insurance company submits that it stands proved on record that the deceased was not wearing a helmet. Had he been wearing the helmet, he would have not sustained fatal injuries. It being a case of contributory negligence, Tribunal erred in deciding issue No.1 against the insured vehicle. Counsel submits that the insurer examined Suraj P.Matondkar, as RW1 who proved the fact that the deceased was driving motorcycle without wearing helmet, yet the said testimony has been ignored.

6 In the considered opinion of this Court, the plea raised by counsel for the insurance company *sans* merit and deserves to be rejected. In order to claim contributory negligence, appellant was required to prove negligence on part of the deceased that contributed to the accident in question. The deceased

not wearing of helmet may be an illegal act that invites penalty under the 1988 Act and may have led to death of the deceased, however, the same cannot be said to be an act that contributed to the accident.

7 In view thereof, the appeal preferred by the insurance company bearing ***FAO-2618-2019*** stands dismissed.

8 The only modification that needs to be made with respect to quantum is regarding denial of parental consortium to the appellants holding them to be major sons of the deceased.

9 In the considered opinion of this Court, *dehors* the fact that they had attained majority, the Tribunal ought not have denied them compensation for loss of consortium. Accordingly, the impugned award is modified to the extent that each of the claimants shall be held entitled to loss of consortium @ Rs. 40,000/-.

10 With the aforesaid modification, the appeal bearing ***FAO-2496-2021*** is disposed off.

11 Photocopy of this order be placed on the connected file.

(PANKAJ JAIN)
JUDGE

12.02.2026
Pooja Sharma-I

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No