2026:PHHC:035555

S. No.206

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

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Date of Decision:06.03.2026

1. FAO No.628 of 2004 (O&M)

Ramesh and another .....Appellants
Vs.
Muzafar Khan and others .....Respondents

2. FAO No.629 of 2004 (O&M)

Ramesh and another .....Appellants
Vs.
Ilam Singh and another .....Respondents

2. FAO No.938 of 2004 (O&M)

Muzafar Khan and others .....Appellants
Vs.
Ramesh and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Sukhdev Singh, Advocate for Mr. Vikram Singh, Advocate for appellants in FAO No.938 of 2004 and for respondents No.1 and 2 in FAO No.628 of 2004.

Appellant No.1– Ramesh in FAO Nos.628 and 629 of 2004 died.

Mr. Karan Garg, Advocate for appellant No.2 in FAO No.628 and 629 of 2004 and for respondent No.2 in FAO No.938 of 2004.

None for respondent No.1 in FAO No.629 of 2004.

Mr. Vinod Gupta, Advocate for the Insurance Company.

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<u>Yashvir Singh Rathor, J. (Oral)</u>

1. This order shall dispose of above noted three appeals, as the same have emanated out of the same award.

FAO No.938 of 2004 (O&M)

2. This appeal has been instituted against the Award dated 31.10.2003 for enhancement of compensation awarded in MACT case No.73 of 2002 decided by the MACT, Panipat (**for short "Tribunal"**) in a petition under Section 166 of Motor Vehicles Act, 1988 vide which a sum of Rs.80,000/- has been awarded as compensation to the claimants/appellants- Muzafar Khan and Habiba on account of death of their son Azam Khan alongwith interest at the rate of 9% per annum from the date of filing of claim petition till realization.

FAO No.628 of 2004 (O&M)
FAO No.629 of 2004 (O&M)

3. These appeals have been instituted by the owner and driver of the offending vehicle against the afore-said award and by way of these appeals, they have challenged the findings of the Tribunal vide which recovery rights have been given to the Insurance Company to recover the awarded amount from the insured/ owner after payment of compensation to the victims.

4. Case of the petitioners is that on 22.06.1999, deceased- Azam Khan along with Abdul Rehman Khan, Mehmood, Illam Singh and Dharam Pal was coming from Titro to Panipat in canter bearing registration No.HR-12/6340. Canter was being driven by respondent No.1 in a rash and negligent manner and it went on the berms/ kacha path of the road near Sanoli and turned turtle. Azam Khan died at the spot and other occupants of the canter suffered injuries and they were got medically examined in Civil Hospital, Panipat. It is further submitted that deceased – Azam Khan was 27 years of age and he was earning Rs.5,000/- per month by taking the fruit orchards on contract. It is further submitted that a sum of Rs.20,000/- was spent on transportation and last rites of the deceased. The

claimants – Muzafar Khan and Habiba, being parents of the deceased claimed compensation to the tune of Rs.10,00,000-.

5. Illam Singh – petitioner in connected claim petition was also travelling with the deceased- Azam Khan. He suffered grievous injuries in the accident. It is also submitted that Illam Singh has spent Rs.60,000/- on his treatment. He has claimed compensation to the tune of Rs.10,000/- on account of expenditure incurred on treatment, loss of income & pain and suffering etc. It is alleged that the offending vehicle was owned by respondent No.2 which was insured with respondent No.3 and all the respondents are jointly and severally liable to pay compensation.

6. Respondents No.1 and 2 filed joint written statement and have controverted the contents of the petition. Allegations with regard to rash and negligent driving have been denied. A plea has been taken that accident took place due to mechanical defect in the vehicle.

7. Respondent No.3- Insurance Company has also challenged the petition by alleging that the driver of offending vehicle was not holding a valid and effective driving licence to drive the canter and as such, he violated the terms and conditions of the Insurance Policy. The other allegations regarding income and loss of earning etc. have also been denied and dismissal of the claim petitions was sought.

8. Replication was filed and from the pleadings of parties, following issues were framed:-

> *"1. Whether the accident in question took place due to rash and negligent driving of Canter No.HR-12/6340 by respondent No.1?OPP*

2. Whether the petitioners are entitled to any compensation, if so, how much and from whom?OPP

3. Whether the respondent No.1 was not holding an effective and valid driving licence at the time of accident as alleged?OPR

4. Relief."

9. Both the parties led evidence in support of their respective cases.

10. After hearing the parties and on going through the material on record, the Tribunal came to the conclusion that accident in question had taken place on account of rash and negligent driving on the part of its driver/ respondent No.1 while driving the offending vehicle in a rash and negligent manner resulting in the death of Azam Khan and injuries to claimant – Illam Singh.

11. Under Issue No.2, the Tribunal awarded a sum of Rs.80,000/- as compensation to claimants – Muzafar Khan and Habiba on account of death of their son while a sum of Rs.25,000/- was awarded as compensation to claimant-Illam Singh. Under Issue No.3, it was held that the driver was not holding a valid and effective driving licence as the same had expired on the date of accident and the Insurance Company was exonerated of its liability to indemnify the insured. However, the Insurance Company was directed to pay compensation to the claimants with a right to recover the same from the insured i.e. owner of the vehicle.

12. Aggrieved with the afore-said award, the claimants i.e. Muzafar Khan and Habiba, have preferred appeal bearing FAO No.938 of 2004 while owner and driver have also preferred FAO No.628 and 629 of 2004.

13. Learned counsel for claimants- Muzafar Khan and Habiba argued that deceased was their unmarried son aged 27 years. He used to earn Rs.5,000/- per

month by selling fruits by taking fruit orchard on contract but the Tribunal has wrongly assessed his income to be Rs.1800/- per month which is on lower side. Learned counsel next contended that future prospects have not been added to the monthly income of the deceased. Learned Tribunal has also applied multiplier of 5 to the loss of annual dependency by taking into consideration the age of the parents whereas multiplier of 17 ought to have been applied since deceased was 27 years of age. Besides this, claimants are also entitled to compensation under conventional heads, i.e. consortium, loss of estate and for funeral expenses and learned counsel prayed that the compensation be duly enhanced.

14. On the other hand, learned counsel for appellants in FAO Nos.628 and 629 of 2004 as well as counsel for Insurance Company argued that adequate compensation has been assessed and no interference in the impugned award is called for. Learned counsel for owner further argued that the driver was holding a valid and effective driving licence. Counsel for Insurance Company had himself tendered one verification report Ex.R4 issued by RTA, Karnal which was got prepared by the surveyor of the insurance company, namely, Lokesh Kumar Anand and as per this report, the licence had been renewed w.e.f. 8.2.1999 onwards and since accident had taken place on 22.6.1999, the driver was holding a valid and effective driving licence and there is no violation of the terms and conditions of the insurance policy and Insurance Company has been wrongly exonerated of its liability to indemnify the insured.

15. On the other hand, learned counsel for Insurance Company argued that the counsel for the owner had himself tendered in evidence the copy of driving licence Mark `A' which showed that the licence had been got renewed

from 30.9.1999 to 19.9.2002 and the licence had already expired much prior to the date of accident and driver was not possessing a valid and effective driving licence as on the date of accident i.e. 22.6.1999 and Insurance Company has thus been rightly exonerated of its liability to indemnify the insured and learned counsel argued that both the appeals preferred by the owner and driver be dismissed.

16. In order to prove rash and negligent driving on the part of respondent No.1, one of the claimants namely Illam Singh had appeared in the witness box as PW2 and he deposed that on 22.6.1999, he along with Azam Khan, Abdul Mehmood and Dharam Pal started from Titro to Panipat in Canter bearing registration No.HR-12/6340. The driver of the offending vehicle was driving the vehicle in a rash and negligent manner without blowing any horn and without caring for the traffic rules. When they reached near Sanoli Khurd, the Canter turned turtle, resulting in death of Azam Khan and injuries to other passengers. No suggestion to prove to the contrary has been given to PW2. The only suggestion given to him is that accident had not taken place due to rash and negligent driving on the part of respondent No.1 which has been denied by him. However, it is vague suggestion and is not sufficient to controvert the testimony of PW2. Besides this, the driver of the offending vehicle has not stepped into witness box and to state his case on oath and to offer himself for cross-examination. The FIR Ex.P1 also shows that same was promptly lodged and similar facts have been mentioned in the FIR as deposed by PW2 and respondent No.1 was also challaned by the police for causing accident by way of his rash and negligent driving. It has been held in 1993(2) PLR 109 – **Girdhari Ram Vs.**

Radhe Shyam and others, that if the driver of the offending vehicle has been challaned by the police and is facing trial for causing accident due to rash and negligent driving, it is safe to presume that accident had taken place due to rash and negligent driving on his part. In the present case, there is also no evidence on the file that respondents No.1 and 2 had ever filed any protest petition before higher authorities against the false implication of respondent No.1 or false involvement of the offending tractor and their silence for such a long period also goes against them. In holding so, I have relied upon 2008(2) RCR (Civil) 72 (P&H) – **Sudama Devi and others Vs. Kewal Ram and others.** Hon'ble Supreme Court while deciding Special Leave to Appeal (C) 10351/2019 titled **Ranjeet and another Vs. Abdul Kayam Neb and another** vide judgment 25.02.2025 has held that once a charge-sheet has been filed and the driver has been held to be negligent, no further evidence is required to prove that offending vehicle was being driven negligently by its driver. Learned Tribunal has also appreciated the facts of the case and evidence on file in the correct perspective while coming to the conclusion that the accident in question had taken place due to rash and negligent driving on the part of respondent No.1 while driving the offending vehicle and there is thus no reason to take a contrary view and finding on Issue No.1 is accordingly affirmed.

17. Coming to FAO No.938 of 2004 (O&M), as per version of the claimants, Muzafar Khan and Habiba, their son namely Azam Khan was 27 years of age on the date of accident. He used to sell fruits and earn Rs.5,000/- per month. However, learned Tribunal came to conclusion that no cogent evidence has been led to establish that deceased was earning Rs.5,000/- per month and

taking into consideration the minimum wages prevalent in the year 1999, the Tribunal assessed his monthly income to be Rs.1,800/- per month. Hon'ble Supreme Court in 2015(1) Law Herald (SC) 105 – **Smt. Neeta Vs. Div. Manager, MSRTC Kolhapur,** has held that in the absence of salary slip/ certificate, the Court should assess monthly income keeping in view the Notification under Minimum Wages Act as applicable at the relevant time and as such, minimum wages fixed by State Government have to be taken into consideration to assess the monthly income of the deceased. Therefore, taking into consideration the fact that no cogent and convincing evidence has been led to prove income of the deceased, learned Tribunal rightly assessed the income of the deceased to be Rs.1,800/- per month by treating him to be a labourer/ unskilled person.

18. However, no future prospects have been added to the income of the deceased and as per guidelines laid down in 2017 ACJ 2700 – **National Insurance Co. Ltd. Vs. Pranay Sethi and Others,** 40% of the amount has to be added towards future prospects as deceased was a self employed person and was not a government employee. After adding 40% towards future prospects, the monthly income comes out to **Rs.2520/- (Rs.1800/- + Rs.720/-)**.

19. Deceased was a bachelor and as such, 50% of the income has to be deducted towards personal and living expenses as per law laid down in 2009(6) SCC 121 – **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Another.** After deducting 50% of the income towards personal expenses, the monthly dependency comes out to Rs.1260/- and the annual dependency comes out to **Rs.15,120/- (Rs.1260/- x 12).** Deceased was 27 years of age. The Tribunal has applied multiplier of 5 by taking into consideration the age of parents of the

deceased, who were 77 and 70 years of age respectively. However, the multiplier has not been correctly applied and as per guidelines laid down in **Sarla Verma's case (supra)**, multiplier of 17 has to be applied by taking into consideration the age of the deceased who was 27 years of age and after applying the same, the compensation comes to **Rs.2,57,040/- (Rs.15,120/- x 17)**.

20. In addition to this, claimant No.1 is also 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, in view of guidelines laid down in 2018 (4) R.C.R. (Civil) 333, **'*Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others'***, claimant No.2, who is father of deceased, is also held entitled to a sum of **Rs.40,000/-** towards filial consortium.

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

S.No.	Under Head	Compensation awarded by the High Court
1.	Monthly income of deceased	Rs.1,800/-
2.	Age of deceased	27 years
3.	Future prospects @40%	Rs.720/-
4.	Total income	Rs.2520/- per month
5.	Number of dependents	02
6.	Deduction towards personal expenses of the deceased	Rs.1,260/- (50%)
7.	Annual loss of dependency	Rs.15,120/- (1260X12)
8.	Multiplier	17
9.	Compensation on account of Loss of dependency	Rs.2,57,040/- (Rs.15,120/- X 17)
10.	Compensation to claimant No.1(mother) for loss of consortium, loss of estate & funeral expenses	Rs.70,000/- (Rs.40,000/- + Rs.15,000/- + Rs.15,000/-)
11.	Filial consortium to claimant No.2(father)	Rs.40,000/-

12.	**Total Compensation**	**Rs.3,67,040/-**
13.	**Interest**	**9%**

22. As result of afore-said discussion, the compensation works out to Rs.3,67,040/- out of which Tribunal has already awarded Rs.80,000/- as compensation and the enhanced compensation payable to claimants – appellants – Muazafar Khan and Habiba thus comes out to Rs.2,87,040/- (Rounded to be Rs.2,87,000/-.

23. A perusal of report Ex.R4 made by Secretary, RTA, Karnal on the application moved by Lokesh Kumar Anand, Surveyor of Insurance Company Ex.R4 shows that the driving licence of respondent No.1 was renewed w.e.f. 8.2.1999 upto 19.9.2002 and original licence had been issued by Transport Authority, Delhi vide DL No.C-87093443. This document Ex.R4 has been tendered in evidence by the Insurance Company itself and thus Insurance Company cannot wriggle out of the same and allege that the licence had already expired on the date of accident which took place on 22.6.1999. However, as per this report Ex.R4, licence had been renewed w.e.f. 8.2.1999 onwards. Learned Tribunal has overlooked the report Ex.R4 while coming to the conclusion that the driving licence held by respondent No.1 had expired and exonerated the Insurance Company from its liability to indemnify the insured. As such, finding arrived at by the Tribunal under Issue No.3 is liable to be reversed and it is ordered accordingly and it is held that all the respondents are jointly and severally liable to pay compensation to claimants in both the claim petitions.

24. As a result of afore-said discussion, FAO No.938 of 2004 (O&M) filed by the claimants is partly accepted with costs while FAO No.628 and 629 of

2004 (O&M) filed by owner and driver against the award dated 31.10.2003 are also accepted in view of finding on issue No.3. Claimants in FAO No.938 of 2004 (O&M) are held entitled to enhanced compensation of Rs.2,87,000/- payable by respondents No.1 to 3 jointly and severally along with interest @ 9% from the date of filing of claim petition i.e. 31.10.2003 till realisation. The afore-said amount be paid to claimants – Muzafar Khan and Habiba in equal shares.

25. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of direction 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.

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

27. A photocopy of this order be placed on the file of connected case.

(Yashvir Singh Rathor)
Judge

March 06, 2026
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No