



FAO-5225-2003 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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FAO-5225-2003 (O&M)
Date of decision: 21.01.2026

SMT SHARDA DEVI AND ORS

....Appellants

Versus

HAR KANWAL SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Roopak Bansal, Advocate for the appellants.

Mr. Jatin Verma, Advocate for
Mr. Nikhil Chopra, Advocate respondents No.1 and 2.

Mr. Sanjiv Pabbi, Advocate for respondent No.3-Insurance Company.

YASHVIR SINGH RATHOR. J.(Oral)

CM-22602-2003

Present application has been filed under Section 151 CPC for condonation of delay in refiling the appeal.

Keeping in view the averments made in the application, the application is allowed and delay is condoned.

Application stands disposed of.

CM-22601-2003

Present application has been filed under Section 5 of Limitation Act for condonation of delay of 88 days.

Keeping in view the averments made in the application, the application is allowed and delay of 88 days is hereby condoned.

Application stands disposed of.

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1. This appeal has been instituted for enhancement of compensation awarded in MACT case No.138/2001 decided by the MACT, Panipat, vide award dated 30.01.2003, vide which a sum of Rs.5,16,000/- has been awarded as compensation to the claimants/appellants alongwith interest at the rate of 9% per annum from the date of filing of claim petition till realization. However, respondent No.3-Insurance Company was given the liberty to recover the amount from the insured/respondent No.2, after paying the awarded amount to the claimants.

2. Case of the petitioner is that on 23.11.1999 at about 12:00 noon, Ishwar Singh (since deceased) was going with Satish son of Satpal on motorcycle bearing No.HR-06F-3576, which was being driven by said Satish. When they reached 70 miles stone near Patti Kalyana village, one truck bearing No.PB-10AB-9675 being driven by respondent No.1 rashly and negligently and without caring for the traffic rules came from the wrong side and hit the motorcycle resulting in death of Ishwar Singh at the spot while Satish Kumar suffered injuries. FIR No.34 dated 23.11.1999, under Sections 279, 337 and 304-A IPC was registered at Police Station Samalkha, regarding the accident. Postmortem of the deceased was conducted. It is further submitted that deceased Ishwar Singh was employed as a Patwari at Samalkha and was aged about 40 years and was earning Rs.6500/- per month. The claimants were depended upon him and now, they have no source of income and they claimed compensation of Rs.20 lakhs on account of death of Ishwar Singh.

3. Respondents No.1 and 2 filed written statement and took a plea that

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accident in question had taken place solely due to negligence of the motorcyclist, whereas, truck was being driven properly and false case has been registered in collusion with the police. Remaining contents of the petition were refuted and dismissal of the same was sought.

4. Respondent No.3 in its written statement has also opposed the petition submitting that driver was not holding a valid and effective driving licence and truck was being driven in violation of the terms and conditions of the insurance policy. The manner of accident was also denied. Other allegations with regard to age and income of the deceased were also refuted to be wrong. Respondent No.4 in his written statement denied its liability to pay any compensation. From the pleadings of the parties, following issues were framed:-

“1. Whether the accident in question was caused due to rash and negligent driving of vehicle No.PB-10AB-9575 by respondent No.1.OPP.

2. To what amount of compensation, the petitioners are entitled to claim and from whom?OPP.

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

4. Relief”

5. Both the parties led evidence in support of their case.

6. After hearing the parties, learned Tribunal came to the conclusion that accident in question had taken place due to rash and negligent driving on the part of respondent No.1, while driving the offending vehicle resulting in death of Ishwar Singh and awarded a sum of Rs.5,16,000/- as compensation to the claimants alongwith interest of 9% per annum from the date of filing of claim petition till realization. However, it was held that respondent No.1 was not holding

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a valid and effective driving licence on the date of accident. The liability of respondents No.1 to 3 was held to be joint and several but respondent No.3- Insurance Company was given the liberty to recover the amount from the insured/owner, after satisfying the award.

7. Feeling aggrieved, claimants preferred the present appeal.
8. The parties have been heard and material on record has been perused.
9. At the very outset, it is pertinent to mention that the record of the Tribunal has got burnt and the facts are being taken from the award passed by the Tribunal.
10. Under Issue No.1, it has been held by the Tribunal that accident in question had taken place due to rash and negligent driving on the part of driver of the offending vehicle. This finding has not been assailed by the owner, driver, or the Insurance Company, as no cross-appeal or cross-objections have been filed. Accordingly, the finding on Issue No.1 is affirmed.
11. To prove the income of the deceased, petitioner had examined the father of deceased namely Ram Krishan as PW1, who deposed that his son was employed as Patwari in Haryana Government, who has left behind wife and four children. The pay certificate of deceased has also been led in evidence as Ex. P2, which was issued by SDO, Civil, Panipat. Learned Tribunal has observed that as per pay certificate Ex. P2, deceased was drawing a salary of Rs.5,450/- and Tribunal took salary of deceased to be Rs.5,400 per month. As per postmortem report Ex. P3, the age of deceased was 35/36 years and since deceased was below 40 years of age and was in permanent employment under the State Government, 50% amount has to be added towards the future prospects in view of law laid



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down in 2009(6) SCC 121 “*Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*” and after adding the same, the monthly income comes to Rs.8175/- (Rs.5450/- + Rs.2725/-).

12. Tribunal has deducted 1/3rd of the income towards personal expenses. However, deceased has left behind five dependents and as such, 1/4th of the income has to be deducted towards personal expenses in view of law laid down in *Sarla Verma’s case (supra)* and after deducting a sum of Rs.2,044/- as personal expenses, the monthly dependency comes out to Rs.6,131/- and the annual dependency comes to Rs.73,572/- (Rs.6,131/- x 12).

13. As per *Sarla Verma’s case (supra)* multiplier of 15 has to be applied for the age group of 35 to 40 and after applying the same, the compensation comes to Rs.11,03,580/- (rounded to Rs.11,03,600/-).

14. As per law laid down in 2017 ACJ 2700, ‘**National Insurance Co. Ltd Vs. Pranay Sethi and Others**’, petitioner No.1-Sharda Devi is held entitled to a sum of Rs.40,000/- towards consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Likewise, in view of law laid down in 2018 (4) R.C.R. (Civil) 333, ‘**Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others**’, petitioners No.2 to 5 are also held entitled to a sum of Rs.40,000/- each towards parental consortium. The total compensation payable thus comes out to be Rs.13,33,600/- as against Rs.5,16,000/- awarded by the Tribunal and petitioners are thus entitled to enhanced compensation of Rs.8,17,600/- (Rs.13,33,600/- - Rs.5,16,000/-).

15. Resultantly, the petition in hand is accepted and petitioners are held entitled to a sum of Rs.8,17,600/- as enhanced compensation over and above the



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compensation awarded by the Tribunal alongwith interest at the rate of 9% per annum from the date of filing of petition till realization and the liability to pay the compensation shall be upon respondents No.1 and 2. However, respondent No.3 shall pay the enhanced compensation and satisfy the award and thereafter, it shall have a right to recover the amount from respondent No.2/insured alongwith interest at the rate of 6% per annum from the date of deposit till realization. However, there shall be no order as to costs.

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

21.01.2026
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(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No