S. No.238

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

FAO No.5387 of 2002 (O&M)
Date of Decision:18.5.2026

Bhupinder Kaur and others .....Appellants
Vs.
Harbans Singh and another .....Respondents

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

Present:- Mr. R.S. Ghuman, Advocate
for the appellants.

Mr. Abhinav Narang, Advocate
for Mr. Deepak Suri, Advocate
for respondent No.1.

Mr. Vinod Gupta, Advocate
for respondent- Insurance Company.

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Yashvir Singh Rathor, J. (Oral)

1. This appeal has been instituted against the Award dated 15.01.2002 for enhancement of compensation awarded in MACT case No.80-T of 1999 decided by the Motor Accident Claims Tribunal, Fatehgarh Sahib (**for short "Tribunal"**) in a petition under Section 166 of Motor Vehicles Act, 1988, vide which a sum of Rs.2,01,600/- has been awarded as compensation to the claimants on account of death of Bahadur Singh in a motor vehicular accident which allegedly took place due to rash and negligent driving on the part of respondent No.1 while driving the offending vehicle bearing No.CH-01-R-8184 (**hereinafter referred to as 'offending vehicle'**), which was insured with respondent No.2

alongwith interest @9% per annum from the date of award till the date of realisation.

2. It is pertinent to mention that the record of the present appeal and the Tribunal has got burnt in a fire incident in the High Court Registry and the present appeal has to be decided on the basis of the facts and evidence discussed by the Tribunal in the impugned award.

3. The copies of paper book along with jamabandi and driving licence of deceased filed in the Court are taken on record. Registry is directed to tag the same at appropriate place.

4. From the pleadings of parties, following issues were framed by the learned Tribunal:-

> *"1. Whether respondent No.1 while driving car No.CH-01-R/8148 on 7.2.99 at about 11/11.50 A,M in the area of Khamano rashly and negligently caused the death of Bahadur Singh? OPA.*
>
> *2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom?OPA.*
>
> *3. Whether the respondent No.1 was not having a valid driving license? OPR.*
>
> *4. Relief."*

5. Thereafter, the parties led evidence in support of their case.

6. After hearing the parties and going through the material on the file, learned Tribunal awarded a sum of Rs.2,01,600/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till realization. It was further held that Insurance Company shall pay the amount to the claimants first of all but shall have a right to recover the same from the owner/ insured.

7. Feeling aggrieved, the appeal in hand has been preferred. The material on file has been perused and parties have been heard.

8. The only issue required to be determined in the present appeal relates to the assessment of compensation. Therefore, the entire facts regarding the manner of the accident are not required to be reproduced in detail, as the Tribunal has already held under issue No.1 that the accident had occurred due to the rash and negligent driving on the part of respondent No.1, while driving offending vehicle owned by him and insured with respondent No.2. No appeal or cross-objections have been filed by respondents, challenging the said finding and accordingly finding on issue No.1 is not required to be interfered with.

9. Learned counsel for the appellants argued that the impugned award, vide which compensation has been awarded is based on conjectures and surmises and is liable to be modified and enhanced amount of compensation should be awarded. Learned counsel further contended that the income of the deceased has been assessed on the lower side. Future prospects have also not been added to the monthly income of the deceased, contrary to the settled provisions of law. Appropriate compensation has not been awarded under the conventional heads, i.e. loss of consortium, loss of estate, and funeral expenses and he prayed that compensation be suitably enhanced. In support of his contentions, learned counsel for the appellants has relied upon **2009(6) SCC 121- Sarla Verma and others Vs. Delhi Transport Corporation and Another, 2017 (16) SCC 680-National Insurance Co. Ltd Vs. Pranay Sethi and Other, 2018 (4) R.C.R. (Civil) 333 Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram &**

Others and **(2021) 11 SCC 780 United India Insurance Co. Ltd. Vs. Satinder Kaur.**

10. Learned counsel for respondent No.1 argued that the driver possessed a valid and effective driving licence authorising him to drive the offending vehicle and issue No.3 has been decided against the Insurance Company. However, the Insurance Company has been exonerated of its liability to indemnify the insured in the relief clause of the award with the observations that the owner/ driver has colluded with the claimants as the driver has been acquitted in the criminal case on account of the fact that the eye witnesses had retracted from their earlier version. Learned counsel next contended that the present claim petition was required to be decided on the basis of evidence led before the Tribunal and finding of acquittal or conviction by the Criminal Court is of no consequence and Insurance Company cannot be exonerated of its liability and the Tribunal has wrongly held that the driver/ owner has colluded with the claimants merely because he has been acquitted and he prayed that the Insurance Company be held liable to indemnify the insured.

11. On the other hand, learned counsel for respondent- Insurance Company argued that the adequate compensation has been awarded by the learned Tribunal and no interference in the said award is called for and appeal in hand be dismissed.

12. The term 'just compensation' has been elaborated by Hon'ble Supreme Court in **2009(1) RCR (Civil) 867 (SC), Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another**, and it has been held that while assessing compensation in a motor accident claims case, the Tribunal should award

compensation which appears to be just. The expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. It has been further held that although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the persons liable to pay compensation and that determination of compensation must be based on certain data establishing reasonable nexus between the loss incurred by the victim or dependents. It has been further held that misplaced sympathy, generosity and benevolence cannot be the guiding factors for determining the compensation. As such, compensation is required to be assessed by taking into consideration above-said parameters.

13. As per version of claimants, deceased was running his own transport business and was also an agriculturist and in all, he used to earn Rs.10,000/- per month. To prove the same, claimant No.1 – PW2- Bhupinder Kaur stepped into the witness box and deposed that her husband was 42 years of age and he owned 4 acres of land. Besides this, he also used to take some land on chakota for cultivation purposes and in all, he used to earn Rs.10,000/- per month from transport business and agriculture. She tendered jamabandi Ex.C4 to prove this fact. During cross-examination, she admitted that her husband owned only one acre of land and he also used to take 5-7 acres of land on `theka' for cultivation purposes. Since the record is burnt, learned counsel for the appellants has placed on file jamabandi for the year 1997-1998 which shows that the deceased- Bahadur

Singh owned one acre of land. As such, from the revenue record placed on file and the statement of PW2, it is established that deceased owned one acre of land and was an agriculturist. He may also have been taking some land on chakota/batai for cultivation purposes and he thus has to be treated as an agriculturist.

14. So far income from transport business is concerned, no registration certificate of any truck has been led in evidence before the Tribunal to show that he owned any trucks. However, during cross-examination, PW2 stated that the trucks are now being plied by the drivers. Learned counsel for the appellants has also placed on file the copy of driving licence of the deceased issued by the District Transport Officer, Bareilly which shows that deceased was authorised to drive heavy motors vehicle which goes to substantiate the version of claimants that he was running transport business and as such, he may be plying his own truck. The Tribunal has assessed his monthly income to be Rs.2,100/- per month by treating him to be an unskilled worker but since the deceased was an agriculturist and he also possessed a licence authorising him to drive a heavy motor vehicle, it could not have been termed as an unskilled person. The accident had taken place in the year 1999 and some amount of guess work thus has to be applied by assessing the monthly income of the deceased. Hon'ble Supreme Court in Civil Appeal No.6152 of 2021 – **Chandra alias Chander alias Chanda Ram and another Vs. Mukesh Kumar Yadav**, decided vide judgment dated 1.10.2021 has held that merely because claimants are unable to produce documentary evidence to show the monthly income of the deceased is not a ground to discard the oral evidence. As such, the oral version of PW4– Gurinder Kaur cannot be brushed aside and since deceased was holding a licence

authorising him to drive heavy transport vehicle, his income as on the date of accident as a driver is taken as Rs.3,000/- per month. In addition to this, deceased was also owner of one acre of land and is stated to be taking 4-5 acres on lease and as such, some amount has to be added to his monthly income towards his managerial skills in managing the land. Hon'ble Supreme Court in 2015(1) RCR (Civil) 625 – **Smt. Neeta W/o Kallappa Kadolkar & Ors. vs The Divisional .Manager, MSRTC, Kolhapur,** has held that if a person was in agricultural occupation, the monthly income can be assessed at Rs.12,000/- per month i.e. beyond the minimum wages prevalent at the time of his death. The afore-said judgment has been followed by a co-ordinate Bench of this Court in FAO No.931 of 2021 – **Shri Ram General Insurance Co. Ltd. Vs. Santosh Devi** decided vide judgment dated 28.7.2022. The accident in **Smt. Neeta's case (supra),** had taken place on 22.3.2011 and judgment was rendered on 13.1.2015. The minimum wages prevalent during those days were Rs.10,243/- and around Rs.2,000/- was added towards managerial skills for managing the land. Hon'ble Supreme Court in 2022 Livelaw (SC) 816- **K. Ramya and others Vs. National Insurance Co. Ltd. & Anr.,** while determining dependency on account of income from agricultural land has held that loss of dependency in such case has to be determined on the basis of loss of management capacity or efficiency. It was held that as a rule of prudence, computation of any individual's managerial skills should lie between 10% to 15% of the total agricultural income but the acceptable range can be increased in the light of specific circumstances and in this case, a sum of Rs.2,50,000/- per annum was assessed as income on account of loss of managerial skills and future prospects were also applied.

15. In the present case, deceased was owner of one acre of land and is stated to be taking 4-5 acres on lease. He was 42 years of age and has left behind daughter, minor sons and wife. It can be assumed that he must be earning at least Rs.40,000/- per annum as an agriculturist. After his death, there was none to look after the land except his wife and minor children and as such, around 15% of the total annual income has to be taken into consideration towards his managerial skills. From his transport business, he was earning Rs.36,000/- per annum and by adding Rs.6,000/- per annum towards managerial skills, his **annual income** comes to **Rs.42,000/-.**

16. No future prospects have also been added to the income of the deceased. The accident had taken place on 7.2.1999 and as such, he was below 45 years of age. He was a self employed person and as such, 25% amount has to be added to his annual income towards future prospects in view of law laid down in **Pranay Sethi's case (supra)** and after adding the same, the **annual income** comes out to **Rs.52,500/-.**

17. The petition in hand has been instituted by wife, daughter and two minor sons of the deceased. Accordingly, it is held that deceased has left behind 4 dependents. The Tribunal has deducted one third of the income towards personal expenses but 1/4rd of the income has to be deducted towards personal and living expenses in view of law laid down in **Sarla Verma's case (supra)** and after deducting the same, the **annual loss of dependency** comes out to **Rs.52,500/- - Rs.13,125/- = Rs.39,375/-.**

18. Since deceased was 42 years of age, multiplier of 14 has to be applied as per guidelines laid down in **Sarla Verma's case (supra)** and after applying the

same, the **compensation on account of annual loss of dependency** comes out to **Rs.5,51,250/-**.

19. In addition to this, claimant No.1-wife is 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, claimants No.2 to 4 who are daughter and minor sons of deceased are also entitled to a sum of **Rs.40,000/- each** on account of '**loss of parental consortium**', in view of law laid down in **Nanu Ram's case (supra)** and **Satinder Kaur's case (supra)**, which takes the compensation to **Rs.7,41,250/- (Rounded to Rs.7,41,500/-).**

20. Accordingly, the compensation to be awarded to the appellants/claimants is assessed as under:-

S.No.	Under Head	Compensation awarded by the High Court
1.	Annual income of deceased	Rs.42,000/- per annum
2.	Age of deceased	42 years
3.	Annual income after adding Future prospects @ 25%	Rs.52,500/-
4.	Number of dependents	4
5.	Deduction towards personal expenses of the deceased (1/4th)	Rs.13,125/-
6.	Annual loss of dependency	Rs.39,375/-
7.	Multiplier	14
8.	Compensation on account of Loss of dependency	Rs.5,51,250/-
9.	Compensation under conventional heads	Rs.70,000/- (wife) Rs.1,20,000/- (Rs.40,000/- each to

		daughter, minor sons of deceased)
10.	**Total Compensation**	**Rs.7,41,500/-**
11.	**Interest**	**9%**

21. Under Issue No.3, it has been held that the driver possessed a valid and effective driving licence and Issue No.3 was decided against the respondent No.2/ Insurance Company. No doubt, a plea was taken by the Insurance Company that the insured has colluded with the claimants but neither any issue was framed in this regard nor any evidence had been led and the Tribunal on the basis of the judgment of acquittal passed in criminal case, held that since the eye witnesses have not identified the driver and have turned hostile, it is sufficient to presume that the insured has colluded with the claimants and exonerated the Insurance Company of its liability to indemnify the insured.

22. However, the finding of the Tribunal in this regard is highly erroneous. It is well settled that the claim petition has to be decided on the basis of evidence led before the Tribunal and judgment of conviction or acquittal in the criminal case is of no consequence and since it has been held under Issue No.1 that the accident in question had taken place on account of rash and negligent driving on the part of respondent No.1 and that vehicle was insured with the Insurance Company and there was no violation of terms and conditions of the Insurance Policy, the Insurance Company could not have been exonerated of its liability to indemnify the insured. Accordingly, it is held that liability to pay the entire compensation including enhanced compensation shall be of the Insurance Company in case the insured has already paid the amount of compensation

awarded by the Tribunal to the claimants, he shall have a right to recover the same from the Insurance Company along with interest @6% per annum from the date of deposit till realisation.

23. Resultantly, the present appeal is partly accepted with costs and appellants/ claimants are held entitled to a sum of **Rs.7,41,500/-** as compensation. The enhanced compensation thus comes out to **Rs.5,39,900/-** (**Rs.7,41,500/- - Rs.2,01,600/-**) **(Rounded to Rs.5,40,000/-)** over and above the compensation awarded by the Tribunal payable alongwith interest at the rate of 9% per annum from the date of filing of claim petition i.e. 10.5.1999, till realization. Liability of respondents shall be joint and several. Out of the enhanced compensation, a sum of Rs.75,000/- each be paid to claimants No.2 to 4 along with proportionate interest and remaining amount be paid to wife of deceased along with proportionate interest.

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

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

(Yashvir Singh Rathor)
Judge

May 18, 2026
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No