

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.

FAO-2714-2023 (O&M)

Rekha Gupta and others

.... Appellants

Vs.

TATA AIG General Insurance Company and others

.... Respondents

II.

FAO-5427-2023 (O&M)

TATA AIG General Insurance Company

.... Appellant

Vs.

Rekha Gupta and others

.... Respondents

Reserved on:13.05.2026

Pronounced on: 15.05.2026

Pronounced Fully/Operative Part: Fully

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Anupam Singla, Advocate,

for the appellants in FAO-2714-2023

for respondents No.1 to 4 in FAO-5427-2023

Mr. Punit Jain, Advocate, for the respondent-Insurance Company.

DEEPAK GUPTA, J.

Both the appeals arise out of the common award dated 24.03.2023 passed by the learned Motor Accident Claims Tribunal, Patiala, in a petition filed under Section 166 of the Motor Vehicles Act on account of death of Raj Kumar in a motor vehicular accident.

2. Briefly stated, Raj Kumar suffered fatal injuries in a motor vehicular accident, which occurred on 15.01.2021 near Raji Radio, Jakhal Road, Patran, when the offending vehicle bearing registration No.PB-72A-5940, being driven by respondent No.2 in a rash and negligent manner, struck

the motorcycle being driven by the deceased. The injured was initially shifted to various hospitals and ultimately succumbed to the injuries during treatment. FIR regarding the occurrence was registered against respondent No.2 at Police Station Patran.

3. The claim petition was filed by the widow and children of the deceased claiming compensation to the tune of ₹70,00,000/- on the plea that the deceased was engaged in agriculture, brick kiln business and cloth business and was earning approximately ₹1,00,000/- per month.

4. The driver and owner of the offending vehicle failed to contest the proceedings and were proceeded against ex parte. The insurance company alone contested the claim petition.

5. Upon appreciation of the evidence led by the parties, the learned Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle and awarded compensation of ₹50,82,600/- along with interest to the claimants.

6. Aggrieved against the aforesaid award, both sides have preferred the present appeals. The claimants seek enhancement of compensation, whereas the insurance company seeks reduction thereof primarily on the ground that the income tax liability of the deceased has not been deducted while computing the compensation.

7. I have heard learned counsel for the parties and have gone through the record carefully.

8. At the outset, it deserves notice that the findings recorded by the learned Tribunal regarding rash and negligent driving of the offending vehicle have attained finality, as the same have not been assailed before this Court. Similarly, the liability of the insurer to indemnify the insured also remains undisputed. Consequently, the controversy in the present appeals is confined only to the quantum of compensation payable to the claimants.

9. In order to establish the income of the deceased, the claimants relied upon Income Tax Returns Ex.C10 and Ex.C11 pertaining to Assessment Years 2020-21 and 2021-22 respectively. Ex.C10 had admittedly been filed by the deceased during his lifetime, whereas Ex.C11 came to be filed after his death.

10. A perusal of the aforesaid returns reveals that for the Assessment Year 2020-21, the total income of the deceased was ₹7,23,984/- and the tax liability discharged thereupon was ₹95,722/-. Likewise, for Assessment Year 2021-22, the income reflected was ₹6,31,650/- and the corresponding tax liability was ₹44,227/-. Though Ex.C11 was filed after the death of Raj Kumar, the same cannot be discarded merely for that reason once it stood accepted by the Income Tax Department and its genuineness was never disputed before the Tribunal.

11. However, this Court finds merit in the contention raised on behalf of the claimants that the return for Assessment Year 2021-22 represented the earnings of the deceased only upto the date of accident i.e. 15.01.2021 and thus covered a period of approximately 9½ months. Therefore, the Tribunal was not justified in treating the said income as the annual income of the deceased.

12. In the considered opinion of this Court, the proper course would be to take into account both the income tax returns and assess the average income of the deceased. The cumulative income reflected in the two returns for a period of 21½ months comes to ₹13,55,634/-. The total tax liability paid thereupon amounts to ₹1,39,949/-. Thus, after deduction of tax liability, the net income of the deceased for the said period comes to ₹12,15,685/-, thereby making the average monthly income of the deceased ₹56,543/-, which can safely be rounded off to ₹56,550/- per month. Consequently, the annual income of the deceased is assessed at $(56550 \times 12) = ₹6,78,600/-$.

13. This Court also finds merit in the submission advanced on behalf of the insurance company that the actual income tax liability of the deceased

was liable to be deducted while determining the multiplicand. The said principle is now well settled and accordingly the net income has been assessed after deduction of the tax component.

14. Since the deceased was aged between 56 to 57 years, addition of 10% towards future prospects is liable to be made in view of the Constitution Bench judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi 2017(4) RCR (Civil) 1009.***

15. Thus, the annual income after adding future prospects comes to $678600 + 10\% \times 6,78,600 = 7,46,460$

16. Since the deceased left behind four dependents, deduction of 1/4th towards personal and living expenses is liable to be made in terms of the judgment of the Hon'ble Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation, (2009) 6 Supreme Court Cases 121.***

17. Accordingly, after making $\frac{1}{4}$ deduction, the annual loss of dependency comes to ₹5,59,845/-.

18. Keeping in view the age of the deceased, multiplier of 9 has rightly been applied. Consequently, the total loss of dependency works out to ₹50,38,605/-.

19. The learned Tribunal has rightly awarded ₹16,500/- each towards funeral expenses and loss of estate. Similarly, compensation of ₹44,000/- each awarded towards consortium to the widow and children deserves affirmation in light of the law laid down by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram, AIR ONLINE 2018 SC 1249.***

20. The evidence on record further establishes that an amount of ₹1,51,873/- was spent on the medical treatment of the deceased prior to his death and the same deserves to be awarded in full. Moreover, since the deceased had been shifted from one hospital to another during the course of treatment, this Court deems it appropriate to award an additional amount of ₹17,000/- towards transportation expenses.

21. Consequently, the compensation payable to the claimants is recalculated as under:

Sr. No.	Head of Compensation	Amount
1.	Loss of dependency	₹50,38,605/-
2.	Funeral expenses	₹16,500/-
3.	Loss of estate	₹16,500/-
4.	Consortium	₹2,20,000/-
5.	Medical expenses	₹1,51,873/-
6.	Transportation expenses	₹17,000/-
	Total	₹54,60,478/-

The total compensation is rounded off to **₹54,60,500/-**.

22. Since the learned Tribunal had already awarded compensation of ₹50,82,600/-, the claimants shall consequently be entitled to enhanced compensation to the tune of ₹3,77,900/- [5460500 – 5082600], which is rounded off to ₹3,78,000

23. Consequently, both the appeals are partly allowed. The appeal preferred by the claimants stands allowed to the extent of enhancement indicated above, whereas the appeal filed by the insurance company also stands partly allowed to the limited extent that the income tax liability of the deceased has been deducted while reassessing the income.

24. Resultantly, the claimants shall be entitled to an enhanced compensation of ₹3,78,000/- along with interest @7.5% per annum from the date of filing of the claim petition till its actual realization. The liability of respondents No.1 to 3 shall remain joint and several. The apportionment and manner of disbursement shall remain the same as directed by the learned Tribunal.

25. Both the appeals stand disposed of in the aforesaid terms. Pending miscellaneous application(s), if any, shall also stand disposed of.

26. A photocopy of this judgment be placed on the file of the connected case.

(DEEPAK GUPTA)
JUDGE

15.05.2026

Vivek

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>

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