

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****119****FAO-4546-2023(O&M)****Date of decision: 04.05.2026****Ravinder Kumar****...Appellant(s)****Vs.****Nishan Kumar & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ravi Kumar Girdhwal, Advocate for
Mr. Amardeep Sheoran, Advocate
for the appellant.

*********NIDHI GUPTA, J.****CM-15282-CII-2023**

This is an application under Section 151 CPC for condonation of
delay of 14 days in re-filing the appeal.

After going through the contents of the application, which is
supported by affidavit of the appellant, the same is allowed subject to all just
exceptions and delay of 14 days in re-filing the present appeal is condoned.

CM-15283-CII-2023

This is an application under Section 5 of Limitation Act for
condonation of delay of 2 days in filing the appeal.



After going through the contents of the application, which is supported by affidavit of the appellant, the same is allowed subject to all just exceptions and delay of 2 days in filing the present appeal is condoned.

MAIN CASE

Present appeal has been filed by the claimant seeking enhancement of compensation of Rs.13,68,356/- awarded by the Motor Accident Claims Tribunal, Rewari (hereinafter 'the learned Tribunal') vide Award dated 27.02.2023 passed in MACP/251 dated 13.07.2020 filed under Section 166 of Motor Vehicles Act (hereinafter "the Act"). The sole claimant is the 33-year-old son of deceased Rajesh Kumar, who was 53 years old at time of accident.

2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the deceased Rajesh Kumar had died due to the injuries suffered by him in a motor vehicular accident that took place on 19.06.2020 at about 10 pm due to the rash and negligent driving of Car bearing registration No.HR-26-DM-0018 (hereinafter "the offending vehicle") owned by respondent No.1, insured by respondent No.2, and being driven by respondent No.3. The compensation has been awarded along with interest @ 6% per annum. Respondents were held jointly and severally liable to pay the compensation.



3. Learned counsel for the appellant seeks enhancement of compensation by submitting that the learned Tribunal has failed to grant future prospects. It is submitted that the deceased being 53 years old, appellant was entitled to future prospects @ 10%. It is further submitted that nothing has been awarded towards pain and suffering. It is prayed that the present appeal be allowed; and the impugned Award be modified/enhanced.

4. No other argument is made on behalf of the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellant.

5. It was the pleaded case of the appellant before the learned Tribunal that prior to the accident, the deceased was serving in Amtek India Ltd. and earning Rs.35,000/- per month. To prove the said income of the deceased, the appellant had examined Subhash Chander PW2 who had proved the Appointment Letter of the deceased (Ex.P2), Pay Slip (Ex.P3) for the month of May 2020 as per which, the deceased had withdrawn salary of Rs.14,674/-. Accordingly, the learned Tribunal had taken income of the deceased as Rs.14,674/-. I find no error in the same as the income of the deceased has been assessed by the Tribunal on the basis of the evidence produced by the appellant.

6. The 36-year-old appellant is the sole claimant being son of the deceased. No reference has been made to wife of the deceased/mother of the claimant. To be entitled for compensation, the appellant was required to



demonstrate his financial dependence upon the deceased. However, except for the bald statement to the effect that the appellant was dependent upon the deceased, no evidence has been led by the appellant in this regard. Accordingly, at least a deduction of 50% was required to be made towards personal expenses; whereas the learned Tribunal had made a deduction of 1/3rd. It is established position in law that major married children are not entitled to compensation unless dependency is proved, in view of judgment of the Hon'ble Supreme Court in **Deep Shikha v. National Insurance Company Ltd., (SC) : Law Finder Doc ID # 2729764**; wherein it is held that married daughter of the deceased is not entitled to compensation, unless financial dependency is proved. Needless to say, in the present case, no such dependency is proved. Accordingly, deduction of 50% was liable to be made towards personal expenses. Consequentially, it is my view that no loss has been caused to the appellant due to non-addition of future prospects. Even otherwise, Hon'ble Supreme Court in SLP (C) No.13931 of 2017 titled as "**New India Assurance Co. Ltd. Vs. Vinish Jain & Others**", has held that where difference in compensation is about 4 to 5 per cent only, it does not warrant interference by this Court as, such variation in compensation is within permissible limits.

7. Further, Age of deceased was proved to be 53 years on the basis of his Post-Mortem Report (Ex.P5). Learned Tribunal had therefore, correctly applied multiplier of 11. Under the conventional heads, the learned Tribunal



has awarded an amount of Rs.16,500/- towards funeral expenses; Rs.16,500/- towards loss of estate; and Rs.44,000/- towards loss of consortium; thereby awarding total compensation of Rs.13,68,356/-.

8. From the above, it is clear that in the facts and circumstances of the case, a very just and fair compensation has been awarded to the appellant. No doubt Chapter-12 of the Act is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Hon'ble Supreme Court in **'State of Haryana & Another Vs. Jasbir Kaur & Others'** Law Finder Doc ID **# 64043** and **'Divisional Controller K.S.R.T.C. Vs. Mahadeva Shetty', (2003) 7 SCC 197**, has held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance. In the case of **"General Manager, KSRTC Vs. Susamma Thomas & Others"** 1994 Volume-II SCC 176, the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

9. It may further be pointed out that in respect of the accident dated 19.06.2020, FIR No.207 dated 20.06.2020 was registered under Sections 279, 427 and 304-A IPC at Police Station Dharuhera, Rewari, on the basis of statement made by eyewitness Jogender. The pleaded case of the



appellant/claimant before the learned Tribunal as recorded in Para 2 of the Award is that: -

“2. Brief facts of the case are that on 19.06.2020 Rajesh (since deceased) alongwith his nephew Jogender son of Shish Ram, resident of village Malahera was going to his village from Dharuhera. The said Rajesh was driven his motor cycle bearing NO. HR36AE-1377 and Yogender was driven his own motorcycle. When they reached near Radha Swami Satsang Vyas on Rajpura Road at about 10.00PM, in the mean time offending vehicle bearing registration No. HR 26DM-0018 being driven by its driver/respondent No.1 in rash and negligent manner came from the came from Rajpura side and direct hit the motor cycle of Rajesh due to which Rajesh fell down from motor cycle and the offending vehicle drugged him for a distance. Due to this impact, Rajesh sustained multiple injuries and fractures on his body and died on the spot. Joginder immediately look after the deceased and noted down the number of the offending vehicle. The motorcycle of the deceased was also damaged. The driver of the offending vehicle ran away from the spot. A criminal case bearing FIR No.207 dated 20.06.2020 under Sections 279/304-A/427 IPC was registered regarding this accident in Police Station, Dharuhera against respondent No.1 on the statement of Joginder. The claimant is sons of deceased Rajesh and he is dependent upon the deceased. Hence, a sum of Rs.50,00,000/- has been claimed as compensation. The petitioner has also lost love and affection of the deceased and is not in a position to maintain himself.”



10. To prove the case before the learned Tribunal, the said eyewitness Jogender had appeared as PW3 and had deposed that the accident in question had taken place due to the rash and negligent driving of the offending vehicle by respondent No.1. On the basis of testimony of said PW3, the learned Tribunal had decided issue No.1 in favour of the claimant holding that the accident dated 09.06.2020 had been caused due to the rash and negligent driving of offending vehicle by respondent No.1; and had therefore, held the claimant entitled to compensation. The relevant findings of Tribunal in this regard are as follows: -

“13. Learned counsel for the respondents have urged before me the vehicle bearing registration no. HR-HR26DM-0018 has been falsely involved at the instance of respondent No.1 and there is collusion between the petitioners and respondent No.1

14. However, after giving a thoughtful consideration to the plea raised on behalf of respondents, I do not concur with the same, in so far as it has specifically come in the statement of eye witness Joginder (PW3) that respondent No.1 while driving vehicle bearing registration no. HR-26D-0018 struck against the motorcycle bearing No. HR36AE-1377. The police after investigation had found respondent No.1 to have committed the offence punishable under Sections 279/304-A/427 IPC while driving the vehicle bearing registration no. HR-26D-0018 in a rash and negligent manner and had therefore, challaned him.”

11. However, in the FIR No.207 dated 20.06.2020, the respondent No.1 has been acquitted by the learned Judicial Magistrate, 1st Class, Rewari



vide judgment dated 31.01.2025 as the very same Jogender while appearing in the criminal trial as PW1 has turned hostile. Relevant findings returned by learned JMJC are as follows:-

"12. The main witness of the prosecution i.e. PW-1 has turned hostile in the present case on the point of identity of accused person as well as on the identity of the offending vehicle. It is pertinent to note that under Indian law, the evidence of hostile witnesses is not discarded completely. The legal maxim, "false in uno false in omnibus" is not applicable in India. With respect to the evidentiary value of hostile witness, it was observed by the Apex Court in the case of Rohtash Kumar vs. State of Haryana (2013) 14 SCC 434, as under:-

"25. It is a settled legal proposition that evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution chose to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effaced, or washed off the record altogether. The same can be accepted to the extent that their version is found to be dependable, upon a careful scrutiny thereof."

13. Therefore, it has to be seen if the evidence of such hostile witness can be relied in part. PW-1 has failed to identify the accused person and has not deposed anything to prove that accused was driving the offending vehicle or was so driving in a rash and negligent. PW-1 has stated in his examination in chief has not established the identity of the accused. However during the cross examination by Ld. APP, the witnesses have failed to identify the accused person and to identify the offending vehicle. The prosecution did not question the witness regarding the manner of driving of the vehicle during cross examination. The



witness has denied all the other facts put forwarded by the prosecution.”

12. A bare reading of the above facts shows that the claimant side has turned turtle on its previous statement. No doubt, proceedings under the Act have to be decided on the preponderance of probabilities. However, this Court cannot shut its eyes in an ostrich like manner to the starkly diametrically opposite stance taken by the claimant's side in the criminal trial. Thus, no credence can be attributed to the contrary statements made by the claimant side before the learned Tribunal. Clearly, claimant was held entitled to compensation on the basis of evidence of eyewitness, PW3 Joginder; who as PW1 has refused to attribute negligence to the respondent no.1 in the criminal trial by failing to identify him. It would therefore appear that the claimant had deposed falsely before the Tribunal only to get the compensation. In such a situation, reference may be made to a judgment of this Court in **“United India Insurance Company Limited Vs. Kamla Devi & Others” (P&H) : Law Finder Doc Id # 251230** wherein it has been held that:

"5. It should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal court. The several decisions which have come about on this issue are to the effect that a judgment in a criminal court is not binding on the Tribunal; the non-filing of a FIR is not material; even the fact of involvement of the vehicle as found by the criminal court is not binding. While the Tribunal is competent to assess the evidence which is brought before it and take an independent decision, then the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come a finding that the



particular vehicle was involved in the accident. It can be either that the version of Sitar Mohd. cannot be relied for he has contradicted himself wholesale with the version given before the criminal court or looked for other evidence which was placed before the Court. Alternatively if any explanation had been given by the witness as to why he deposed falsehood before the criminal court, even such an explanation could have been accepted to enter a finding that the accident took place only involving the particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the criminal court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that he ever made any such statement before the criminal court, necessitating the statement made before the criminal court to be exhibited for contradiction before the Tribunal. It must be remembered a statement in criminal court case by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence. If it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice."

13. The above said view has been reiterated by this Court in **"Shri Ram General Insurance Company Limited Vs. Jeeto Devi & Others"** FAO-2231-2014 decided on 03.12.2019, wherein it is held as under:-

*"(6) This Court cannot loose sight of the judgment rendered by this Court in the case of **United India Insurance Company Limited versus Kamla Devi and others**, wherein it was specifically held that in case an eye witness gives totally different version before the Court conducting trial in criminal case from the statement made by the said eye witness before the Tribunal, the testimony of such a witness is unworthy of being accepted and the evidence should be simply rejected. In fact, the learned Single Bench came down heavily on such witness and held that the said witness is also liable for perjury."*



14. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. In view of the above discussion, no ground is made out for enhancement of compensation.
15. The present appeal, accordingly, stands **dismissed**.
16. Pending application(s) if any also stand(s) disposed of.

04.05.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No