2026:PHHC:015803

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1455-2023 (O&M)
Date of Decision : 03.02.2026

SWARNA DEVI AND ANR .... Appellants

VERSUS

BAL KISHAN AND ORS .... Respondents

AND

FAO-2172-2022 (O&M)

NATIONAL INSURANCE COMPANY LIMITED .... Appellant

VERSUS

SWARNA DEVI AND ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sunil Bhardwaj, Advocate and
Mr. Pankaj Bains, Advocate (Amicus Curiae)
for the appellants in FAO-1455-2023 and
for respondents No.1 and 2 in FAO-2172-2022.

Ms. Anamika Thakur, Advocate for
Mr. Sherry K. Singla, Advocate
for respondents No.1 and 2 in FAO-1455-2023 and
for respondents No.3 and 4 in FAO-2172-2022.

Mr. Mayank Gupta, Advocate for
Mr. Vinod Gupta, Advocate
for respondent No.3 in FAO-1455-2023 and
for the appellant in FAO-2172-2022.

ALKA SARIN, J. (ORAL)

CM-5535-CII-2023 & CM-5536-CII-2023 IN FAO-1455-2023

1. These are applications for condonation of delay of 80 days in refiling and 70 days in filing the appeal.

2. Notice of the applications.

3. Ms. Anamika Thakur, Advocate appearing on behalf of Mr. Sherry K. Singla, Advocate accepts notice on behalf of respondents No.1 and 2 (the owner and the driver). Mr. Mayank Gupta, Advocate appearing on behalf of Mr. Vinod Gupta, Advocate accepts notice on behalf of respondent No.3 (Insurance Company).

4. For the reasons stated in the applications, the same are allowed and the delay of 80 days in refiling and 70 days in filing the appeal is condoned.

FAO-1455-2023 and FAO-2172-2022

5. The present order shall dispose off the above noted two appeals being FAO-1455-2023 filed by the claimants and FAO-2172-2022 filed by the Insurance Company, both against the award dated 31.01.2022 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal'). Claimants have preferred the appeal being FAO-1455-2023 aggrieved by the quantum of compensation awarded and the Insurance Company has preferred the appeal being FAO-2172-2022 seeking reduction of the compensation on account of contributory negligence. The parties are being referred to as the claimants, the owner and the driver and the Insurance Company for the sake of clarity.

6. Since the factum of the accident is not in dispute, the facts, as recorded in the impugned award passed by the Tribunal, are not being adverted to herein for the sake of brevity.

7. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹28,025
2.	Deduction 1/3rd	[₹28,025 - ₹9,342] = ₹18,683
3.	Yearly income	[₹18,683 x 12] = ₹2,24,196
4.	Multiplier of 7	[₹2,24,196 x 7] = ₹15,69,372
5.	Funeral expenses	₹16,500
6.	Loss of estate	₹16,500
7.	Loss of consortium	₹44,000
	Total Compensation	**₹16,46,372**
	Interest	**@ 7% per annum**

8. Learned counsel for the claimants would contend that though the claimants do not challenge the income as assessed, the deduction made, and the multiplier as applied by the Tribunal, however, the amounts awarded under the conventional heads i.e. loss of estate and funeral expenses and under the head loss of consortium are on the lower side. In support of his contentions the learned counsel for the claimants has relied upon the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

9. *Per contra*, the learned counsel for Insurance Company has vehemently argued that the finding of the Tribunal on issue No.1 as regards rash and negligent driving of the offending truck by the driver is erroneous inasmuch as the Tribunal has failed to appreciate the fact that the deceased was following the offending truck in his car without maintaining a safe distance and contributed to the happening of the accident by negligently ramming his car behind the truck. It is further the contention of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

10. Heard.

11. In the present case, the claimants have examined Ram Kumar as PW3 who was an eyewitness of the accident. This witness deposed that the offending truck bearing No.HR-58-B-9090, being driven by driver in a rash and negligent manner, was going ahead of the car of the deceased and all of a sudden it applied the brakes due to which the car of the deceased struck behind the offending truck on the rear side. This witness was cross-examined at length but there is nothing in his cross examination either to prove that the deceased was not maintaining a safe distance or that he contributed to the happening of the accident or that no sudden brake was applied by the driver in a rash and negligent manner. Admittedly, FIR No. 505 dated 17.05.2018 was registered against the driver and after presentation of the challan, charges under Sections 279 and 304-A IPC were also framed against him by the Court of the learned Chief Judicial Magistrate, Kurukshetra vide order dated 25.04.2019. Registration of FIR and framing of charges under Sections 279

and 304-A IPC against the driver are *prima facie* proof of his rash and negligent driving of the offending truck. Further, no issue as regards contributory negligence was framed and no evidence was led to that effect before the Tribunal. Even the driver of the offending truck did not step into the witness box to state that he was not driving rashly and negligently. Hon'ble Supreme Court in the case of **M. Nithya & Ors. vs. SBI General Insurance Company Limited [SLP (Civil) Nos.833-834 of 2023 decided on 03.01.2025]** has held as under:

> *"7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contends that contributary negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributary negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any*

> *advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributary negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained.”*

In view of above, no fault can be found with the finding of the Tribunal on issue No.1 and the argument of learned counsel for the Insurance Company that the deceased was following the offending truck in his car without maintaining a safe distance and contributed to the happening of the accident stands rejected.

12. On quantum, since there is no challenge to the income as assessed, the deduction made and the multiplier as applied by the Tribunal, the same are maintained. The amounts awarded under the conventional heads and under the head loss of consortium are on the lower side. Hence, as per the law laid down by the Hon’ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimants would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses. The claimants, being the widow and the son of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium.

13. Accordingly, the reworked compensation to which the claimants are entitled to is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1.	Monthly income	₹28,025
2.	Deduction 1/3rd	[₹28,025 - ₹9,342] = ₹18,683
3.	Yearly income	[₹18,683 x 12] = ₹2,24,196
4.	Multiplier of 7	[₹2,24,196 x 7] = ₹15,69,372
5.	Funeral expenses	₹18,000
6.	Loss of estate	₹18,000
7.	Loss of consortium i. Spousal ii. Parental	 ₹48,000 ₹48,000 Total = ₹96,000
	Total Compensation	**₹17,01,372**

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

15. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [AIR 2025 SC 1713]**, after calculation of the enhanced amount, the same be transferred by Insurance Company in the bank accounts of the claimants within a period of six weeks from today. The particulars of the bank accounts along with the requisite documents in support thereof shall be furnished by the claimants to Insurance company within a period of two weeks from today and needful shall be done by Insurance Company after verification thereof within a period of four weeks thereafter along with up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

16. In view of the above discussion, the appeal filed by the claimants

being FAO-1455-2023 is allowed and the appeal filed by the Insurance Company being FAO-2172-2022 is dismissed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

03.02.2026 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No