(Pronouncement)

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

**(1) FAO No. 192 of 2015 (O&M)**

Mithlash Kumar Mishra and others

...Appellants

***Versus***

Parminder Singh and others

...Respondents

***AND***

**(2) FAO No. 7998 of 2016 (O&M)**

National Insurance Company Ltd., Mohali

...Appellant

***Versus***

Mithlash Kumar Mishra and others

...Respondents

| | | |
|---|---|---|
| 1 | The date when the judgment was reserved | 21.04.2026 |
| 2 | The date when the judgment is pronounced | 29.05.2026 |
| 3 | The date when the judgment is uploaded on the website | 01.06.2026 |
| 4 | Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced | Full |
| 5 | The delay, if any, of the pronouncement of full judgment, and reasons thereof. | Not applicable |

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:- None for the appellants (in FAO-192-2015); and for respondent Nos. 1 to 4 (in FAO-7998-2016)

Mr. Vikrant, Advocate for
Mr. S.S. Sidhu, Advocate
for the appellant (in FAO-7998-2016); and
for respondent No. 3-National Insurance Company Ltd. (in FAO-192-2015)

Mr. P.S. Paul, Advocate for
Mr. B.S. Saroha, Advocate
for respondent Nos. 4 & 5 (in FAO-192-2015) and
for respondent Nos. 7 & 8 (in FAO-7998-2016)

for respondent No. 3-National Insurance Co. Ltd.
(in FAO-3932-2015 & FAO-637-2016)

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**HARKESH MANUJA, J.**

By this common judgment, two appeals bearing FAO Nos. **192 (lead case)** of **2015**; and 7998 of **2016** arising out of award dated 13.01.2015 passed by the learned Motor Accident Claims Tribunal, Rupnagar **(for short, "the Tribunal")**, in MACT Case No. 98 of 2012 are being decided together.

**FACTS**

**[2]** As per the case set up by the claimants, on 19.09.2012 deceased Rajan Mishra along with Narinder Singh were proceeding from Ropar to Garshankar in Tempo bearing registration No.PB-12-K-1795 loaded with mobile oil. The said vehicle was being driven by Narinder Singh. Jaswinder Singh was following them on a separate scooter. At about 5.00 PM, near Kukar Majra Petrol Pump, Scorpio vehicle bearing registration No.DL-08-CJ-8182 being driven rashly and negligently by respondent No.1 came from the opposite side and struck against the Tempo. Due to the impact, Narinder Singh and Rajan Mishra suffered multiple grievous injuries and died at the spot.

**[3]** The learned Tribunal, on appreciation of evidence, held that the accident occurred due to rash and negligent driving of Scorpio vehicle by respondent No.1 and awarded compensation of Rs.4,18,000/- along with interest @ 6% per annum from the date of claim petition till its realization.

**[4]** Aggrieved against the aforesaid award, the claimants filed the present appeal seeking enhancement of compensation, whereas the Insurance Company preferred appeal seeking recovery rights on the plea that the insurance policy was fraudulently ante-dated after the accident.

**CONTETIONS ON BEHALF OF THE APPELLANTS / CLAIMANTS.**

**[5]** It has been averred that the learned Tribunal committed grave error while assessing income of the deceased at Rs.4,000/- per month despite cogent oral evidence showing that the deceased was working as cleaner and additionally earning as waiter in marriage functions. It was further averred that the Tribunal erred in deducting 50% towards personal expenses despite the fact that there were four dependents upon the deceased. It was also pleaded that no addition towards future prospects was granted and inadequate amounts were awarded under conventional heads.

**ARGUMENTS ON BEHALF OF NATIONAL INSURANCE COMPANY LIMITED**

**[6]** Per contra, learned counsel for Insurance Company submitted that though the awarded amount already stands deposited and disbursed, the Insurance Company was entitled to recovery rights from the owner of offending vehicle as the insurance policy was fraudulently ante-dated after occurrence of accident. It was argued that vigilance inquiry revealed that premium was actually deposited on 24.09.2012 whereas accident occurred on 19.09.2012 and the policy was ante-dated from 18.09.2012 in connivance with officials of Insurance Company. Learned counsel further submitted that material collected during vigilance inquiry including bank records and RTI information clearly established fraud and therefore recovery rights deserve to be granted.

**DISCUSSION AND REASONING**

**[7]** I have heard learned counsel for the parties and perused the paper-book.

**[8]** The findings recorded by the Tribunal regarding occurrence of accident on account of rash and negligent driving of offending Scorpio vehicle are based upon ocular testimony of PW2 Jaswinder Singh coupled with FIR No.105 dated 19.09.2012 and the other documentary evidence. No material has been placed on record to discredit the said findings. Accordingly, findings of the Tribunal on Issue No.1 are affirmed.

**QUESTION OF INCOME ASSESSED**

**[9]** The learned Tribunal assessed the income of the deceased at Rs.4,000/- per month by treating him to be an unskilled labourer. However, the said assessment does not appear to be fully commensurate with the nature of employment and avocation proved on record. The claimants had specifically pleaded that deceased Ranjan Mishra was employed as a cleaner on commercial tempo bearing registration No.PB-12K-1795 and was also supplementing his income by working as a waiter during marriage functions and other social events. In support of the said assertion, claimant Mithlash Kumar Mishra appeared as PW-2 and categorically deposed regarding the occupation and earnings of the deceased. Further, PW-1 Harcharan Singh, Assistant Manager of Sahil Hotel, Rupnagar, also stepped into the witness box and deposed that the deceased used to work as a part-time waiter in marriage parties/functions organized through the hotel and was being paid approximately Rs.300/- per day.

**[9.1]** It is true that no documentary evidence such as salary certificate, attendance register, account books or income tax record was produced by the claimants to establish the exact monthly income of the deceased. Nonetheless, it is a settled proposition of law that in claim petitions arising out of motor vehicular accidents, strict rules of evidence are not to be applied with rigidity and the Tribunal/Court is required to determine just compensation on the basis of preponderance of probabilities and surrounding circumstances. In this situation observations made by the Hon'ble Apex Court in ***"Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav & Ors."***, reported as ***(2022) 1 SCC 198,*** to the effect that in the absence of proof of income, the minimum wage notification can be a yardstick but at the same time cannot be absolute one to fix the income of the deceased and some guesswork is required to be done to assess the income. Relevant excerpt thereof is reproduced hereunder:-

> *"…….In the absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In the absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around `. 15,000/- per month……"*

**[9.2]** The evidence led by the claimants clearly established that the deceased was not a mere non-working person or casual labourer, but was engaged in gainful employment as cleaner on a commercial vehicle and was additionally earning through part-time work as waiter. The nature of duties discharged by a cleaner on a commercial transport vehicle itself requires regular engagement and physical labour and, therefore, the deceased was not to be equated with an ordinary unskilled labourer. Even otherwise, the possibility of a young able-bodied person supplementing his income by undertaking part-time work during marriage functions and social gatherings cannot be brushed aside, particularly in the absence of any material contradiction elicited during cross-examination of the witnesses. At the same time, since the claimants failed to produce cogent documentary evidence substantiating the claimed income of Rs.15,000/- per month, the said figure appears to be on the higher side and cannot be accepted in its entirety. However, keeping in view the age of the deceased, the nature of his avocation, the evidence of PW-1 and PW-2, the prevailing wages at the relevant time and the overall facts and circumstances of the case, this Court is of the considered opinion that assessment of monthly income of the deceased at Rs.6,000/- per month would be fair, reasonable and just for the purpose of computation of compensation.

**QUESTION OF FUTURE PROSPECTS, MULTIPLIER AND DEDUCTION TOWARDS PERSONAL EXPENSES.**

**[10]** The learned Tribunal committed an error in not awarding future prospects. The deceased was 26 years and thus addition towards future is liable to be made. In terms of the judgment of the Hon'ble Supreme Court in ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another"***, reported as ***2009 (3) RCR (Civil) 77***, and ***"National Insurance Co. Ltd. vs. Pranay Sethi and others***" reported as ***(2017) 16 SCC 680,*** addition of 40% towards future prospects is liable to be made. Accordingly, multiplier of 17 is applied.

**[10.1]** The learned Tribunal deducted 1/2nd of the income towards personal and living expenses of the deceased in accordance with the law laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma's case (supra),*** wherein it was held that the deceased was a bachelor and the claimants were the parents, the deduction follows a different principle and with regard to bachelors, and 50% needs to be deducted as personal and living expenses. Relevant para of the judgment is culled out as under:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In this regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will wither be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be dependent, and 50% would be treated as the personal and living expenses of the bachelor 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses*

*may be restricted to one-third and contribution to the family will be taken as two-third."*

**[10.2]** From a sociological standpoint, the deceased, being the son of appellants/claimants, would have invariably prioritized setting aside financial resources to look after his parents. In the prevailing social context, where it is increasingly observed that elderly parents are often neglected and left without adequate support by their children, the responsibility of a son towards the care, maintenance and welfare of aged parents assumes even greater legal and social significance. The deceased, therefore, was under a clear moral, social and filial obligation to financially support his dependent parents, and it is reasonable to infer that a substantial portion of his income would have been set apart for their sustenance and welfare, rather than being spent exclusively on his personal needs. Although, the law laid down in ***Sarla Verma's case (supra)*** prescribes that the standard deduction towards personal and living expenses of a bachelor is one-half ($1/2^{nd}$), the judgment itself clarifies that such deduction is not an inflexible or rigid rule. Relevant extract is reproduced hereunder:-

> *"But, such percentage of deduction is not an inflexible rule and offers merely a guideline. In Susamma Thomas, it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants. In* ***UPSRTC v. Trilok Chandra [1996(4) SCC 362]****, this Court held that if the number of dependents*

*in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the Court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units is allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased. This Court gave the following illustration :*

> *"X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for and adult and one unit for a minor. Thus X and his wire make 2+2=4 units and each minor one unit i.e. 3 units in all, totaling 7 units. Thus the share per unit works out to Rs. 3500/7 = Rs. 500 per month. It can thus be assumed that Rs. 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount spent on the deceased X works out to Rs. 1250 per month per month leaving a balance of Rs. 3500-1250= Rs. 2250 per month. This amount can be taken as the monthly loss of X's dependents."*

*In* ***Fakeerappa v. Karnataka Cement Pipe Factory, 2004(2) RCR (Civil) 619 : 2004(2) SCC 473****, while considering the appropriateness of 50% deduction towards personal and living expenses of the deceased made by the High Court, this Court observed :*

> *"What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly*

*was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction."*

In the humble opinion of this Court, the present case stands on exceptional footing and thus, in view of the aforesaid and having regard to the contemporary social realities, and the dependent status of the aged parents, such mechanical application may result in manifest injustice. Accordingly, a just, fair, and reasonable deduction towards personal and living expenses of the deceased is assessed at 40% of his income.

**QUESTION OF COMPENSATION UNDER CONVENTIONAL HEADS**

**[11]** Furthermore, in view of the judgment of the Hon'ble Apex Court in ***Sarla Verma's case (supra)***, ***Pranay Sethi's case (supra)*** and ***"United India Insurance Co.Ltd. vs. Satinder Kaur",*** reported as ***(2021) 11 SCC 780,*** compensation awarded under conventional heads is also required to be assessed accordingly. Appellants/claimants are thus, held entitled for Rs. 18,000/- as compensation under funeral head and Rs. 18,000/- towards loss of estate. Loss of Consortium is assessed to the tune of Rs. 1,92,000/- (48,000 x 4) as appellants/claimants being parents and siblings are entitled to filial and sibling consortium.

## CONCLUSION

**[12]** In view of the discussion made herein above, the appellants/claimants are held entitled for the grant of compensation in the following manner:-

| S.No. | Nature | Amount (in Rs.) |
|---|---|---|
| 1. | Annual Income of deceased | 72,000/- |
| 2. | Add 40% future prospects | 28,800/- |
| 3. | Total Income (Rs. 72,000+ Rs. 28,800) | 1,00,800/- |
| 4. | Deduction (40%) | 40,320/- |
| 5. | Net Income (Rs. 1,00,800 – Rs. 40,320) | 60,480/- |
| **6.** | **Loss of Income after applying multiplier of 17 as per the age of 26 years (Rs. 60,480 x 17)** | **10,28,160/-** |
| **7.** | **Loss of Consortium** | **1,92,000/-** |
| **8.** | **Funeral expenses** | **18,000/-** |
| **9.** | **Loss of estate** | **18,000/-** |
| | **Total compensation** | **12,56,160/-** |
| | **Amount Awarded by the Tribunal** | **4,18,000/-** |
| | **Enhanced Amount** | **8,38,160/-** |

Accordingly, appellants/claimants shall be entitled to receive above enhanced compensation in the proportion already determined by the learned Tribunal.

## QUESTION OF LIABILITY

**[13]** The principal controversy raised by the Insurance Company pertains to alleged ante-dating of the insurance policy. It is noteworthy that before the Tribunal, the Insurance Company contested the claim petition primarily on the ground that the driver was not holding a valid driving licence and that the vehicle lacked valid documents. The insurance policy itself was exhibited on record as Ex.P5 and no plea whatsoever regarding fraud, ante-dating or fabrication of policy was raised before the learned Tribunal. No issue in this regard was even pressed for or framed.

**[13.1]** The entire case now sought to be set up by the Insurance Company is founded upon a subsequent vigilance inquiry conducted internally by the appellant-Company after passing of the award. The material relied upon by the Insurance Company consists of internal correspondence, RTI replies, alleged software entries and suspension order of an employee. In the considered opinion of this Court, such material cannot *ipso facto* dislodge a concluded adjudication under the Motor Vehicles Act, particularly when the insurance policy admittedly stood issued by the Company itself and was operative on the date reflected therein. The policy document was never cancelled nor was any declaration obtained from a competent Civil Court declaring the same to be void *ab initio*.

**[13.2]** The burden to establish fraud is extremely heavy and allegations of fraud are required to be proved by cogent, reliable and unimpeachable evidence. Mere suspicion or internal departmental inquiry cannot constitute conclusive proof of fraud against third party claimants, who are innocent victims of a motor accident. Even otherwise, the Insurance Company has not produced any evidence establishing that the insured-owner had participated in any alleged manipulation. The purported irregularities in receipt of premium or internal software entries, even if assumed to be correct, essentially arise out of the functioning of the appellant-Company and its officials. Third party claimants cannot be made to suffer on account of internal lapses, negligence or misconduct of employees of the insurer.

**[13.3]** The Hon'ble Supreme Court has consistently held that beneficial provisions of the Motor Vehicles Act are required to be interpreted in favour of victims of accidents. The statutory liability of insurer *qua* third party risks cannot be lightly avoided. The reliance placed upon judgment in ***"United India Insurance Company Limited versus Rajendra Singh"*** reported as ***2000 (3) SCC 581*** is misconceived. In the said case, there existed clear allegations of fabricated accident and fraudulent claim itself. In the present case, neither the accident nor the existence of policy document is disputed. The insurer seeks to avoid liability solely on the basis of subsequent internal investigation. The ratio of the aforesaid judgment is, therefore, distinguishable on facts. Accordingly, this Court finds no merit in the appeal preferred by the Insurance Company and the prayer for grant of recovery rights is liable to be rejected.

**[14]** The grant of interest @ 6% per annum is not equitable and just in view of the observations made by the Hon'ble

Supreme Court in ***"Smt. Supe Dei and others vs. National Insurance Company Limited and other,*** reported as ***(2009) (4) SCC 513*** approved in a subsequent judgment titled as ***"Puttamma and others vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443,*** thus, the interest is enhanced to 9% per annum on the amount of compensation re-assessed from the date of institution of claim petition till its realization. In case the said amount is not paid within three months, the same shall be payable thereafter along with 12% interest from the expiry of period of three months from today. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

**[15]** Consequently, the appeal bearing **FAO No. 192 of 2015** filed by the appellants / claimants is **allowed** and compensation is enhanced from Rs.4,18,000/- to Rs. 12,56,160/- along with interest @ 9% per annum from the date of filing of claim petition till realization. The appeal bearing **FAO No. 7998 of 2016** preferred by National Insurance Company Limited seeking recovery rights against the owner and driver of the offending vehicle is hereby **dismissed** being devoid of merits.

**[16]** Pending miscellaneous application(s), if any, shall also stand(s) disposed off.

**CM-26816-CII-2016 in FAO-7998-2016**

Prayer in the present application moved on behalf of the appellant-National Insurance Company is for producing some documents Anenxures A-2 to A-10 in the shape of additional evidence.

In view of the detailed discussion made hereinabove in para-13 under the head of “Question of Liability”, as also dismissing the appeal filed by the National Insurance Company, no orders are required to be passed in the present application, the same is hereby **dismissed**.

**May 29, 2026** **( HARKESH MANUJA )**
*‘dk kamra’* **JUDGE**

| | | |
|---|---|---|
| Whether Speaking / Reasoned : | Yes | No |
| Whether Reportable : | Yes | No |

DINESH KUMAR
2026.06.01 13:02
I attest to the accuracy and
integrity of this document