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

1. FAO-6303-2014 (O&M)

New India Assurance Co. Ltd. ......Appellants

vs.

Paramjit Kaur and ors. ......Respondents

2. FAO-6304-2014 (O&M)

New India Assurance Co. Ltd. ......Appellants

vs.

Parkash Kaur and ors. ......Respondents

Date of Reserve: 19.12.2025
Date of Pronouncement:28.01.2026
Uploaded on:- 30.01.2026

Whether only the operative part of the judgment is pronounced? *No*
Whether full judgment is pronounced? *Yes*

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vinod Gupta, Advocate, for the appellant (s) in
FAO No. 6303 and 6304-2014
and for respondent-Insurance Company in
FAO No. 6128 and 8177-2014.

Mr. Sushil Saini, Advocate
for the appellants in FAO No. 6128 and 8177-2014.
and respondents/claimants in FAO No. 6303 and 6304-2014.

Service of respondent No.6 (driver) in FAO No. 6303-2014
is dispensed with, vide order dated 09.07.2015.

Respondent No. 7 (owner) in FAO No. 6303-2014 ex parte
vide order dated 09.07.2015.
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SUDEEPTI SHARMA J.

1. Both the appeals, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 04.03.2014

passed by the learned Motor Accidents Claim Tribunal, Tarn Taran, whereby the claimants (Paramjit Kaur and others) were awarded compensation to tune of Rs.10,12,500/- along with interest @ 6% per annum and the claimants (Parkash Kaur and others) were awarded compensation to tune of Rs.07,42,500/- along with interest @6% per annum. The Insurance company was held liable to pay the compensation to the claimants.

<u>FACTS NOT IN DISPUTE</u>

2. Brief facts of the case are that on 15.08.2011, deceased Balwinder Singh alias Billa along with Kashmir Singh and Lakhwinder Singh were going from their village Brahampura, towards Naushehra Pannuan in order to perform their job of Painter on their separate bicycles. At about 9.00 A.M., when they reached near National Public School, Naushehra Pannuan, in the meantime a truck bearing registration no. PB-11-X-6735 came from the backside which was begin driven by respondent no. 1 in a rash and negligent manner and struck into the bicycle of Balwinder Singh and Kashmir Singh. Respondent no.1 lost his control over the said truck and hit into the trees. Due to this accident Balwinder Singh and Kashmir Singh fell down on the road and received multiple injuries and died at the spot. The said accident took place due to rash and negligent driving of respondent no.1. The matter was reported to the police and FIR No. 100 dated 15.08.2011, u/s 304-A, 279,427 IPC was registered at P.S. Sarhali.

3. Upon notice of the claim petition, respondents appeared and admitted the factum of compensation.

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

> *"1. Whether Balwinder Singh died in the motor vehicular accident alleged took place on 15.08.2011 in the area of near National Public School Naushehra Pannuan on account of rash and negligent driving of truck no. PB-11X-6735 by its driver l.e. respondent no.1 Raju, as alleged ?OPP.*
>
> *2. If issue no.1 is proved, whether the petitioners are entitled for compensation as prayed for, if so to hat extent ?OPP*
>
> *3. Whether the present claim petition is not maintainable ? OPR.*
>
> *4. Whether the respondent no.1 Raju was not having any legal and valid driving license at the time of alleged accident ?OPR*
>
> *5. Relief."*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the appellant-Insurance Company was held liable to pay the compensation. Hence, the present appeals.

<u>SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES.</u>

6. Learned counsel for the appellant–Insurance Company contends that the driving licence of the driver of the offending vehicle is fake, as is evident from the verification report annexed with the memorandum of appeal. It is submitted that the said report could not be produced or proved during the trial since the evidence on behalf of the insurer had already been closed by order of the learned Tribunal. On this basis, learned counsel prays that the present appeal be allowed and that the appellant–Insurance Company be absolved of its liability to satisfy the award of compensation.

7. He further contends that the learned Tribunal erred in law in assessing the monthly income of both the deceased **(Balwinder Singh @ Billa and Kashmir Singh)** @ Rs.7500/- per month. He, therefore prays that the present appeals be allowed.

8. Learned counsel for the claimants vehemently contends that the liability has rightly been fixed upon the Insurance Company by the learned Tribunal. He further contends that the amount awarded by the learned Tribunal is on the lower side and the claimants have also filed separate appeals bearing ***FAO No. 8177-2014 titled as Paramjeet Kaur and others vs. Raju and others and FAO No. 6128-2014 titled as Parkash Kaur and others vs. Raju and others,*** seeking enhancement of the compensation amount awarded by the learned Tribunal.

9. I have heard learned counsel for the parties and perused the whole records of the case.

10. Before proceeding further, it is relevant to reproduce the relevant portion of the award, which reads as under:-

> ***"ISSUE NO.4***
>
> *20. The onus of proving this issue was placed upon the respondent no.3 Insurance Company. Not even a scintilla of evidence has been brought on record to show that the respondent no.1 was not holding a valid or effective driving license at the time of accident. So, this issue is decided against the respondent no.3 and in favour of the claimants."*

11. A perusal of the impugned award reveals that the learned Tribunal has correctly adjudicated the issue of liability and rightly fastened the liability to pay compensation upon the appellant–Insurance Company.

12. It is trite law that in order to avoid its liabilities, the Insurance Company must not only plead the available statutory defence(s) but must also strictly establish a willful breach of the terms and conditions of the insurance policy on the part of the owner of the offending vehicle. The burden of proving such breach squarely lies upon the insurer.

13. In the present case, the appellant–Insurance Company has miserably failed to discharge this burden, inasmuch as no cogent or reliable evidence was led before the learned Tribunal to demonstrate any violation of the terms of the insurance policy, particularly with regard to the alleged absence of a valid and effective driving licence.

14. As regards the contention of the appellant–Insurance Company that the report pertaining to the alleged fake driving licence could not be produced or proved during the trial since the evidence on behalf of the insurer had already been closed by order of the learned Tribunal, the said contention is wholly misconceived and devoid of merit. It is not the case of the appellant-Insurance Company that the awards were passed without affording due opportunity of hearing. The record clearly reflects that the impugned awards were passed in the presence of learned counsel for the Insurance Company and after granting adequate opportunity to lead evidence and to address arguments.

15. Having failed to avail such opportunity at the appropriate stage, the appellant–Insurance Company cannot, at this appellate stage, be permitted to fill up lacunae in its case by seeking to rely upon additional evidence.

16. In view of the foregoing discussion, the findings recorded by the learned Tribunal on the issue of liability are well-reasoned, sound, and call for no interference. The same are accordingly affirmed.

17. So far as the contention of the appellant–Insurance Company that there was no documentary evidence on record regarding the income of the deceased and, therefore, the assessment of his monthly income at ₹7,500/- is on the higher side, the same is wholly devoid of merit.

18. It transpires from the impugned award that the deceased, Balwinder Singh alias Billa and Kashmir Singh were engaged in the profession of painting/whitewashing. The learned Tribunal assessed their monthly income at ₹7,500/- keeping in view the nature of his avocation.

19. Further, claimant No.1, Paramjit Kaur, specifically deposed that the deceased was earning ₹7,500/- per month by doing the work of whitewashing. The said testimony has remained unrebutted, as no evidence whatsoever was led on behalf of the respondents to controvert the said assertion or to establish that the deceased was merely an unskilled labourer earning a lesser amount.

20. In view of the surrounding circumstances, the nature of work being performed by the deceased, and the prevailing socio-economic conditions in Indian society, the learned Tribunal has rightly assessed the monthly income of the deceased at ₹7,500/-. The approach adopted by the learned Tribunal is neither arbitrary nor excessive and is in consonance with settled principles of law governing assessment of income in cases involving persons employed in the unorganised sector.

21. Support for the aforesaid view can be drawn from the judgment of the Hon'ble Supreme Court in ***Kubra Bibi v. Oriental Insurance Co. Ltd., reported as 2023 (3) Apex Court Judgments (SC) 23***, wherein it has been held that in the absence of definite proof of income, the social status and nature of employment of

the deceased are relevant considerations, and notional income must be reasonably assessed. The relevant extract reads as under:-

> *"In a matter of the present nature where the compensation is sought and even in absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration…"*

22. Furthermore, the nature of proceedings in Motor Accident Claims, being summary in nature, evidence in *stricto sensu* is not required. The Hon'ble Supreme Court in case of ***"Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav & Ors.", reported as (2022) 1 SCC 198***, held that in 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 Rs. 15,000/- per month……"

23. In the light of the above authoritative pronouncement and the evidence available on record, the findings recorded by the learned Tribunal on the issue of assessment of income suffer from no infirmity and are accordingly upheld.

24. In view of the above, the appeals are dismissed, accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

28.01.2026
Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes