



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

FAO-5973-2015 (O&M)
Reserved on : 30.01.2026
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National Insurance Company LimitedAppellant

Vs.

Mehar Chand and othersRespondents

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. R.C.Kapoor, Advocate,
for the appellant.

Mr. Mohan Singh Rana, Advocate,
for respondent No.1.

Ms. Shweta Bawa, Advocate, and
Mr. Naveen, Advocate,
for respondents No.2 and 3.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 07.07.2017 passed in the claim petition filed under Sections 166/140 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Palwal (for short, 'the Tribunal'), whereby the appellant-Insurance company was held liable to pay the compensation to the claimant/respondent No.1 to the tune of Rs.1,45,498/- along with interest @ 7.5% per annum on account of injuries sustained by the claimant/respondent No.1.

**BRIEF FACTS OF THE CASE**

2. Brief facts of the case are that on 01.01.2014, Jasbir (since deceased), along with Inderjeet (since deceased), was returning from school after attending the annual function on a motorcycle bearing registration No. HR-50C-3980. On the way, upon meeting Satbir and Mehar Chand at Ghasera turn, the motorcycle was stopped. Mehar Chand also took a lift on the said motorcycle, whereas Satbir proceeded on another motorcycle. When they reached near the water hut, a tractor bearing registration No. HR-38S-5957, attached with a trolley and driven by respondent No.1 in a rash and negligent manner, came from the side of Hassanpur and while crossing, struck against the motorcycle of deceased Jasbir. As a result of the impact, all three occupants fell onto the *kachha* road. Respondent No.1 abandoned the tractor-trolley at the spot and fled away. Jasbir succumbed to the injuries at the spot, whereas Mehar Chand and Inderjeet were taken to General Hospital, Palwal. Considering their serious condition, they were referred to Safdarjung Hospital, Delhi. However, Inderjeet succumbed to his injuries on 02.01.2014. The matter was reported to the police and in this regard, FIR No.4 dated 02.01.2014, under Sections 279, 337 and 304-A the Indian Penal Code, 1860 was registered against respondent No.1 at Police Station Hassanpur.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition by filing their separate written replies and denied the factum of the accident/compensation.



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

- “1. Whether the accident in question resulting into the death of Jasbir son of Hari Singh and Inderjeet and causing injuries to the petitioner Mahesh took place due to alleged rash and negligent driving of Tractor bearing registration no.HR 38S 5957 by the respondent no.1? OPP*
- 2. If issue no.1 is proved, whether petitioners are entitled to any compensation, if so how much and from whom? OPP*
- 3. Whether respondent no.1 was not holding a valid and effective driving licence to drive the offending vehicle on the date of accident? OPR3*
- 4. Whether the respondent no.2 has violated the terms and conditions of policy exonerating the liability of the insurance company? OPR3.*
- 5. Relief. ”*

5. In support of their pleadings, both the parties led their respective evidence.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimant/respondent to the tune of Rs.1,45,000/- along with interest @ 7.5% per annum on account of injury suffered by Mehar Chand-claimant and appellant-Insurance Company was held liable to pay compensation. Hence, the present appeal.

**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES**

7. Learned counsel for the appellant-Insurance Company contends that the learned Tribunal has erred in holding that the accident took place due to rash and negligent driving of offending vehicle. He further contends that the present accident occurred due to contributory negligence as the driver of motorcycle was himself negligent since he was carrying three persons on motorcycle bearing No.HR-50C-3980. He further contends that the compensation awarded by learned Tribunal is on higher side and deserve to be reduced as per settled law.

8. Learned counsel further submits that the accident in question occurred on 01.01.2014, i.e., prior to the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Ltd. v. Pranay Sethi.** It is contended that, in view of the fact that the question regarding enhancement of compensation under the conventional heads by granting 10% increase after every three years has been referred to larger Bench of the Hon'ble Supreme Court in **Hasina Yasmin & Ors. Petitioners v. National Insurance Company Ltd. & Anr.,** Therefore, such enhancement is presently impermissible and unsustainable in law. Therefore, he prays that the present appeal be allowed and award be modified/reduced.

9. Per contra, learned counsel for respondent No. 1-claimant contends that a finding of contributory negligence can be returned only when there is cogent and reliable evidence on record to establish



that the driver of the other vehicle also contributed to the occurrence of the accident. It is submitted that, in the present case, the driver of the offending vehicle has not entered the witness box to depose that the accident occurred due to any negligence on the part of the driver of the motorcycle. In the absence of such evidence, learned counsel submits that the plea of contributory negligence is wholly untenable and cannot be sustained in law. Consequently, the finding of the learned Tribunal holding the driver of the offending vehicle solely negligent calls for no interference. He further contends that the amount of compensation awarded to the claimants is on lower side and deserves to be enhanced as per latest law.

10. Learned counsel for respondents No.2 and 3 argues on the lines of award.

11. I have heard learned counsel for the parties and carefully perused the whole record of this Court with his able assistance.

12. Before proceeding further, it is relevant to reproduce the relevant portion of the award dated 07.07.2015 passed by the learned Tribunal:-

Issues No.1 :

11. To prove this issue, claimants have examined Satbir as PW4, who is the eye witness of the accident and author of the FIR. He tendered his affidavit Ex.PW4/A in his evidence, wherein he deposed that on 1.1.2014 Jasbir (since deceased) alongwith Inderjet (since deceased) was coming from school after attending annual function on a motorcycle bearing no.HR 50C



3980. On seeing him one Mehar Chand son of Lala Ram (injured), they stopped at Ghasera More. Mehar Chand also took lift on the motorcycle of Jasbir (since deceased). He (Satbir) took lift at some other motorcycle and the same was following the motorcycle of the deceased. When they reached near water hut, ahead of Ghasera turn situated at Hassanpur road, in the mean time a tractor bearing registration no.HR 38S 5957 being driven by respondent no.1 in a rash and negligent manner came from Hassanpur side. As soon as motorcycle of Jasbir was crossing, respondent no.1 hit the same. All the trio fell down on the kachha road. After causing the accident respondent no.1, leaving the tractor trolley at the spot fled away. Jasbir sustained multiple grievous injuries on various vital parts of his body and he died at the spot. Mehar Chand and Inderjeet were rushed to General Hospital, Palwal where they were medicolegally examined. He further deposed that the accident in question took place due to rash and negligent driving of the offending tractor by respondent no.1 He further deposed that police recorded his statement on the basis of which formal FIR No.4 dated 2.1.2014 Ex.P4, under Sections 279,337 and 304A IPC was registered at Police Station Hassanpur. Mahesh (claimant injured) has appeared in the witness box as PW1 and by way of his affidavit Ex.PW1/A he has reiterated the stand taken by him in his petition. Besides it, PW2 Jai Kishan, Ahlmad in the court of learned Shri Ashok Kumar, learned Judicial Magistrate Ist Class, Hodal has brought the summoned file and stated that respondent no.1 is facing trial before the court of learned



*Judicial Magistrate Ist Class, Hodal in connection with the accident in question. Moreover, respondent no.1 has not appeared in the witness box to rebut the evidence led by the claimants. Therefore, an adverse inference is liable to be drawn against him. Reliance on this point can be placed upon the authority of the Hon'ble High Court of Punjab & Haryana in **Raju and others Vs. Sukhwinder Singh and others 2006(4) RCR (Civil) 82. 12.** Claimants Smt.Laltesh and others have placed on record copy of the post mortem report of Jasbir as Ex.P109, which reveal that the cause of death was ante mortem head injury which was sufficient to cause death in ordinary course of nature. Mehar Chand (injured) has placed on file his discharge card Ex.P108, discharge summary of Guru Nanak Hospital, Palwal Ex.P109 and copy of MLR Ex.P130. The claimants Daya have produced copy of post mortem report of Inderjeet as Ex.P119 which shows that the cause of death in this case was due to shock and haemorrhage due to injuries to vital organs i.e. brain and multiple fracture which were ante mortem in nature and sufficient to cause death in ordinary course of nature. The post mortem reports of Jasbir and Inderjeet and the discharge card, discharge summary and MLR of Mehar Chand also depict the injuries on their person, apparently sustained in the accident in question.*

13. The above evidence led by the petitioners leads to an irresistible conclusion that the accident in question took place due to rash and negligent driving of tractor bearing no. HR 38S 5957 by respondent no.1 resulting in death of Jasbir and Inderjeet and injuries to Mehar



Chand. This issue is, therefore, decided in favour of the claimants and against the respondents.

Issues No.2, 3 and 4:

In Claim Petition No.102 of 2014 titled Smt.Laltesh Versus Satya Parkash and others:

14. Learned counsel for the claimants argued that deceased was 19 years of age on the date of accident. He was studying in 10th class and also giving tuitions to the students thereby earning Rs.9,000/ per month. The claimant no.1 widow, and claimants no.2 and 3 being parents of the deceased were entirely dependent upon his income. The claimant no.1 has lost her life partner in young age and claimants no.2 and 3 have lost their beloved son in the accident in question. The untimely death of deceased Jasbir has brought the claimants at the verge of starvation with no source of their livelihood. No amount can compensate the loss of life, still the complainants needs adequate compensation for their survival.

15. On the other hand, learned counsel for the respondents argued that Jasbir (since deceased) did not suffer any injury in the accident in question. He was a labourer and was not earning more than Rs.4000/ per month. The claimants have procured forged PMR of the deceased just to extract compensation. They have not even produced any witness to prove that he was giving tuitions to the students thereby 13 Laltesh Vs. Satya Parkash earning Rs.9000/ per month as alleged. Therefore, they are not liable to any amount of compensation.



16. So far as age of the deceased is concerned, in para no.3 of the petition, the claimants have mentioned his age as 19 years. The claimants have produced on file copy of post mortem report of Jasbir as Ex.P109 which also reveals that Jasbir was 19 years of age at the time of his death. Thus, keeping in view the material available on file, the age of the deceased is assessed as 19 years.

17. To prove the income of the deceased, claimants no.1 Smt.Laltesh, wife of deceased Jasbir, when appeared in the witness box as PW3 has stated that the deceased Jasbir was a student of 10th class at Brij Mandal School, village Khambi and was also giving tuitions to the students thereby earning Rs.9,000/ per month. The claimants have not placed on file any document with regard to his income from tuition. They have even not produced any witness to prove that he was giving tuitions to the students. However, he being 19 years of age was capable enough to earn his livelihood. The accident in question took place on 1.1.2014. A labourer in those days was fetching Rs.5000/ per month approximately. Thus, the income of the deceased is determined as Rs.5000/ per month.

*18. In this case, the deceased died at the age of 19 years and was earning a fixed sum without provision for annual increment etc. Thus, the question arises whether in a case of labourer who was getting a fixed sum without any provision of annual increment etc., an addition of 50 percent increase in his total income is liable to be taken towards future prospects. The Hon'ble Supreme Court of India in case titled **Smt. Sarla Verma Versus Delhi***

**Transport Corporation (SC) 2009(3) RCR (CIVIL) 77**

has observed that :

“In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though, the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was selfemployed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances”.

19. The Hon'ble Apex Court in case titled as *Santosh Devi Vs. National Insurance Company Limited and others 2012 STPL(Web) 248 SC in Civil Appeal No. 3723 of 2012 (arising out of SLP (C) No.24489 of 2010) decided on 23.04.2012* has further observed that :



“We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma’s case that where the deceased was selfemployed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is selfemployed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are selfemployed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also



increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are selfemployed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it



would be reasonable to say that a person who is selfemployed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation”.

20. *In this case the age of the deceased was 19 years at the time of accident. Thus, in view of the law laid down in Santosh Devi's case (supra) an increase of 50% is liable to be taken in the income of the deceased which comes to be Rs.2500/ per month. In this way, total income of the deceased comes to Rs.7500/ per month (Rs.5000/ + Rs.2500/) or Rs.90,000/ per annum.*

21. *The number of dependents upon the deceased are three, therefore, in view the law laid down in Smt. Sarla Verma's case (supra), where the number of dependent family members are 2 to 3, the deduction should be 1/3rd. Thus, the dependency of the claimants comes to Rs.60,000/ (90,000/3) per annum.*

22. *As discussed above the age of deceased was 19 years at the time of accident. Therefore, keeping in view the law laid down by Hon'ble Supreme Court of India, in Sarla Verma's case (supra) the multiplier of 18 is to be applied in this case. Accordingly, the claimants are entitled to compensation of Rs.60,000 x 18= 10,80,000/).*

23. *The claimant No. 1 Smt.Laltesh, widow of deceased is further awarded a sum of Rs.10,000/ as consortium. The claimants are also awarded a sum of Rs.10,000/ on account of expenditure incurred on transportation & last rites of the deceased.*



24. In this way, claimants are awarded a total compensation mentioned below:

Sr. No.	Head under which amount Awarded	Amount
1.	Loss of dependency	: Rs.10,80,000/-
2.	Transportation & Last Rites expenses.	: Rs.10,000/-
3.	Compensation on account of consortium.	: Rs.10,000/-
	TOTAL	: Rs.11,00,000/-

25. Thus, claimants are held entitled to a total compensation of Rs.11,00,000/ (Rs.eleven lacs only).

In Claim Petition No.RBT 129 of 2014 titled Mehar Chand and another Versus Satya Parkash and others:

26. Learned, counsel for the claimant argued that the claimant was 22 years of age on the date of accident. He was working as mason thereby earning Rs.10,000/ per month. He sustained multiple injuries on various parts of body. He was treated in Guru Nanak Hospital, Palwal and Sheetal Hospital, Palwal where he remained admitted w.e.f 1.1.2014 to 22.1.2014 and and incurred an amount of Rs.2,00,000/ on his treatment. However, he could not retain entire bills. He also suffered loss of earning and had to undergo the agony of treatment on account of the accident in question. He has also become permanently disabled. He could not attend his job for a period of more than six months. Besides the amount incurred on his treatment, the claimant also suffered loss



of income. Thus, the claimant is entitled to adequate compensation.

27. On the other side, the counsel for respondents argued that the claimant neither sustained any injury in the accident in question nor spent any amount on his treatment as alleged. He has procured forged MLR, discharge card, discharge summary and bills. No disability has been suffered by him. He did not suffer any loss of income as alleged. He is not entitled to claim the amount incurred on the treatment from the respondents.

28. Though, the claimant Mehar Chand has pleaded that he was working as mason thereby earning Rs.10,000/ per month, but neither he has placed on file any document showing his income nor examined any witness where he did such like work. Therefore, in the given circumstances, at the most he can be treated as a labourer, keeping in view his age he was capable enough to earn his livelihood. The accident occurred on 1.1.2013. In those days, labourer was fetching Rs.5000/ per month approximately. Thus, the income of the claimant/injured is assessed at Rs.5000/ per month.

29. PW8 Satvir Singh has proved discharge summary of the injured as Ex.P109 which reveals that he sustained head injury – SAH right frontal lobe, mild diffuse cerebral edema with hemorrhagic contusion in right temporal lobe, fracture anterior of lateral wall of right manillary, fracture of right zygomatic arch, external swelling right para orbit region, right segmental, fracture ulna, fracture DER right, and fracture right shaft raduys. Thus, keeping in view the nature of injuries, the claimant must have taken at least three months to recover. In this



way, he is awarded a sum of Rs.15,000/ (Rs.5,000/ X 3) towards loss of earnings.

30. The petitioner has placed on file disability certificate on record. Neither the disability certificate has been tendered in evidence nor any witness has been summoned to prove the said disability certificate. Merely placing on file the disability certificate does not serve any purpose. Therefore, the same cannot be taken into consideration.

31. To prove the amount incurred on his treatment, the claimant has examined Surender Singh, recordkeeper, Balaji Pharmacy, Guru Nanak Hospital, Palwal as PW4 who has proved final bills Ex.P5 to Ex.P100 for Rs.26,538/, Subhash Chand, Recordkeeper Sheetal Hospital, Palwal has proved bills Ex.P101 to Ex.P107 for Rs.23,400/ and Satvir Singh Dagar, Record-keeper/Accountant Guru Nanak Hospital, Palwal has proved bills Ex.P110 to Ex.P118 for Rs.50,510/. Besides this the claimant has also placed on file medicine bills Ex.P120 to Ex.P129 for Rs.5,050/. A perusal of above bills and receipts reveals that claimant incurred an amount of Rs.1,05,498/ on his treatment and purchase of medicines to which he is held entitled.

32. A perusal of discharge summary of Guru Nanak Hospital, Palwal and the discharge card of Sheetal Hospital, Palal reveals that the patient Mahesh was treated for the injuries sustained in the accident in accident and remained admitted from 1.1.2014 to 2.1.2014. Thus, keeping in view the period of his admission in the hospital and nature of injuries sustained by the claimant in the accident in question, he is awarded



a sum of Rs.15,000/ towards pain and suffering. He is also awarded a sum of Rs.5000/ for transportation and a sum of Rs.5000/ towards nutritious diet. In this way, the claimant is awarded the following amount of compensation for the injuries sustained by him in the accident in question.

Sr. No.	Head under which amount Awarded	Amount
1.	<i>Compensation on account of treatment expenses.</i>	<i>Rs.1,05,498/-</i>
2.	<i>Loss of earning</i>	<i>Rs. 15,000/</i>
3.	<i>Pain and suffering</i>	<i>Rs. 15,000/</i>
4.	<i>Compensation on account of transportation</i>	<i>Rs. 5,000/</i>
5.	<i>Compensation on account of special diet</i>	<i>Rs. 5,000/</i>
	TOTAL	<i>Rs.1,45,498/-</i>

33. Thus, the claimant is held entitled to a total compensation of Rs.1,45,498 (Rs. One lac forty five thousand four hundred and ninety eight only) on account of injuries sustained by him in the accident in question.

In Claim Petition no.RBT 9 of 2014/2015 titled Daya Chand and another Versus Satya Parkash and others:

34. Learned counsel for the claimants argued that deceased was 20 years of age on the date of accident. He was studying in 12th class and also giving tuitions to the students thereby earning Rs.9,000/ per month. The claimants being parents of the deceased were entirely dependent upon his income. The claimants have lost their



beloved son in the accident in question. The untimely death of deceased Inderjeet has brought the claimants at the verge of starvation with no source of their livelihood. No amount can compensate the loss of life, still the complainants needs adequate compensation for their survival.

35. On the other hand, learned counsel for the respondents argued that Inderjeet (since deceased) did not suffer any injury in the accident in question. He was a labourer and was not earning more than Rs.4000/ per month. The claimants have procured forged PMR of the deceased just to extract compensation. They have not even produced any witness to prove that he was giving tuitions to the students thereby earning Rs.9000/ per month as alleged. Therefore, they are not liable to any amount of compensation.

36. So far as age of the deceased is concerned, in para no.3 of the petition, the claimants have mentioned his age as 20 years. The claimants have produced on file copy of post mortem report of Inderjeet as Ex.P119 which also reveals that Inderjeet was 20 years of age at the time of his death. Thus, keeping in view the material available on file, the age of the deceased is assessed as 20 years.

37. To prove the income of the deceased, claimant no.1 Daya Chand, father of deceased Inderjeet, when appeared in the witness box as PW7 has stated that the deceased Inderjeet was a student of 12th class at Brij Mandal School, village Khambi and was also giving tuitions to the students thereby earning Rs.9,000/ per month. The claimants have not placed on file any document with regard to his income from tuition. They



have even not produced any witness to prove that he was giving tuitions to the students. However, he being 20 years of age was capable enough to earn his livelihood. The accident in question took place on 1.1.2014. A labourer in those days was at least fetching Rs.5000/ per month approximately. Thus, the income of the deceased is determined as Rs.5000/ per month.

*38. In this case, the deceased died at the age of 20 years. Therefore, in view of law laid down by the Hon'ble Supreme Court of India in cases titled **Smt. Sarla Verma (supra)** and **Santosh Devi (supra)**, the claimants are entitled to an increase of 50% in the income of the deceased which comes to be Rs.2500/ per month. In this way, total income of the deceased comes to Rs.7500/ per month or Rs.90,000/ per annum.*

*39. The Hon'ble Supreme Court of India in **Sarla Verma'case (supra)** has further held that :*

“where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50 per cent 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. Thus, 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family.”



40. Therefore, as discussed above in view of law laid down in **Sarla Verma's case (supra)** the contribution of deceased towards the family is to be considered as 50%. Thus, the contribution of the deceased towards his family comes to Rs.45,000/ per annum.

41. Now, the next question arises for consideration is whether the multiplier is to be applied in respect of the age of the deceased or the claimants. The similar matter came before the **Hon'ble High Court of Punjab & Haryana at Chandigarh in FAO No. 2618 of 2011 (O&M) titled Savitri and another Vs. Rejender and another decided on 14.02.2012** wherein the Hon'ble High Court has observed that :

“With utmost respect, case of Shakti Devi (supra) is decided on 09.11.2010 and the case of P.S.Somanathan and others (supra) is decided on 17.02.2011 reiterating the view expressed in the case of Smt. Sarla Verma and others (Supra) taken on 15.04.2009 wherein it has been held that the multiplier has to be applied keeping in view the age of the deceased.

Interestingly all the decisions of the Supreme Court are rendered by the Bench of Hon'ble two Judges.

Since the view in the case of Smt. Sarla Verma and others (supra) has been reiterated by the Supreme Court in the case of P.S.Somanathan and others (supra) even after the decision in the case of Shakti Devi (supra), therefore, I am inclined to take the view expressed in the case of Smt. Sarla Verma and others (supra) and P.S.Somanathan and others (supra) to hold that the multiplier has to be



applied by the Tribunal in respect of the age of the deceased and not of the claimant”.

42. *Coming to the facts of this case, the age of deceased was around 20 years at the time of accident. Therefore, keeping in view the law laid down by Hon'ble Supreme Court of India, in Sarla Verma's case (supra), P.S.Somanathan and others's case (supra) and law laid down by Hon'ble High Court of Punjab & Haryana at Chandigarh in Savitri and another's case (supra), the multiplier of 18 is to be applied in this case considering the age of deceased. Accordingly, the claimants are entitled to compensation of Rs.8,10,000/ (Rs.45,000/ X 18).*

43. *The claimants are also awarded a sum of Rs.10,000/ on account of transportation, funeral and last rites of the deceased Amrish.*

44. *In this way, claimants are awarded a compensation mentioned below :*

Sr. No.	Head under which amount awarded	Amount
1.	Loss of dependency	: Rs.8,10,000.00
2.	Expenses incurred on Transportation, funeral and last rites.	: Rs. 10,000.00
	TOTAL	: Rs.8,20,000.00

45. *Thus, claimants are held entitled to a total compensation of Rs.8,20,000/ (Rs. Eight Lacs and Twenty Thousand only).*

46. *So far as the liability to pay the amount of compensation is concerned, the petitioner has placed on record copy of driving licence of respondent no.1 as*



Ex.P1 which was issued on 24.12.2009 and was valid upto 23.12.2014 for driving motorcycle, motorcar and tractor only. The accident took place on 1.1.2014. Thus, it stands proved that on the date of accident, respondent no.1 was holding a valid and effective driving licence to drive the vehicle in question. A perusal of copy of registration certificate of the offending vehicle Ex.P2 shows that it was registered in the name of respondent no.2 and was insured with respondent no.3 as reflected in insurance policy Ex.R1. Thus, respondents no.1 to 3 being the driver, owner and insurer of the offending vehicle are jointly and severally liable to pay the amount of compensation. Thus, issue no.2 is decided in favour of the claimants and issues no.3 is decided against respondent no.3.”

13. A perusal of the impugned award reveals that the learned Tribunal has rightly appreciated the oral as well as documentary evidence available on record and has returned a well-reasoned finding that the accident in question occurred due to the rash and negligent driving of the offending tractor-trolley bearing registration No. HR-38S-5957 by respondent No.1 (driver) of the offending tractor-trolley.

14. It is evident from the record that the accident occurred on 01.01.2014 and the FIR was promptly registered on the basis of the statement of the eye-witness Satbir Singh, who had witnessed the occurrence in its entirety. A perusal of the contents of the FIR clearly reflects that the accident was caused due to the sole negligence of the driver of the offending vehicle. The prompt registration of the FIR lends further



credibility to the prosecution version and rules out any possibility of embellishment or afterthought.

15. The eye-witness Satbir Singh was examined as PW-3, who categorically deposed about the complete sequence of events leading to the accident. He specifically asserted that the tractor-trolley was being driven in a rash and negligent manner and that the same struck the motorcycle, resulting in fatal injuries to the deceased and injuries to the claimant. Despite being subjected to lengthy cross-examination, nothing material could be elicited to discredit his testimony. His evidence, therefore, inspires confidence and remains unimpeached.

16. Further, PW-2 Jai Kishan, Ahlmad from the criminal court, testified that respondent No.1 is facing trial in connection with the accident and that the challan has already been presented against him. It is well-settled that once an FIR has been registered and a charge-sheet has been filed against the driver of the offending vehicle, the same constitutes prima facie evidence of negligent driving, unless rebutted by cogent and convincing evidence. Notably, respondent No.1 failed to step into the witness box to rebut the evidence led by the claimants, thereby inviting an adverse inference against him.

17. As regards the contention raised by the learned counsel for the appellant-Insurance Company that the accident occurred due to contributory negligence on the part of the deceased motorcycle rider on the ground that



three persons were riding the motorcycle, the said argument is wholly devoid of merit.

18. It is pertinent to note that the plea of contributory negligence has been raised for the first time in appeal and was neither pleaded nor urged before the learned Tribunal. Consequently, no issue on contributory negligence was framed. In the absence of pleadings and a specific issue, any finding or reduction of compensation on that ground is legally untenable. The Hon'ble Supreme Court in *M. Nithya & Ors. v. SBI General Insurance Co. Ltd. SLP© NOS.833-834 OF 2023* has unequivocally held that where no issue on contributory negligence is framed, neither the Tribunal nor the appellate court can reduce compensation on that basis.

19. Even otherwise, the doctrine of contributory negligence requires a clear, specific, and affirmative finding regarding the negligent conduct of the injured or deceased and the manner in which such conduct contributed to the occurrence of the accident. Negligence cannot be presumed merely on conjectures or surmises. In the present case, there is a complete absence of any evidence demonstrating that the deceased committed any negligent act which contributed to the accident.

20. In view of the foregoing discussion and the settled legal position, the findings recorded by the learned Tribunal on the issue of rash and negligent driving are sound, justified, and based on proper appreciation



of evidence. The same do not call for any interference and are, accordingly, affirmed.

21. Adverting now to the second limb of the argument advanced on behalf of the appellant–Insurance Company, namely that the quantum of compensation awarded by the learned Tribunal is on the higher side, the same is examined hereunder.

22. A perusal of the award shows that the appellant/claimant was 22 years old and he sustained multiple injuries on various parts of body. He was treated in Guru Nanak Hospital, Palwal and Sheetal Hospital, Palwal where he remained admitted wef 1.1.2014 to 22.1.2014. It is further transpired from the medical bills that the learned Tribunal has rightly awarded sufficient amount towards his medical treatment. However, a meager amount has been awarded towards special diet and pain and sufferings. Considering the nature of injuries and the duration of hospitalisation of the appellant, this Court in the interest of justice deems it fit to award Rs.70,000/- in lumpsum over and above the amount already awarded by the learned Tribunal.

ENHANCEMENT OF THE AWARD IN THE ABSENCE OF CROSS-OBJECTION IN THE APPEAL

23. The aforesaid re-computation gives rise to a further issue, i.e. **whether the award passed by the Tribunal can be enhanced in an appeal preferred by the insurance company, when the claimants have not filed any cross-objection or cross-appeal.**



24. This question came up for consideration before three-Judge Bench of the *Hon'ble Supreme Court in Surekha & Ors. v. Santosh & Ors., (2021) 16 SCC 467*. The relevant portion of the said order reads as follows:

1. *Leave granted. This appeal takes exception to the judgment and order dated 4-1-2019 [Shriram General Insurance Co. Ltd. v. Surekha, 2019 SCC OnLine Bom 12] passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs 49,85,376 (Rupees forty-nine lakhs eighty-five thousand three hundred seventy-six only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.*
2. *By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hypertechnical approach and ensure that just compensation is awarded to the affected person or the claimants.*
3. *As a result, we modify the order passed by the High Court to the effect that the compensation amount payable to the appellants is determined at Rs 49,85,376 (Rupees forty-nine lakhs eighty-five thousand three hundred seventy-six only), with interest thereon as awarded by the High Court.*
4. *The appeal is allowed in the above terms. Pending applications, if any, stand disposed of."*



25. In view of the above, settled principles of law as held by Apex Court this Court can award just and reasonable compensation by enhancing the amount of compensation, even in the absence of a cross-objection or cross-appeal by the claimants.

26. This conclusion is further strengthened by the settled principle that a Court adjudicating claims under the Motor Vehicles Act is duty-bound to award just and fair compensation to victims of road accidents, unrestrained by strict rules of pleadings and evidence, as laid down by the *Hon'ble Supreme Court in Nagappa v. Gurudayal Singh & Ors (2003)2SCC 274*.

27. Furthermore, this Court in FAO-5834-2016 titled as *The Oriental Insurance Company Limited Vs. Smt. Mathri Devi and others* decided on 12.09.2025 has already dealt with similar issue and held as under:-

28. “This Court in *FAO-195-2006*, titled *Mamata and others v. Happy and others*, decided on 29.05.2024, while examining the scope of the appellate jurisdiction under Section 107 CPC read with Order XLI Rule 33 CPC, has held as follows:-

“11. RELEVANT PROVISIONS UNDER THE CODE OF CIVIL PROCEDURE, 1908

Section 107 :- Powers of Appellate Court.— (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

(a) to determine a case finally;

(b) to remand a case;



(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Order XLI Rule 33 of the Code of Civil Procedure, 1908:-

33. Power of Court of Appeal.—*The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees: [Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]*

12 to 18 XXX XXX XXX

19. *As per Section 107 of Code of Civil Procedure, 1908 which refers to the powers of the Appellate Court, the Appellate Court shall have the same powers and shall perform as nearly*



as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein, and the Motor Vehicle Act 1988 since being a beneficial legislation, the evidence led by the parties cannot be ignored by the Appellate Authority.

20 to 25 XXX XXX XXX

CONCLUSION

26. *The Appellate Courts for the purpose of doing complete justice between the parties and completely adjudicating upon all the disputes, after appreciating the whole evidence on record, have power under Section 107 read with Order XLI Rule 33 of the Code of Civil Procedure, 1908 to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.*

27. *Motor vehicle statute is a beneficial legislation. Generally the victims/claimants/legal-representatives are not aware of their right to compensation and it is Advocates who decide under which provision of the statute the claim petition is to be filed. Before deciding the claim petitions, after appreciating the evidence on record, it is the bounden duty of the Court to apprise the parties of their legal rights as to under which provision they can get the maximum of benefit/compensation. The Judges should apply their judicial mind after appreciating the evidence on record, gravity of offence, gravity of loss, conduct of parties and over all facts and circumstances of each case and after that decide the same.*



The Court should not go into the technicalities that under which provision of statute case is to be filed, specially in the motor accident cases. If at any stage after appreciating the evidence, since it is original jurisdiction of the Court and the case is at initial stage, normally a person of ordinary prudence can calculate the loss of near and dear one's/relationship, the Judge feels that case of the claimant falls under a particular section he should apprise the parties regarding the same. The Courts should not apply straight jacket formula in every case and are presumed actually to do the justice by applying their judicial mind to the facts and circumstances of each and every case. The beneficial intent of the legislation ought to be borne in mind and procedural and technical formalities cannot be invoked to defeat the purpose of the legislation.

28. The Courts have to be very cautious and careful while accepting the prayer of the claimants/appellants to convert the claim petition filed under Section 163-A to Section 166 of the Motor Vehicles Act, 1988. Under Section 107 read with Order XLI Rule 33 of CPC the general rule is that an appeal is persistence of a suit and, therefore, an Appellate Court can do, while the appeal is pending, what the original Court could have done while the suit was pending. Thus, as per Section 107 Order XLI Rule 33 of CPC, an Appellate Court is empowered to re-appreciate the evidence. While hearing the appeal it is very important for a judge to apply his judicial mind. The Appellate Authority can re-appreciate the evidence before it. The grant of just and fair compensation is a statutory responsibility of the Court.

29. Over all conclusion of the above is that the Appellate Court has power to convert the petition under Section 163-A to



Section 166 of the Motor Vehicles Act, 1988 to give justice to the claimants.”

13. *It is manifest from the above discussion that although respondents/claimants No.1 and 2 have not preferred any appeal seeking enhancement of compensation, and the present appeal has been instituted solely by the appellant-Insurance Company challenging the quantum of compensation, the settled principle of law is that an appeal is a continuation of the original proceedings. Consequently, the appellate court is vested with ample jurisdiction to mould relief and to award just and proper compensation, even in the absence of a cross-appeal by the claimants.*

14. *In exercise of such appellate powers, this Court cannot overlook the beneficial nature of the Motor Vehicles Act, 1988, which has been consistently interpreted as a piece of social welfare legislation intended to provide just compensation to victims of motor accidents and their dependents. The statutory duty of the Court is to ensure that the claimants are not deprived of legitimate entitlement merely due to procedural technicalities such as the absence of a cross-appeal.*

15. *Accordingly, in the interest of justice, and to secure the ends of a fair adjudication, this Court deems it appropriate*



to award a further sum of ₹18,150/- under the head “Loss of Estate” in favour of respondents/claimants No.1 and 2.

16. *It is well settled by the Hon’ble Supreme Court in **K. Ramya v. National Insurance Co. Ltd., 2022 (4) RCR (Civil) 435** that the Motor Accident Claims Tribunals are vested with latitude to determine “just compensation” and are not shackled by rigid arithmetical rules or strict standards of evidence as in civil suits for damages. Interference by the Appellate Court is warranted only when the award of compensation is manifestly excessive, arbitrary, or contrary to settled principles.”*

29. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

30. The appellant-Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the account of the claimants/respondents No.1 and 2 as per the ratio settled in



the award dated 07.07.2017. The claimants/respondents No.1 and 2 are directed to furnish their bank account details to the Tribunal.

31. Consequently, the present appeal, being devoid of merits, stands **dismissed**.

32. The statutory amount of Rs.25,000/- deposited by the appellant at the time of admission of the appeal, is ordered to be refunded to it.

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

(SUDEEPTI SHARMA)
JUDGE

31.01.2026

Virender

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