IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

107 **FAO-1115-2017 (O&M)**
DATE OF DECISION:04.02.2026

RAJINDER SINGH ...APPELLANT
VERSUS
BALDEV SINGH AND ORS. ...RESPONDENTS

FAO-6684-2018 (O&M)
DATE OF DECISION:04.02.2026

JASPAL KAUR ...APPELLANT
VERSUS
BHARTI AXA GENERAL INSURANCE AND ORS ...RESPONDENTS

FAO-1612-2017 (O&M)
DATE OF DECISION:04.02.2026

BALDEV SINGH ...APPELLANT
VERSUS
BHARTI AXA GENERAL INSURANCE AND ORS. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Arjun Veer Sharma, Advocate
for the appellant in FAO-1115-2017.

Ms. Vandana Malhotra, Advocate (through V.C.) and
Ms. Manvi Verma, Advocate
for the respondent-Insurance Company in all three appeals.

Mr. Suneet Pal Singh Aulakh, Advocate
for respondent No. 4 in FAO-1115-2017 and
FAO-1612-2017.

Mr. Suneet Pal Singh Aulakh, Advocate
for appellant in FAO-6684-2018.

Mr. Gurbir S. Dhillon, Advocate
for appellant in FAO-1612-2017.

****

PARMOD GOYAL, J. (ORAL)

Three appeals, one by appellant-claimant Rajender Singh seeking enhancement of compensation (**FAO No.1115 of 2017**), second by driver of offending vehicle-Baldev Singh-Respondent No.1 (**FAO No.1612 of 2017**), and third by owner of offending vehicle namely Jaspal Kaur (**FAO No.6684 of 2018**) have arisen from impugned award dated 05.11.2016 passed by Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as '**Tribunal**'), vide which the claimants were found entitled to compensation of Rs.6,63,000/-. The learned Tribunal had further held that owner and driver-respondent Nos.1 and 2 shall be responsible to make the payment of compensation so awarded, however directed respondent No.3-Insurance Company to pay the compensation at first instance and then get it recovered from respondent Nos.1 and 2 i.e. driver and owner of offending offending vehicle.

2. Claimant is seeking enhancement of compensation on the ground that same is not in accordance with their entitlement and is insufficient compensation. Respondent Nos.1& 2- Baldev Singh and Jaspal Kaur, driver and owner of offending vehicle are aggrieved by fixation of liability to pay compensation upon them on the ground that learned Tribunal has exonerated Insurance Company wrongly and it was the Insurance Company who was liable to indemnify respondent No.2-owner of offending vehicle being bound by contract of insurance.

3. Respondent No.3-Insurance Company, on the other hand though has not filed any appeal, is aggrieved by direction of learned Tribunal to pay

and recover on the ground that since offending vehicle was being driven in contravention of insurance contract/policy, therefore, it has no liability to indemnify or pay on behalf of owner and driver of offending vehicle and the liability to pay compensation ought to have been imposed only on respondent Nos.1 and 2.

4. Claimants who are parents of deceased Ravinder Singh (hereinafter referred to as '**deceased'**), who died in motor vehicular accident which took place on 30.10.2013 on account of rash and negligent driving of respondent No.1 while driving offending vehicle bearing registration number PB-10DQ-6803, had preferred a claim petition which was allowed vide impugned award dated 05.11.2016 awarding compensation of Rs.6,63,000/-.

FAO No.6684 of 2018 (O&M) & FAO No.1612 of 2017 (O&M)

5. Appellant(s) driver and owner of offending vehicle have challenged finding of learned Tribunal on issue No.1 regarding involvement of offending vehicle and rash and negligent driving on the part of Baldev Singh-driver. It is asserted that learned Tribunal has failed to take into consideration evidence of RW1 driver of offending vehicle and solely has relied upon evidence of PW1.

6. On consideration, I do not find any error in the conclusion drawn by learned Tribunal as regards to issue No.1. Learned Tribunal has duly considered the evidence of PW1, who happens to be eye-witness and author of FIR, RW-1, driver of offending vehicle and RW-2, official from insurance company. As far as RW-2 is concerned, he was neither

present at the time of accident nor has he deposed about the accident. Evidence of RW-2 is related to breach of insurance policy on the part of owner of offending vehicle. On appreciation of evidence of PW-1 and RW-1, it is made out that PW-1 has clearly stated manner of accident as was stated in claim petition. The manner of accident stated before Court, as witness in claim petition as well as while lodging FIR No.191 dated 30.10.2013 under Section 279/304A/427 Indian Penal Code registered with Police Station, Samrala, are consistent in line with each other. The accident had taken place on 30.10.2013 and FIR was lodged on the same day without there being any delay by the father of deceased, who had witnessed the occurrence. Therefore, the manner of accident showing involvement of offending vehicle as well as negligence on the part of respondent No.1 had come in public domain immediately after the accident on the same day and has been consistently stated before the court.

7. On the other hand, RW-1, driver of the offending vehicle, had simply denied his involvement and negligence in the accident. His self-serving assertions are not corroborated by any supportive evidence which may show truthfulness in the statement made by RW1. The version or denial of respondent No.1-driver has come in public domain for the first time only on filing of written statement. Admittedly, after registration of FIR on the same day by father of deceased, FIR was investigated and police had found involvement of respondent No.1-driver. Police, on the basis of investigation, and had filed a challan against respondent No.1. Respondent No.1 while appearing as RW1 has clearly admitted that it is he who is facing trial for causing the accident. However, till filing of a written statement, no efforts were

made to challenge manner of accident or seek redressal against alleged false implication. On the one hand, the evidence of claimants has come in public domain immediately after accident, ruling out possibility of any false implication, supported by police investigation whereby respondent No.1-driver of offending vehicle was facing trial for causing accident, collectively proves the case of claimants on the standard of proof of preponderance. On the other hand, same is being sought to be rebutted by self-serving statement of RW-1 without there being any corroboration.

8. The conclusion drawn by learned Tribunal, therefore, cannot be faulted with. Finding of learned tribunal on issue No.1 is accordingly affirmed.

9. Issue No.2, as regards to quantum of compensation, has been decided by dealing with the appeal preferred by claimants.

10. The only dispute which is left out in present case is regarding liability of respondents i.e. driver and owner on one side and Insurance Company on other side. It is the case of appellant-owner of offending vehicle that vehicle was duly insured and it is Insurance company who is liable to indemnify her and pay claimants under the contract of insurance policy. On the other hand, appellant-Insurance Company has denied its liability to pay compensation on the ground that the vehicle was being used for commercial purposes in violation of contract of insurance policy. Insurance Company has relied upon evidence of RW2-Hartej Singh, its Manager, who vide his affidavit Ex.RW2, has asserted that vehicle of the appellant-owner was insured with appellant-Insurance company under the private car package policy vide Ex.R4.

He further asserted that vehicle could not be used for commercial purposes, however, owner had used the vehicle as a school van i.e. for a commercial purpose without informing the Insurance Company and without seeking change in insurance policy. Hence, Insurance Company is not liable to pay compensation in view of violation of contract of insurance policy.

11. It is the case of Insurance company that since insured vehicle was being plied as a school van, therefore, there was violation of insurance policy, whereas, it was asserted on behalf of appellants-driver and owner of offending vehicle that the vehicle was owned by Principal of school that is appellant-Jaspal Kaur and has wrongly been described as school van by driver-respondent No.1 while appearing as RW1. It is asserted on behalf of appellants- driver and owner that mere description of vehicle as school van is not sufficient to conclude that there was a violation of insurance policy as at the time of accident no school children were being carried in the offending vehicle.

12. Learned counsel for appellant-Insurance Company has made a reference to cross-examination of driver of offending vehicle who had appeared as RW1. Perusal of cross-examination of RW1 shows that he had stated the offending vehicle to be van owned by school. However, RW-1 had specifically denied suggestion that vehicle was being used for carrying children to and from school. Learned Tribunal, considering statement of RW-1 that the vehicle, which he was driving, is a van owned by a school and had concluded that van was a school van and was being plied in contravention of conditions of insurance policy for commercial purposes. Admittedly, vehicle

was owned by Principal of school i.e. appellant-Jaspal Kaur, therefore it was natural for witness RW-1 to state that the vehicle belonged to school, however, this assertion would not lead to conclusion that the vehicle was a school van being plied for carrying children for remuneration or consideration and being used for commercial purposes. There is no evidence to this effect. Merely, if a vehicle belongs to school would not lead to conclusion that it was being used for commercial purposes in contravention of insurance policy. Same needs to be proved by Insurance Company by leading positive evidence. There is no evidence in this regard. Rather, RW-1 has specifically denied the suggestion of insurance company that vehicle was being used for bringing and dropping school children for remuneration or consideration.

13. Moreover, violation of contract of insurance policy has to be seen at the time of accident. If the accident had occurred while using a private vehicle for commercial purposes, it would be open for Insurance Company to plead violation of insurance policy. However, fact whether the vehicle was being used for commercial purposes at the time of accident or not, needs to be proved by way of positive evidence.

14. In the present case, there is no material to conclude that at the time of accident, vehicle was being used for commercial purposes. Neither in FIR nor in statement of any of the witnesses including RW-2, it has come that at the time of accident vehicle was having children or was being used to bring children for consideration. Therefore, in present case, learned Tribunal has erred in fixing entire liability on respondent Nos.1 and 2. There is no evidence on record to conclude that at the time of accident, vehicle was being driven in

violation of insurance policy. The key factor of violation of insurance policy is the time of accident. Merely, because vehicle was earlier used in violation of insurance policy or had been used subsequently for any other purpose for which it is not insured would not attract violation of insurance policy. Violation of insurance policy has to be seen in reference to occurrence. It is therefore, to be seen whether at the time of accident vehicle was being driven in violation of insurance policy or as per insurance policy. In case, vehicle is used for private purposes, as stated in insurance policy, at the time of occurrence, the liability by Insurance Company cannot be avoided. In present case, as noted above, there is no evidence that at the time of accident, vehicle was being driven in violation of insurance policy and therefore finding of learned Tribunal on issue No.3 is accordingly set aside. It is held that all the respondents i.e. driver, owner and Insurance Company are liable to pay compensation jointly and severally.

FAO No.1115 of 2017 (O&M).

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

Income of deceased	Rs.6,000/-
Multiplier	18
50% deduction	Rs.3,000/-
Total loss of income	Rs.6,48,000/- (3,000x18x12)
Funeral expenses	Rs.15,000/-
Total compensation awarded	Rs.6,63,000/-

16. Learned Counsel for claimants-appellant has sought enhancement in compensation on following grounds that:

- Income of deceased was not correctly taken. That the income of the deceased taken by learned Tribunal is on the lower side. That deceased was 20 years of age at the time of accident and was a student of B.A.
- Future prospects were not added while determining loss of dependency. Future prospects to the extent 40% of monthly income needs to be added as the deceased was 20 years of age at the time of accident.
- Appropriate compensation amount needs to be granted under the heads loss of consortium, funeral expenses and loss of estate in accordance with law laid down by Hon'ble Supreme Court.

17. *Per contra*, learned counsels for respondents have argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

18. It was the case of claimants that deceased was student of BA and was pursuing computer course at Samrala, was giving tuitions to students of class V to X and was earning Rs.6,000 per month. PW1-father of deceased and PW2-mother of deceased, both have reiterated assertions made in their claim petition. Reliance was also placed on the education certificates (Ex.P1 to Ex.P8), Learners driving license (Ex.P9). Learned Tribunal had took income of deceased as Rs.6,000/-. Learned counsel for appellant states that the learned Tribunal ought to have taken minimum wages even though claimants had pleaded lesser income as deceased was 20 years old and was capable to earn

minimum wages on the date when he had died. I find merit in contention raised on behalf of learned counsel for appellant. The income of deceased ought to have been taken equivalent to minimum wages payable to unskilled worker in year 2013, which was Rs.6,247/- and ought to have determined compensation after applying future prospects, multiplier and by deducting personal expenses. Accordingly, income of deceased is taken as Rs.6,247/- per month.

19. Learned Tribunal has not made any addition towards future prospects. The deceased was 20 years of age, hence, as per the law laid down by supreme court in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.**, 2017 (16) SCC 680, 40% towards future prospects needs to be taken in consideration while determining loss of dependency. Keeping in view the age of deceased, learned Tribunal has rightly applied multiplier of '18' as mandated in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, 2017 (16) SCC 680 and deduction of 50% is required to be made towards personal expenses of deceased as he was 20 years old, survived by parents and was unmarried. Further compensation has to be granted under the heads funeral expenses, loss of estate and loss of consortium. Therefore appellant-claimant would be entitled to Rs.1,500/- towards loss of estate and Rs.1,500/- towards funeral expenses and appellant-claimant would also be entitled to Rs.40,000/- each towards filial consortium.

20. Accordingly, re-worked compensation payable to appellant-claimant is as under:-

Notional Income	Rs. 6,247/- per month	Rs.6,247/-

	(as per minimum wages payable to skilled worker)	per month
Future Prospects	40% (Rs.6,247+2,499)	Rs.8,746/-
Deduction towards personal expenses	50% of 8,746/-	Rs.4,373/-
Multiplier	18	18
Compensation for Loss of dependency	4373X12X18	Rs.9,44,568/-
Compensation for Loss of Estate		Rs.15,000/-
Compensation for Funeral Expenses		Rs.15,000/
Filial consortium to clamant Nos.1 and 2	40,000/- X 2	Rs.80,000/-
Total Compensation awarded by the Tribunal	Rs.6,63,000/-	
Total Compensation awarded in appeal		Rs.10,54,568/-
Enhanced compensation	Rs.10,54,568 (awarded in appeal)- Rs.6,63,000/- (awarded by Tribunal)	Rs.3,91,568/-

21. Appellant-claimant shall be entitled to enhanced compensation along with 7.5% interest from date of filling claim petition till realization. The apportionment of compensation shall be as per award. The enhanced amount be paid to bank accounts of appellants-claimants without insisting to deposit the same in FDR.

22. Accordingly, FAO No.6684 of 2018 and FAO No.1612 of 2017 preferred by owner and driver of offending vehicle are allowed respectively to above extent. FAO No.1115 of 2017 preferred by appellant-claimant is also

allowed in above terms.

23. Pending application(s), if any, stand disposed of. Photocopy of this order be placed on the file of connected cases.

04.02.2026 **(PARMOD GOYAL)**
Sunil Chander **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*