2026:PHHC:027451

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-780-2016 (O&M)
Date of Decision: 20.02.2026

SAJIDA & ORS .... Appellants

VERSUS

MAMSED KHAN & ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Komal Rana, Advocate for
Mr. Abhimanyu Singh, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate (through hybrid mode) and
Ms. Manvi Verma, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

1. As per the report of the Mediator, mediation remained unsuccessful.

CM-10711-CII-2025

2. This is an application for fixing an actual date of hearing in the main appeal.

3. Learned counsel for respondent No.3 state that they have no objection if the present application is allowed.

4. In view thereof, the present application is allowed. With the consent of the learned counsel for the parties, the main appeal is taken on Board today itself.

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5. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') vide award dated 09.09.2015. The parties are being referred to as the claimants, the owner and the driver and the insurance company for the sake of clarity.

6. Brief facts relevant to the present *lis* are that a claim petition had been filed by the claimants on account of death of Rashid under Section 166 of the Motor Vehicles Act, 1988. The accident in the present case took place on 08.05.2014 at about 4/5:00 pm. Maqsood, who is the complainant in the criminal case, stated that when he reached near Village Malab near hotel on Nuh-Nagina Road for taking food out of his car, at that time Rashid son of Daud and Sahid son of Abdul Rahim were going towards Nuh side on their motorcycle bearing registration No.HR-27D-3896, which was ahead of the car of the complainant. Just ahead of Pooja Hotel the vehicle bearing registration No.HR-74A-2926 (hereinafter referred to as 'the offending vehicle') was parked in the middle of the road without any indication. When Rashid reached near the offending vehicle, a Dumper came towards Malab side and in order to save the motorcycle from the Dumper, Rashid struck against the parked offending vehicle. It was the case set up that the accident took place due to the sole negligence of the driver of the offending vehicle as he had parked the same in the middle of the road without giving any indication. It was claimed that Rashid was 24 years of age and was earning ₹20,000 per month while working as a driver.

7. On notice, the owner and the driver filed their joint written statement. The insurance company also filed its separate written statement. The owner and the driver denied the accident and claimed false implication. It was the stand taken by the owner and the driver that the offending vehicle was insured with the insurance company. The insurance company in its written statement raised various preliminary objections qua maintainability, the petition being bad for mis-joinder and non-joinder of parties. The accident was denied and even the manner in which the accident is alleged to have taken place was denied. It was further the case that the accident had taken place due to the rash and negligent driving of the deceased.

8. On the basis of the pleadings of the parties the following issues were framed :

> 1) Whether the accident in question was caused by the respondent No.1 while driving the vehicle No.HR-74A-2926 rashly and negligently and caused death of Rashid, the son of petitioners ? OPP
>
> 2) If issue No.1 is proved, whether petitioners are entitled for compensation. If so, to what effect and from whom ? OPP
>
> 3) Whether respondent No.1 was not having valid and effective driving licence at the time of accident ? OPR
>
> 4) Whether respondents No.1 and 2 violated the terms and condition of the insurance policy ? OPR
>
> 5) Relief.

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

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹5,547
2.	Annual income	[₹5,547 x 12] = ₹66,564
3.	Deduction 1/4th	[₹66,564 - ₹16,641] = ₹49,923
4.	Future prospects @ 50%	[₹49,923 + ₹24,961.5] = ₹74,884.5
5.	Multiplier of 17	[₹74,884.5 x 17] = ₹12,73,036.5 (rounded off to ₹12,73,036)
6.	Transportation and last rites	₹25,000
7.	Loss of consortium	₹1,00,000
8.	**Total Compensation**	**₹13,98,036**
9.	Less 50% on account of contributory negligence	₹6,99,018
	Compensation awarded to the claimants	**₹6,99,018 (rounded off to ₹6,99,000)**
	Interest	**@ 9% per annum**

10. Learned counsel for the claimants would contend that it is wrongly been held to be a case of contributory negligence as no evidence was led by the insurance company to show that it was a case of contributory negligence. Learned counsel, while relying upon the judgment passed by the Hon'ble Supreme Court in the case of **M. Nithya & Ors. vs. SBI General Insurance Company Limited [SLP (Civil) Nos.833-834 of 2023 decided on 03.01.2025]**, has contended that no issue was framed in this regard by the Tribunal. It is further the contention of the learned counsel that the income of the deceased has wrongly been assessed as ₹5,547 per month whereas the deceased was a driver and was earning ₹20,000 per month. Learned counsel would further contend that though the claimants do not challenge the deduction made towards personal expenses, the addition made towards future

prospects and the multiplier as applied by the Tribunal, however, the amounts awarded under the conventional heads i.e. loss of estate and funeral expenses and under the head loss of consortium are on the lower side. In support of her contentions the learned counsel for the claimants has relied upon the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

11. *Per contra*, learned counsel for the insurance company would contend that it was a clear case of contributory negligence as the offending vehicle was hit from behind by the motorcycle and that too during broad day light and that the issue of contributory negligence is covered in issue No.1. It is further the contention of the learned counsel that an addition of 50% made toward future prospects is excessive.

12. Heard.

13. In the present case, admittedly, there is no appeal filed by the insurance company. The argument of the learned counsel for the claimants that in the absence of any issue having been framed it could not have been held to be a case of contributory negligence deserves to be accepted. The Hon'ble Supreme Court in the case of **M. Nithya & Ors.** (supra) has held as under :

> *"7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that*

contributary negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributary negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributary negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained."

A specific plea of contributory negligence was raised by the insurance company and as such it was incumbent on the insurance company to have claimed an issue qua the contributory negligence. Issue No.1 as framed was *'Whether the accident in question was caused by the respondent No.1 while* *driving the vehicle No.HR-74A-2926 rashly and negligently and caused death of Rashid, the son of petitioners ? OPP'* which cannot be said to have covered the issue of contributory negligence. The issue of contributory negligence, if framed, the onus of the same would have had to be cast upon the insurance company. Learned counsel for the insurance company has candidly admitted that no evidence was led by the insurance company to even remotely suggest that it was a case of contributory negligence. She has, however, relied upon the statement of eyewitness to show that it was a case of contributory negligence. In the absence of any issue having been framed and in view of the law laid down by the Hon'ble Supreme Court in the case of **M. Nithya & Ors.** (supra), the finding of the Tribunal qua contributory negligence cannot be sustained and the same is accordingly set aside.

14. The argument of the learned counsel for the claimants that the income of the deceased has wrongly been assessed cannot be accepted in the absence of any evidence to show that the deceased was working as a driver. Accordingly, the income of the deceased is maintained at ₹5,547 per month. Since there is no challenge to the deduction made towards personal expenses and the multiplier as applied by the Tribunal, the same are maintained. The argument of the learned counsel for the insurance company that an addition of 40% ought to have been made towards future prospects cannot be accepted in the absence of any appeal having been filed by the insurance company. The present appeal was filed in the year 2016. Had the insurance company been aggrieved by the impugned award, it could have either filed cross-objections or the cross-appeal, however, the insurance company chose to file neither. In

the absence of any appeal having been filed by the insurance company, the argument of the learned counsel for the insurance company qua future prospects cannot be accepted. Accordingly, the addition @ 50% made by the Tribunal towards future prospects is also maintained.

15. Further the amounts awarded under the conventional heads i.e. loss of estate and funeral expenses and under the head loss of consortium are on the lower side. As per the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimants would be entitled to ₹18,000/- (₹15,000 + 20% increase) towards loss of estate and ₹18,000/- (₹15,000 + 20% increase) towards funeral expenses. The claimants, being the widow, the children and the parents of the deceased, would also be entitled to ₹48,000/- each (₹40,000 + 20% increase) towards loss of consortium.

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

Sr. No.	**Heads**	**Compensation Awarded**
1.	Monthly income	₹5,547
2.	Annual income	[₹5,547 x 12] = ₹66,564
3.	Deduction 1/4th	[₹66,564 - ₹16,641] = ₹49,923
4.	Future prospects @ 50%	[₹49,923 + ₹24,962] = ₹74,885
5.	Multiplier of 17	[₹74,885 x 17] = ₹12,73,045
6.	Funeral expenses	₹18,000
7.	Loss of estate	₹18,000
8.	Loss of consortium (i) Spousal (ii) Parental (iii) Filial	 ₹48,000 [₹48,000 x 3] = ₹1,44,000 [₹48,000 x 2] = ₹96,000 Total = ₹2,88,000
	Total Compensation	**₹15,97,045**

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

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

19. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

20.02.2026 **(ALKA SARIN)**
Aman Jain **JUDGE**

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