IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-8135-2016(O&M)
Date of decision: 05.05.2026

Smt. Urmila Devi & Others

...Appellant(s)

Vs.

Sunder Lal & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.P. Chahar, Advocate
Mrs. Savita Chahar, Advocate
for the appellants.

Mr. D.K. Prajapati, Advocate
for respondent No.2.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.22,16,884/- awarded by the Motor Accident Claims Tribunal, Rohtak (hereinafter 'the learned Tribunal') vide Award dated 03.08.2016 passed in MACT Case No.102 dated 09.10.2015 filed under Section 166 of Motor Vehicles Act (hereinafter "the Act"). The 4 claimants are the 40-year-old widow, 19-year-old daughter, 16-year-old son and 75-year-old mother of deceased Sombir @ Somveer Singh, who was 42 years old at time of accident.

2. Brief facts of the case are that the ld. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the deceased Sombir @ Somveer Singh had died due to the injuries suffered by him in a motor vehicular accident that took place on 04.09.2015 at about 7:15 pm due to the rash and negligent driving of Car bearing registration No.HR-12-V-4116 (hereinafter "the offending vehicle") being owned and driven by respondent No.1 and insured by respondent No.2. The compensation has been awarded with interest @ 9% per annum. Respondents were held jointly and severally liable to pay the compensation.

3. Learned counsel for the appellants submits that vide the Award dated 03.08.2016, a deduction of 50% has been made by the learned Tribunal towards contributory negligence. It is contended that a perusal of the findings of the learned Tribunal in this regard as contained in Paras 10 to 15 shows that the said finding of contributory negligence on behalf of the deceased is totally based on assumptions and presumptions as the learned Tribunal has repeatedly said that deceased should have looked towards the left side and that had the deceased looked on the left side of the road and observed the coming of vehicles, the accident could have been avoided; or that the accident would not have taken place if respondent No.1 would have been cautious and vigilant. It is submitted that therefore, the finding of contributory negligence against the deceased by the learned Tribunal is based on conjectures and surmises without being supported by any concrete

evidence in this regard. It is further submitted that it is important to note that while deciding issue No.1, the learned Tribunal has categorically recorded in Para 12 of the Award that no evidence was led by the respondents in respect of the issue No.1. Learned counsel argues that therefore, in the above circumstances, finding of contributory negligence could not have been returned against the deceased.

4. Learned counsel for the appellants/claimants further submits that compensation paid to the appellants is also liable to be enhanced on account of the fact that salary of the deceased has been wrongly assessed inasmuch as deduction of 20% towards Income Tax has been wrongly deducted. It is submitted that the appellants had duly proved by way of comprehensive evidence that deceased was a Constable in the Chandigarh Police and was drawing salary of Rs.42,978/-. Yet the learned Tribunal has taken income of the deceased as Rs.38,361/-. It is reiterated that deduction of 20% towards Income Tax could not have been made by the learned Tribunal while assessing income of the deceased. It is submitted that the learned Tribunal has erred in applying split multiplier of 10; whereas keeping in view the age of the deceased, multiplier of 14 was required to be applied. Furthermore, nothing has been awarded to the claimants under the conventional heads. Interest is also on the lower side and should be at least 18%. It is prayed that the present appeal be allowed; and finding of

contributory negligence be set aside; and compensation paid to the appellants be enhanced.

5. Per contra, learned counsel for the respondent No.2 vehemently opposes the submissions advanced on behalf of the appellants and has led this Court through the record of the case to submit that the finding returned by the learned Tribunal that deceased was equally negligent in causing the accident in question, is not erroneous.

6. As regards quantum of compensation, learned counsel submits that Income Tax is legally deductible as per law and therefore, income of the deceased has been correctly assessed by the learned Tribunal. It is accordingly submitted that the impugned Award suffers from no error; and the present appeal deserves to be dismissed.

7. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find some merit in the submissions advanced on behalf of the appellants.

8. As regards contributory negligence, perusal of record of the case shows that the appellants had examined PW1 eyewitness and author of the FIR Yudhvir Singh, who had tendered his Affidavit (Ex.PW1/A) and had deposed in the following terms as recorded in the impugned Award that: -

> *"10… … …on 4.9.2015 he alongwith deceased Sombir were going to Advanta Hospital, Rohtak for his medical examination in a car bearing No.HR-14J/8505 and that at about 7.15 P.M. when they reached near the hospital, the deceased alighted from the car*

and he was in the process of turning the car in order to park it, in the mean-time, the deceased was hit by the offending vehicle bearing registration No.HR-12V/4116 which came from the side of medical turn being driven by respondent No.1 at a very high speed and in a rash and negligent manner. As a result thereof, Sombir received fatal injuries. He had shifted Sombir to Advanta Hospital, Rohtak where he succumbed to his injuries on the same day… … …"

9. In the FIR, PW1 has disclosed the registration number of the offending vehicle, however, has not given the name of the driver/respondent No.1 on the ground that after causing the accident, he had fled from the spot. Admittedly, no evidence in this regard was led by the respondents.

10. However, upon examination of the evidence on record, including Site Plan prepared by the appellants and brought on record as Ex.R5, the learned Tribunal had rightly deduced that the accident had taken place on a National Highway and that there was a divider on the road. Thus, the offending vehicle was coming on the correct side of the road. Further, in his cross-examination, eyewitness PW1 Yudhvir Singh had admitted that there was no Kacha portion beside the road where the accident had taken place. From this fact, it was clear that deceased was passing through the road when the accident had taken place. Ld. Counsel for the appellant has been unable to rebut this evidence.

11. Findings returned by learned Tribunal in this regard are in Para 15 of the Award, which read as follows:-

"15. Having heard learned counsel for the parties and going through the evidence on the file, it is borne out that the accident had taken place on national highway. As per case of the claimants, the deceased was on kacha portion of the road when the accident took place. However, PW1 Yudhvir Singh, the alleged eye witness to the accident during his cross- examination has admitted that there was no kacha portion on the road. Meaning thereby, the deceased was passing through the road when the accident took place. It is further borne out from the site plan Ex.R5 of the place of the accident prepared by the police during investigation that there was a divider in between the road and the offending vehicle was coming on its right side. The place of occurrence as shown at point A in the site plan Ex.R5 would further reveal that the deceased himself was also at fault and contributed for the accident. Had he given a look on left side of the road and observed the coming vehicles from that side, the accident could have been avoided. Similarly the accident would not have taken place, if respondent No.1 would have been cautious and vigilant while driving on a road situated within the city. Keeping in view the negligence on the part of the deceased as well as respondent No.1 resulted into the accident and despite the fact that respondent No.1 has been facing trial for the present accident, this Tribunal is of the considered view that the accident occurred on account of equal contributed negligence of both of them. This issue is, decided accordingly."

12. I find no error whatsoever in the above findings of the learned Tribunal. It is clear that the offending vehicle was being driven by respondent

No.1 on the correct side of the road; whereas it was the deceased who had come onto the right side without being vigilant and without looking on the left side of the road, as a result of which, the offending vehicle had hit into the deceased leading to his death. Thus, the deceased was equally responsible for causing the accident dated 04.09.2015 as was the offending vehicle. In this circumstance, finding of contributory negligence against the deceased to the extent of 50% is correct.

13. As regards quantum of compensation, admittedly the deceased was a Constable in the Chandigarh Police at the time of accident. As per the claimants, the deceased was drawing salary of Rs.42,978/- which is proved vide Salary Certificate (Ex.P5) which was proved by PW3 Constable Dinesh Kumar. However, admittedly the said salary includes all emoluments including the Basic Pay, Grade Pay and Dearness Allowance, etc.; after deduction of which salary of deceased comes to Rs.38,361/- per month. Ld. counsel for the appellants has not been able to show anything to this Court that the said deductions were not legally made. As such, the learned Tribunal has correctly assessed income of the deceased as Rs.38,361/- per month.

14. Age of the deceased was determined to be 42 years at the time of accident on the basis of his Service Record (Ex.P6) wherein his date of birth is mentioned as 06.04.1973. Accordingly, the learned Tribunal had correctly made an addition of 30% towards future prospects. After addition of future prospects, the learned Tribunal has further made a deduction of 20% towards

Income Tax. It is the contention of learned counsel for the appellants that the said Income Tax could not have been deducted at the flat rate of 20% and should have been deducted slab wise. I find merit in the said contention as well. Admittedly, income up to 2.5 lakh is not taxable; 2.5 to 5 lakh is taxable @ 10%; and beyond is taxable up to 20%. Thus, the said correction is also liable to be made in the compensation payable to the appellants.

15. The learned Tribunal has further applied multiplier of 10 before retirement and multiplier of 4 after retirement. Keeping in view the age of the deceased, multiplier of 14 is applicable. Keeping in view the number of dependents, the Tribunal has correctly made deduction of $1/4^{th}$. Under the conventional heads, the Tribunal has awarded only an amount of Rs.1 lakh towards consortium and Rs.25,000/- towards funeral expenses. The said amounts are also liable to be re-assessed. Thus, keeping in view the above discussion, compensation payable to the appellants is re-assessed as follows:

Head	**Awarded by learned Tribunal**	**Re-assessed compensation**
Income	Rs.38,361/-	Rs.38,361/-
Future prospects	30%	(30%) Rs.11,508/-
Annual income		Rs.49,869/- x 12 = Rs.5,98,428/-
Income Tax	20%	Upto Rs.2.5 lakh – Nil Above 2.5 lakh to 5 lakh = Rs.25,000/- @ 10% Above Rs.5 lakh i.e. Rs.98,428/- = Rs.19,685/- @ 20% i.e. Rs.44,685/-

Total income – tax		Rs.5,98,428/- - Rs.44,685/- = Rs.5,53,743/-
Deduction	1/4th	(1/4th) Rs.5,53,743/- - Rs.1,38,436/- = Rs.4,15,307/-
Multiplier	10 before retirement 4 after retirement	(14) Rs.4,15,307/- x 14 = Rs.58,14,298/-
Consortium	Rs.1,00,000/-	Rs.40,000/- x 4 = Rs.1,60,000/-
Loss of estate		Rs.15,000/-
Funeral expenses	Rs.25,000/-	Rs.15,000/-
Total	**Rs.44,33,768/-**	**Rs.60,04,298/-**
50% contributory negligence	**Rs.22,16,884/-**	**Rs.30,02,149/-**
Awarded amount		Rs.22,16,884/-
Enhanced compensation		Rs.7,85,265/-
Interest	9% p.a.	9% p.a.

16. Present appeal accordingly stands **partly allowed** as above.

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

05.05.2026 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No