

FAO-4035-2017 (O&amp;M)

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

FAO-4035-2017 (O&amp;M)

RENU AND ANR

..Appellant

Versus

KAPIL AND ORS

..Respondents

Reserved on: 28.11.2025

Date of decision: 29.01.2026

Uploaded on: 31.01.2026

*Whether only the operative part of the judgment is pronounced?*

NO

*Whether full judgment is pronounced?*

YES

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

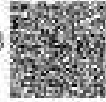
Present: Mr. Gaurav, Advocate  
for Mr. Prabhjit Singh, Advocate  
for the appellants.

Mr. Ankur Dua, Advocate  
for respondent Nos.1 and 2.

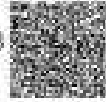
Mr. Punit Jain, Advocate  
for respondent No.3.

**SUDEEPTI SHARMA, J.**

1. The present appeal has been filed by the appellant-claimant against the award dated 10.08.2016 passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal'), wherein the claim petition filed by the claimants-appellants was allowed and respondent No.3-Insurance company was made liable to pay compensation. The award is challenged on the ground that contributory negligence was wrongly attributed on the deceased-Shiv Shankar as well as quantum of compensation is on the lower side.

**BRIEF FACTS OF THE CASE**

2. Brief facts of the case are that deceased Shiv Shankar was employed as Assistant Lineman in the department of Uttar Haryana Bijli Vitran Nigam (UHBVNL) and was posted at Power House, Lakhan Majra. He had also retired from Army. On 6.12.2015 the deceased was going towards village Lakhan Majra from village Nindana on his motorcycle bearing registration No.HR-15A/2376 to attend his duty. At about 6.30/7.00 p.m. when he crossed village Bainsi and reached before canal bridge his motor-cycle rammed into a stationary tractor bearing registration No.HR-15A/7753 (hereinafter referred to as the offending vehicle) as the same had been stationed on wrong side of the road by Kapil respondent No.1 without putting any indicator. Parking lights of the offending vehicle were also switched off. As a result thereof, he received multiple grievous injuries. The accident was witnessed by Satbir Sharma son of Mange Ram as he was following the deceased on another motorcycle. He immediately arranged some vehicle and shifted Shiv Shankar to Post Graduate Institute of Medical Sciences (PGIMS), Rohtak where he was declared brought dead. He at the time of death was 49 years of age and was getting Rs.30,000/- per month as salary and Rs.17,000/- per month as pension from Army. His widow and daughter was dependent upon him. With these averments, they claimed Rs.70,00,000/- as compensation from the respondents, respondent No.1 being driver, respondents No.2 being owner and respondent No.3 being insurer of the offending vehicle respectively.



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

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

*“1. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. tractor bearing registration No.HR-15A/7753 by respondent No.1? OPP*

*2. If issue No.1 is proved, whether Shiv Shankar has died due to the injuries received by him in the above said accident, if so to what amount of compensation and from whom, the claimants are entitled to? OPP*

*3. Whether there was willful violation of the terms and conditions of the insurance policy, if so to what effect? OPR*

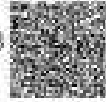
*4. Relief”*

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

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the learned Tribunal held that accident occurred due to contributory negligence of deceased-Shiv Shankar and driver of offending vehicle in the ratio of 50:50. Hence, the present appeal.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:**

7. Learned counsel for the appellants–claimants contends that the learned Tribunal has committed error in law and on facts in holding that the accident in question occurred due to contributory negligence on the part of both the deceased-Shiv Shankar and the driver of the offending



vehicle (the tractor–trolley). He contends that the said finding is perverse, arbitrary, and not borne out from the evidence available on record.

8. He further contends that the learned Tribunal has gravely erred in deducting the amount of family pension received by the wife of the deceased while computing the loss of dependency, which is contrary to the settled principles of law governing determination of just compensation.

9. Learned counsel also submits that the learned Tribunal has erred in applying split multiplier while assessing compensation, which is impermissible in the eyes of law and contrary to the law laid down by the Hon’ble Supreme Court.

10. On the aforesaid grounds, it is prayed that the present appeal be allowed and the impugned award be set aside or suitably modified in the interest of justice.

11. Per contra, learned counsel for the respondents, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted. He, thus prays for dismissal of the appeal.

12. I have heard learned counsel for the appellant and perused the whole case file with his able assistance.

13. The relevant portion of the award is reproduced as under:-

***“ISSUE No.1***

*10. In order to prove the factum of accident, involvement of the offending vehicle in said accident and the fact that it was respondent No.1 who was at fault for the same, the claimants examined Satbir, alleged eye witness to the accident and author of FIR*



*as PW2. He was real brother of the deceased. He tendered in evidence his affidavit Ex.PW2/A deposing that on 6.12.2015 the deceased was going towards village Lakhan Majra from village Nindana on his motor-cycle bearing registration No.HR15A/2376 to attend his duty and that at about 6.30/7.00 p.m. when he crossed village Bainsi and reached before canal bridge, his motor-cycle rammed into the stationary offending vehicle bearing registration No.HR15A/7753 which had been parked on wrong side of the road without putting any indicator or taking any other precautions. As a result thereof, the deceased received multiple grievous injuries. He further deposed that he was following the deceased on another motor-cycle. He immediately arranged some vehicle and shifted the deceased to PGIMS, Rohtak where he was declared brought dead. In cross-examination, it was suggested to him that he was not present at the time of accident which fact he denied.*

*11. The claimants have also placed on the file copy of FIR Ex.P6. Perusal of the same would show that it was drawn by the police on the next day of accident on the statement of Satbir Sharma PW2 and he in his statement had disclosed the registration number of the offending vehicle but the name of the driver was not disclosed.*

*12. To prove that respondent No.1 is facing trial for causing the accident on account of his negligence, the claimants placed on the file copy of charge-sheet framed against respondent No.1 by the court of Shri Sukhpreet Singh, learned Sub Divisional Judicial Magistrate, Meham for the offence under Sections 283, 304-A of the Indian Penal Code. Perusal of the same would show that respondent No.1 has been charge-*



*sheeted by the court of Shri Sukhpreet Singh, learned Sub Divisional Judicial Magistrate, Meham vide order dated 11.3.2016 for the offence under Section 283, 304-A of the Indian Penal Code.*

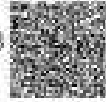
*13. On the other hand, in order to rebut the claim of the claimants and to prove his claim, Kapil respondent No.1 appeared as RW1 and tendered in evidence his affidavit Ex.RW1/A deposing that he had parked his tractor on the demarcated line taking all the precautions. Its parking lights were also switched on. In fact, the deceased himself was rash and negligent in driving the motor-cycle and thus, he could not control over the wheels of the motor-cycle and dashed the same into the stationary tractor. He further deposed that Satbir Sharma, the alleged eye witness and author of FIR has been falsely introduced as an eye witness in order to get compensation and there was delay of one day in lodging the FIR.*

*14. It is submitted by learned counsel for the claimants that from the evidence on the file and the fact that respondent No.1 is facing trial for the offence under Sections 283, 304-A IPC, it is proved that the accident had taken place on account of the negligence of respondent No.1 as he stationed the offending vehicle in the middle of the road without any indicator or taking any other kind of precaution. Learned counsel in support of his contention cited two judgments of our Hon'ble High Court reported as The Oriental Insurance Co.Ltd. Versus Smt.Surinder Kaur and others, FAO No.2349 of 2001 decided on 14.5.2012 & National Insurance Co.Ltd. Versus Kamaljit Kaur and others, 2013 ACJ-2399, a judgment of Hon'ble Gujrat High Court in National Insurance Co. Ltd. Versus Varshaben Bharatbhai Gohil and others, 2013-*



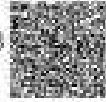
*ACJ-2150 and a judgment of Hon'ble Andhra Pradesh High Court in case National Insurance Co. Ltd. Versus Y.S.Madhavi Latha and others, 2013, ACJ-1960. In those cases, the driver of the stationary vehicle was held solely negligent for the accident. Learned counsel in support of his contention also cited a judgment of our Hon'ble High Court reported as National Insurance Company Ltd. Versus Sanjay Kumar & Ors., II (2011) ACC-75 wherein it has been observed that when driver of the offending vehicle is facing criminal trial, prima facie, it can be presumed that he was responsible for the accident.*

*15. On the other hand, it is submitted by learned for the respondents that the offending vehicle was not stationed on the pucca portion of the road, rather it had been parked by respondent No.1 on the demarcated line of the road and thus, it was the deceased who was at fault for the accident. He was driving the motor-cycle in a rash and negligent manner without wearing helmet and therefore, he could not control over the wheels of the motor-cycle and struck against the stationary offending vehicle. To prove their claim, learned counsel relied upon copy of site plan of the place of accident prepared by the police during investigation as Ex.R1. Learned counsel in support of his contention referred a judgment of our Hon'ble High Court in The New India Assurance Co.Ltd. Versus Smt.Harbans Kaur and others, 2010 (4), The Punjab Law Reporter-422. In said case the accident resulted in death of a passenger in a car that struck with the parked truck. The contention in the petition was that the truck had been parked on the main road without adequate parking lights and the accident took place when the driver of the car was attempting to overtake*



*yet another vehicle and finding that it was not possible on account of another vehicle coming from the opposite direction blinding the sight of the driver by its headlights, the driver attempted to draw the car towards left when he dashed against the parked truck. It was held to be a case of contributory negligence by the Tribunal. The Hon'ble High Court upheld the finding of the Tribunal holding that if there was a parked vehicle and still there had been a collision, it is normally be taken only that the vehicle, which dashed against the parked vehicle, was responsible for the accident. It was further held that the aggravating circumstance could be when the parked vehicle had been parked inappropriately at the middle of the road or without adequate parking lights and that the mitigating circumstance, on the other hand, would be when the vehicle had been parked to the left side but still a collision had taken place by virtue of the fact that there were no adequate sign that the vehicle had been parked on the side. It was further held that in any event, a greater share of responsibility must be taken by a person, who dashed against the parked vehicle unless the place of parking was at the middle of the road. Learned counsel further cited a judgment of Hon'ble Apex Court in Raj Rani and others Versus Oriental Insurance Co. Ltd. and others, 2009 ACJ-2003. In said case the offending truck had been parked in the middle of the road without parking lights on and the car driver driving at normal speed of 40 kmph, owing to lights of another vehicle coming from opposite direction, sighted the truck only at last minute and could not avoid the accident resulting in his death. The drivers of both the vehicles were held to be equally at fault for the accident.*

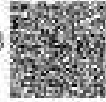




16. Having heard learned counsel for the parties and going through the evidence on the file, I am the view that it was a case of contributory negligence. From the perusal of the site plan Ex.R1 it would reveal that the road on which the alleged accident took place is a very wide and almost two-three vehicles can pass at the same time without any disturbance. It has come in evidence that the deceased had struck his motor-cycle against the stationary offending vehicle from back side and he was not wearing helmet at the time of accident. In such a situation, I am of the view that had the deceased been vigilant, the accident could have been averted. At the same time, respondent No.1 was also at fault for the accident as he had parked the offending vehicle on the road. Had he been taken any precaution in parking the offending vehicle, the accident could have been avoided. Keeping in view the negligence on the part of the deceased as well as respondent No.1 resulting 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 contributory negligence of both of them. This issue is, decided accordingly.

#### **ISSUE No.2**

17. In order to prove age of the deceased, his income and dependency factor, his widow Renu appeared as PW1 and tendered in evidence her affidavit Ex.PW1/A deposing that her husband at the time of death was employed as Assistant Lineman with UHBVNL and was getting Rs.30,000/- per month as salary. He had also retired from Army and was getting Rs.17,000/- per month as pension. His total monthly income was Rs.47,000/-. In cross-examination, she admitted that



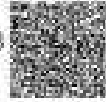
*she was getting family pension from Army as well as from the department of UHBVNL after the death of her husband. She also admitted that he had received all the benefits from the department of UHBVNL in lieu of death of her husband.*

*18. The claimants have also placed on the file copy of salary certificate of the deceased as Ex.P2. Perusal of the same would show that his last drawn salary for the month of November 2015 was Rs.30,609/-.*

*19. To further prove that the deceased had retired from Army and was getting Rs.14,679/- as pension, the claimants have placed on the file copy of pension papers Ex.P3. Perusal of the same would show that the deceased was getting family pension of Rs.14,679/-. The claimants have also placed on the file copy of matriculation examination certificate of the deceased as Mark-A. In said certificate, date of birth of the deceased is recorded as 31.12.1965. Meaning thereby at the time of death, the deceased was about 50 years of age.*

*20. On the other hand, no evidence is led by the respondents on this issue too.*

*21. From the evidence on the file, it is proved that the deceased at the time of death was about 50 years of age and was employed as Assistant Lineman with UHBVNL and his last drawn salary including all emoluments was Rs.30,609/- per month. However, the salary of the employee can be taken as his basic pay, grade pay and dearness allowance only which in this case comes to Rs.8260/-+2400/-+12685/=Rs.23,345/-. It is also proved from the evidence that the deceased had retired from Army and was getting Rs.14,679/- per month as pension, but said amount cannot be included for computation of income in view of the fact that*

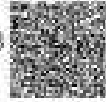


widow of the deceased is getting the same amount of pension as family pension which the deceased was getting during his life time and no loss of the income of the deceased towards the pension being received by him from Army is caused to his legal heirs. Therefore, for the purpose of determination of compensation, the income of the deceased shall be taken as Rs.23,345/- per month.

22. As per date of birth i.e. 31.12.1965 as mentioned in matriculation examination certificate Mark-A, the deceased was 25 days less than 50 years of age at the time of death, therefore, an addition of 30% of actual salary income of the deceased towards future prospectus is to be made in his salary as laid down by Hon'ble Apex Court in *Sarla Verma & Others Versus Delhi Transport Corporation and another* III (2009) ACC-708. If said addition is made the income of the deceased for the purpose of determination of compensation comes to Rs.23,345/- +Rs.7,003/- =Rs.30,348/-. As the annual income of the deceased was not in taxable range, no amount shall be deducted towards income tax.

23. It is submitted by learned counsel for the insurance company that the widow of the deceased is getting the family pension from the department of UHBVNL and thus, the same is liable to be deducted. It is further submitted by the learned counsel that the widow of the deceased was paid all the benefits lying in the account of the deceased. This fact is admitted by PW1 Renu, widow of the deceased during her cross-examination.

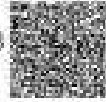
24. There is no force in the contention of learned counsel. The fact that the widow of the deceased is getting family pension is not relevant for the purpose of determination of compensation and cannot be deducted



*from the amount of compensation as held by our Hon'ble High Court in Reliance General Insurance Company Limited Versus Purnima and others, 2013 (2), The Punjab Law Reporter,-306. Again the amount received by the widow of the deceased after his death lying in his GPF and other accounts cannot be deducted from the amount of compensation because had the deceased not died he would have been entitled to receive said amount on his retirement.*

*25. Learned counsel further submitted that principle of split multiplier formula should be applied. For the loss of income during service one income should be taken and after retirement, the income of a retired employee should be taken. In support of his contention, learned counsel referred a judgment of our Hon'ble High Court reported as Daljit Kaur Versus Darshan Singh and others, 2014 (6) Law Herald-4747, wherein it has been observed that the income before and after the retirement should be separately calculated.*

*26. As the number of claimants is two, as per the ratio of the judgment of the Hon'ble Apex Court in Sarla Verma's case (supra), 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. After the 1/3rd of the income of the deceased is deducted towards his personal and living expenses, the dependency of the claimants upon the deceased comes to Rs.20,232/- per month. In view of the law laid down in Daljit Kaur's case (supra), it would be just and proper that income before and after the retirement should be separately calculated. As the deceased had to retire on after eight years of his death, multiplier of '9' would be applied, therefore, for the loss of income for eight years till retirement, the loss of dependency comes to Rs.21,85,056/- (20,232/-x12x9).*

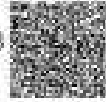


*It is to be assumed that after the retirement the deceased was to get only pension. Therefore, his income is reduced by half and is to be taken as Rs.10,116/- per month. As the deceased had to retire in the age of 58 years, multiplier of '4' would be applied. If said multiplier is applied, the compensation, on calculation, comes to Rs.26,70,624/- (Rs.10,116/- x 12 x '4'=4,85,568+21,85,056/-).*

*27. Besides that the claimants are entitled to Rs.1,00,000/- on account of loss of consortium and Rs.25,000/- as funeral expenses in view of the judgments of the Hon'ble Apex Court in Vimal Kanwar and others Versus Kishore Dan and others 2013 ACJ 1441 and Rajesh and others Versus Rajbir and others 2013(3) Civil Court Cases 15. Thus, in-all, the amount of compensation comes to Rs.27,95,624/- but as the deceased was equally at fault for the accident, the claimants are entitled to only 50% of said amount i.e. Rs.13,97,812/-.*

*28. The vehicle in question was fully insured on the date of accident i.e. 6.12.2015 as is evident from the perusal of the copy of the Insurance Cover Note Ex.R5, according to which the vehicle bearing registration No.HR-15A/7753 was insured with the respondent No.3- insurance company with effect from 26.10.2015 to 25.10.2016. It being so, I am of the view that the claimants are entitled to receive the amount of Rs.13,97,812/- as compensation and respondents No.1 to 3 are jointly and severally liable to pay the same. Thus, issue No.2 is accordingly decided in favour of the claimants."*

14. A perusal of the impugned award reveals that the learned Tribunal has gravely erred in holding that the accident occurred due to

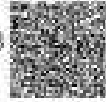


contributory negligence in the ratio of 50:50 between the deceased-Shiv Shankar and respondent No.1–driver of the offending vehicle (the tractor-trolley bearing registration No.HR-15A/7753).

15. It is an admitted fact that the accident occurred on 06.12.2015 during winter hours at about 6:30–7:00 p.m. The FIR (Ex.P6) pertaining to the accident was lodged on the very next day on the statement of Satbir Singh, the eye-witness to the occurrence. A careful reading of the FIR unequivocally shows that the accident occurred solely because the offending tractor-trolley was parked on the road without any reflectors, indicators, warning signals or lights.

16. The appellants-claimants examined PW-2 Satbir Singh, the eye-witness to the accident, who categorically narrated the entire sequence of events leading to the occurrence. He specifically deposed that the Swaraj tractor bearing registration No. HR-15A-7753 was standing in the middle of the road without any indicator, lighting or warning signal and that the motorcycle of the deceased collided with the said stationary vehicle. PW-2 (eye-witness) was subjected to detailed and lengthy cross-examination; however, nothing material could be elicited to discredit his testimony. His evidence remained consistent, cogent and unimpeachable.

17. It further stands established on record that respondent No.1, driver of the offending vehicle, is facing criminal trial in pursuance of the FIR and has been charge-sheeted for offences under Sections 283 and 304-A IPC. It is further well settled that once an FIR has been registered and a challan has been filed against the driver of the offending vehicle, the same constitutes prima facie evidence of the fact that the accident occurred due to the rash and negligent act of the said driver.

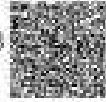


18. Respondent No.1 appeared in the witness box as RW-1 and admitted the factum of accident. While he attempted to attribute rashness and negligence to the deceased, his testimony suffers from material contradictions. In his cross-examination, he admitted that he did not move any application or representation before any authority alleging false implication in the criminal case. More importantly, he categorically admitted that there were no indicators on the tractor-trolley. He further admitted that the tractor was in stationary condition and had no diesel, clearly implying that no headlights were switched on and no reflectors or warning devices were placed to alert approaching vehicles. These admissions demolish his defence and conclusively establish negligence on his part.

19. It is also a settled position of law that parking a vehicle on a public road without taking adequate precautions such as indicators, reflectors or warning signals itself constitutes negligence. Reliance at this stage can be made to recent judgement of apex court rendered in **Sushma vs. Nitin Ganapati Rangole and others, 2024 SCC Online SC 2584**, wherein it is held as thus :

*“16. Having considered the submissions advanced by learned counsel for the parties and after going through the impugned judgements passed by the High Court and the Tribunal as well as upon appreciating the material placed on record, we feel that the contentious finding whereby, the driver of the car, namely, Saiprasad Karande (deceased) was held jointly responsible for causing the accident along with the driver/owner of the offending truck leading to the claims of the passenger-Sushma & dependants of the*





*deceased-passengers being deducted by 50% on the principle of contributory negligence is perverse on the face of the record.*

*26. We shall briefly refer to the statutory provisions applicable to the situation at hand.*

*27. A highway or a road is a public place as defined in Section 2(34) of the Act:-*

*"2(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"*

*28. Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.*

*29. Section 122 of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any "public place" in such a position or in such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.*

*30. Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.*

*31. Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by*

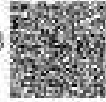




*a towing service may be authorised by a police officer having jurisdiction.*

*32. Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.*

*33. These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity. But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control over the said truck in this regard. Thus, the entire*



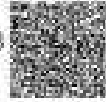
*responsibility for the negligence leading to the accident was of the truck owner/driver.*

*34. In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and surmises. Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical.*

*35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged.*

*36. In the case of Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak, (2002) 6 SCC 455, this Court while referring to a decision of the High Court of Australia in Astley v. Austrust Ltd., (1999) 73 ALJR 403, went on to hold that: -*

*"... where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which,*



*with the benefit of hindsight is shown not to have been the best way out of the difficulty."*

37. In the very same judgment, this Court also referred to and approved the view taken in *Swadling v. Cooper*, 1931 AC 1, as below: -

"Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence."

40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is *ex-facie* perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court's powers under Article 136 of the



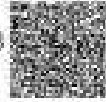
*Constitution of India to interfere with the concurrent finding of facts.”*

20. It is significant to note that although the Insurance Company and the driver of offending vehicle raised a plea of contributory negligence, the learned Tribunal did not frame any specific issue with regard thereto. In the absence of a specific issue, the finding of contributory negligence is wholly unsustainable. The Hon’ble Supreme Court in ***M. Nithya & Ors. v. SBI General Insurance Co. Ltd, arising out of SLP(Civil) No.833-834 of 2023.*** has categorically held that when no issue on contributory negligence is framed, the Tribunal or the appellate court cannot reduce compensation on that ground.

21. The learned Tribunal further fell into grave error in attributing contributory negligence to the deceased on the premise that he was not wearing a helmet and that the motorcycle struck the stationary vehicle from behind. There is no evidence on record to suggest that the deceased was driving rashly, negligently or at a speed beyond the permissible limit.

22. It is well-settled that the doctrine of contributory negligence requires a specific and affirmative finding regarding the conduct of the injured/deceased and the manner in which such conduct contributed to the occurrence of the accident. Negligence cannot be presumed or inferred merely on conjectures or surmises. In the present case, there is a complete absence of evidence demonstrating any negligent act on the part of the deceased that contributed to the accident.

23. In view of the foregoing discussion and the settled principles of law, the finding of the learned Tribunal holding the deceased guilty of

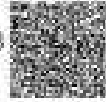


contributory negligence is perverse, erroneous and unsustainable in the eyes of law. The evidence on record conclusively establishes that the accident occurred due to the sole negligence of respondent No.1, who left the tractor-trolley parked on the road without any signal, indicator or warning, thereby creating a hazardous and dangerous obstruction for road users.

24. So far as the contention raised by the appellant-claimant that the learned Tribunal has committed a patent illegality by deducting a sum of ₹14,679/- per month, being the family pension received by the widow of the deceased, while computing the loss of dependency is concerned, this Court finds substantial merit in the said submission.

25. The issue as to whether family pension received by the widow can be taken into consideration for deduction while determining loss of dependency is no longer *res integra*. This Court has already examined and settled the said question in **FAO No. 4272 of 2018, titled as “Chameli Devi and others Vs. Sanjeev Kumar and others”, decided on 28.01.2026.** After an exhaustive analysis of the law laid down by the Hon’ble Supreme Court, it was categorically held that family pension is not a pecuniary advantage flowing from the tortfeasor and, therefore, cannot be deducted while assessing loss of dependency under the Motor Vehicles Act.

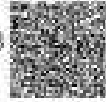
26. It was further held that family pension is a deferred benefit earned by the deceased during his lifetime by rendering service and making contributions, and the same accrues to the dependents independent of the accidental death. Such benefit cannot be allowed to enure to the advantage of the wrongdoer or the insurer.



27. The relevant extract of **Chameli Devi's case (supra)** is reproduced as under:-

“11. The pivotal question that thus arises for consideration is **whether the family pension being received by the widow can be taken into account while computing the loss of dependency.**

12. This aspect was considered in the case of **Mrs. Helen C. Rebello & Ors. v. Maharashtra State Road Transport Corpn. & Anr. AIR, 1998 SC 3191** wherein it was observed that while calculating the compensation on account of death, the pecuniary advantage accruing under the Act, had to be deciphered by co-relating it with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death **and not other forms of death.** The pecuniary advantage cannot be interpreted and co-related to any other source/form of death such as natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving motor vehicle because the same would dilute all possible benefits conferred on the Claimant and would be contrary to the spirit of law. If the pecuniary advantage resulting from death was to include all forms of amounts whether by way of inheritance, succession or any other manner, then it could obliterate both, all possible conferment of economic security to the claimant by the deceased and the intention of the legislature. By such an interpretation, the tortfeasor, despite his wrongful act or negligence which contributed to the death of the victim, would have in many cases no or meagre liability and would benefit from the same. Thus, any amount which the Claimants received on account of

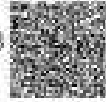


*other forms of death, would not be included while considering the loss of pecuniary benefit in case of accidental amount. Any amount receivable or received not on account of accidental death but would have in any case be received by the Claimant, cannot be construed as a "pecuniary advantage" liable for deduction.*

13. *With specific reference to deduction of "pensionary benefits", it was further explained that a person becomes entitled to pension on account of the services rendered in the Department during the tenure of his service. The employee or his heirs are entitled to this amount irrespective of the accidental death. Similarly, family pension is also earned by an employee for the benefit of his family in the form of contribution of his services in terms of service conditions, which becomes receivable by the heirs on his demise. **There is no co-relation between the family pension, which in any case the family would have got and the amount which is paid on account of accidental death.***

14. *Helen C. Rebello (supra) was referred to by the Apex Court in the Case of **United India Insurance Co. Ltd. etc. v. Patrica Jean Mahajan & Ors., 2002 (6) SCC 281** wherein it was endorsed that there is no co-relation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death which otherwise in the normal course one would be entitled to receive. It was further highlighted an amount receivable under a statute has no co-relation with an amount earned by an individual.*

15. *In the case of **Lal Dei & Ors. v. Himachal Road Transport, (2007) 8 SCC 319**, the Apex Court set-aside the Impugned Order of deduction of the*

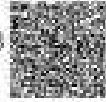


*family pension, by observing that the **family pension** is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death and is receivable even otherwise than the accidental death. There is no co-relation between the two and **therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.***

16. *In **Vimal Kanwar & Ors. v. Kishore Dan & Ors., AIR 2013 SC 3830**, the issue arose before the Hon'ble Apex Court that "whether Provident Fund, **Pension** and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction." While relying on the judgment of Mrs. Helen C. Rebello (supra) it was concluded that Provident Fund, **Pension**, Insurance and similarly any Cash, Bank Balance, Shares, Fixed Deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death, but all these have no correlation with the amount receivable under a Statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. It was also held that salary receivable by the claimant on compassionate appointment, may have nexus with the death of an employee while in service but it has no co-relation with the accidental death and hence, not liable to be deducted.*

17. *Similar observations have been made in the Case of **Sebastiani Lakra v. National Insurance Company Ltd., AIR 2018 SC 5034** wherein it was*

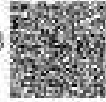




observed that **deductions cannot be allowed** from the amount of compensation either on account of insurance, **or on account of pensionary benefits** or gratuity or grant of employment to a kin of the deceased, because these amounts are earned by the deceased on account of contractual relations entered into by him with others and do not accrue to the heirs on account of his death in a motor vehicle accident. It was further explained that **amounts of pension and gratuity** are paid on account of the service rendered by the deceased to his employer and are more like the property of the deceased. Since these amounts are also payable on death, irrespective of the form or cause of the death, the same is not liable to be deducted. **If the deduction towards the family pension is permitted, it would amount to a tort fissure being given the benefit of munificence or gratuity of others.**

18. More recently, the Hon'ble Supreme Court in **Hanumantharaju B (Dead) by LRs v. M. Akram Pasha & Anr. 2025 INSC 682**, has once again reaffirmed the settled legal position. The relevant extract of the judgment passed in **Hanumantharaju B's case (supra)** is reproduced as under:-

“19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit

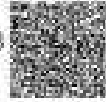


*is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as “pecuniary advantage” liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.*

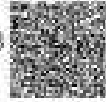
*For this proposition of law, we may refer to the decision in **Vimal Kanwar & Ors. v. Kishore Dan & Ors. (2013) 7 SCC 476**, wherein this Court, by referring to the earlier decision in **Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90**, held as follows:-*

*“19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90: 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court: (SCC pp. 111-12, para 35)*

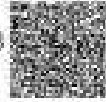
*“35. Broadly, we may examine the receipt of the provident fund which is a deferred*



*payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed*



*deposits, etc. though are all Page 13 of 20 a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."*



*Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in **Reliance General Insurance Co. Ltd. v. Shashi Sharma & Ors. (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender & Ors. (2020) 11 SCC 356.***”

20. *Keeping the aforesaid legal position in mind, we shall examine the issues at hand.*

21. *As regards computing the loss of income, in the light of the above referred decisions, it would not be permissible to deduct the pensionary amount of Rs. 15,247/- from the salary of Rs. 36,231/- as was done by the High Court. Hence, for the purpose of computing the loss of earning, the said monthly salary of Rs. 36,231/- has to be accepted without deducting the pension amount.*

19. *Applying the above settled principles to the facts of the present case, it is evident that the learned Tribunal committed a manifest error in deducting the family pension while computing the compensation, which is wholly impermissible in law and warrants interference. Therefore, income of the deceased Kehar Singh is assessed as Rs.24,000/- per month.”*

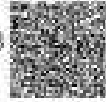


28. In view of the settled legal position, it is beyond any pale of doubt that the learned Tribunal committed a manifest and patent error in deducting the monthly family pension of ₹14,679/- while computing the loss of dependency. The said deduction is wholly illegal and unsustainable in law and deserves to be set aside.

29. It is further borne out from the record that the deceased, at the time of his death, was about 50 years of age and was employed as an Assistant Lineman with Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL). His last drawn salary, inclusive of all admissible allowances and emoluments, was ₹30,609/- per month. In view of the settled position of law that family pension cannot be deducted while computing loss of dependency. Consequently, the monthly loss of dependency is to be assessable at **₹44,679/- per month**, computed by taking into account the last drawn salary of ₹30,609/- along with ₹14,679/- family pension.

30. A further perusal of the impugned award reveals that the learned Tribunal has committed a manifest error in applying split multiplier while computing the compensation payable to the appellants-claimants. The adoption of split multiplier in motor accident claim cases is impermissible and contrary to settled law.

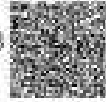
31. The issue stands conclusively settled by the Hon'ble Supreme Court in **Preetha Krishnan & Anr. v. United India Insurance Co. Ltd.** **2025 INSC 1293**, wherein it has been categorically held that the concept of split multiplier is alien to proceedings under the Motor Vehicles Act and cannot be applied while determining compensation. The Apex Court observed that the multiplier has to be selected strictly in accordance with the age of the deceased (or the claimant, as applicable) as laid down in the



structured formula and reiterated in authoritative pronouncements, without bifurcation of the multiplier on speculative considerations.

32. The relevant para of Preeta Krishnan's case (*supra*) is reproduced as under:-

*“18. The judgment referred to by the learned Single Judge in the impugned judgment, i.e., **K.R. Madhusudhan v. Administrative Officer and Puttamma v. K.L. Narayana Reddy & Ors.**, in our considered view, does not support the use of a split multiplier. In both these judgments, this Court has held that there have to be cogent reasons recorded for its use. As already observed above, retirement from service is not ‘out of the ordinary’, ‘exceptional’ and ‘cogent’ for the same to qualify. It is also, a matter of considerable difficulty to conceive what such cogent or exceptional circumstances may be. In any event, the Constitution Bench in **Pranay Sethi (supra)** had, in para 59.7 observed that the age of the deceased is the criterion to be utilized for multiplier. It does not provide for any other possibilities. This, in our considered view, does not even leave open the possibility of employment of split multiplier, whatsoever. As such, when dealing with a beneficial legislation which relies on just compensation as its bedrock, it is most prudent to tread the path of certainty, insofar as practicable. This is more so important in the context of age which is the primary basis for computation of compensation. In other words, split multiplier is a concept foreign to the Motor Vehicles Act, 1988 and is not to be used by the Tribunal and/or Courts in calculation of the compensation.”*



33. In view of the settled legal position, the application of a split multiplier by the learned Tribunal is wholly illegal, arbitrary and unsustainable in law and the computation of compensation on that basis deserves to be set aside.

34. A further perusal of the award shows that learned Tribunal has rightly added 30% future prospects, however, nothing has been awarded by learned Tribunal under the heads of loss of estate, funeral expenses and consortium. Therefore, the award requires indulgence of this Court.

### **CONCLUSION**

35. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 10.08.2016 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made hereunder:-

| <b><i>Sr. No.</i></b> | <b><i>Heads</i></b>                                                 | <b><i>Compensation Awarded</i></b> |
|-----------------------|---------------------------------------------------------------------|------------------------------------|
| 1                     | Monthly Income                                                      | Rs.44,679/-                        |
| 2                     | Future prospects @30%                                               | Rs.13,403/- (30% of 44679)         |
| 3                     | Deduction towards personal expenditure 1/3                          | Rs.19,360/- (58082 X 1/3)          |
| 4                     | Total Income                                                        | Rs.38,722/- (58082-19360)          |
| 5                     | Multiplier                                                          | 13                                 |
| 6                     | Annual Dependency                                                   | Rs.60,40,632/- (38722 X 12 X 13)   |
| 7                     | Loss of Estate                                                      | Rs.15,000/-                        |
| 8                     | Funeral Expenses                                                    | Rs.15,000/-                        |
| 9                     | Loss of Consortium<br>Parental : 1 x 40,000<br>Spousal : 1 x 40,000 | Rs.80,000/-                        |
| 10                    | <b>Total Compensation</b>                                           | <b>Rs.61,50,632/-</b>              |
| 11                    | <b>Deduction</b><br>Amount awarded by the Tribunal to               | <b>Rs.13,97,812/-</b>              |



|    |                          |                                      |
|----|--------------------------|--------------------------------------|
|    | the claimants/appellants |                                      |
| 12 | Enhanced amount          | Rs.47,52,820/- (61,50,632-13,97,812) |

36. 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 Nandu 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.

37. The respondent No.3-Insurance Company is directed to deposit the enhanced amount along with interest at the rate of 9% with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed to disburse the same to the appellants-claimants in their bank accounts. The appellants-claimants are directed to furnish their bank account details to the Tribunal.

38. Pending miscellaneous applications are also disposed of.

January 29<sup>th</sup>, 2026

(SUDEEPTI SHARMA)  
JUDGE

Ayub

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No