231

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5435-2017 (O&M)
Date of Decision : 05.02.2026

NATIONAL INSURANCE CO. LTD. .... Appellant

VERSUS

RAM KUMAR & ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harjinder Singh, Advocate for the appellant.

Mr. Ankur Bali, Advocate for respondents No.1 to 4.

Mr. Vipin Kumar, Advocate for respondent No.6.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant (Insurance Company) aggrieved by the award passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') dated 10.04.2017. The parties are being referred to as the Insurance Company, the owner, the driver and the claimants for the sake of clarity.

2. Brief facts relevant to the present *lis* are that the deceased, namely, Chander Shekhar, was traveling on his motorcycle bearing registration No.HR-20Z-5019 make CD Deluxe on 25.08.2015 along with his younger brother, namely, Bhal Singh. They started from their village to get the diesel filled. When they reached the Petrol Pump, Bhal Singh got down from the motorcycle and Chander Shekhar started his journey on his motorcycle to Adampur. When he just traveled a little distance from the Petrol

Pump, a Jeep Commander bearing registration No.HR-26F-6508 (hereinafter referred to as 'the offending vehicle'), which was being driven by its driver at a high speed, came from the opposite direction and dashed into the motorcycle of the deceased. As a result, Chander Shekhar fell down. On seeing the accident, Bhal Singh reached the place of occurrence. Meanwhile the driver fled from the spot along with the offending vehicle. Chander Shekhar was shifted to Government Hospital, Adampur where he was declared brought dead. FIR No.252 dated 25.08.2015 under Sections 279 and 304A Indian Penal Code, 1860 Police Station Adampur was registered. Postmortem was also conducted at the General Hospital, Hisar. It was the case set up by the claimants that the deceased was 21 years of age and was working as a salesman in a shop under the name and style of Shri Ram Multi Brand, Adampur and used to earn ₹20,000 per month. Besides this, he was also working as an agriculturist and used to earn ₹2,00,000 per annum. The claimants were dependent upon the deceased.

3. The owner and the driver filed their written statement raising various objections qua maintainability, cause of action, *locus standi* and the claim petition being bad for mis-joinder and non-joinder of parties. On merits the date, time, place and the manner of the accident were refuted. It was further the stand taken that it is a false case which has been registered against the driver.

4. Insurance Company also filed its written statement raising the plea that the driver did not have a valid and effective driving licence and further denied that the narration as made in the claim petition was correct and

that no accident, as described, had taken place. It was further the stand taken that the claimants were under legal obligation to prove the alleged accident. It was further the stand taken that the offending vehicle was being driven in contravention of the terms and conditions and limitation to use the vehicle. It was further the stand taken that the FIR was registered against the unknown vehicle and later on the name of the driver and the number of the offending vehicle was introduced on the basis of the supplementary statement after a period of 21 days.

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

> 1- Whether accident in question took place on account of rash and negligent driving of respondent No.1 while driving vehicle bearing registration No.HR-26F-6508 ? OPP
>
> 2- If issue No.1 is proved whether the petitioners are entitled to claim compensation, if so, how much and from whom ? OPP
>
> 3- Whether insured/ owner of the offending vehicle has violated terms and conditions of the insurance policy, if so to what effect ? OPR
>
> 4- Relief.

6. The Tribunal on issue No.1 returned a finding in favour of the claimants and held that the offending vehicle was being driven rashly and negligently by the driver. The Tribunal awarded the following compensation:

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹9,000
2.	Annual income	[₹9,000 x 12] = ₹1,08,000
3.	Deduction $1/4^{th}$	[₹1,08,000 - ₹27,000] = ₹81,000
4.	Future prospects @ 50%	[₹81,000 + ₹40,500] = ₹1,21,500
5.	Multiplier of ‘18’	[₹1,21,500 x 18] = ₹21,87,000
6.	Transportation and funeral expenses	₹25,000
7.	Loss of consortium	₹1,00,000
8.	Love and affection	₹3,00,000
	Total Compensation	**₹26,12,000**
	Interest	**@ 9.00% per annum**

7. Learned counsel for the Insurance Company would contend that the accident did not take place with the offending vehicle inasmuch as the FIR, which was registered on 25.08.2015 on the statement of Bhal Singh, did not contain the details of the name of the driver and the registration number of the offending vehicle. However, after a period of 21 days, the name of the driver and the registration number of the offending vehicle was introduced. It is further the contention that the witness Bhal Singh in his cross-examination as PW2 had stated that he could not see the number of the offending vehicle in question. Learned counsel would contend that in his cross-examination he stated that he never recorded in his statement that the driver of the Jeep Commander had fled away from the spot and so he could not notice the number and then self-stated that he had noted the number of the offending vehicle. Learned counsel further contended that even the quantum of compensation, as awarded by the Tribunal, is in excess of the parameters of laid down by the Hon’ble Supreme Court. Learned counsel would contend that the income has wrongly been assessed as ₹9,000 per month as there was

no evidence on the record qua the fact that the deceased was earning ₹9,000 per month. Learned counsel for the Insurance Company would contend that though there is no challenge to the deduction made and the multiplier as applied by the Tribunal, however, an addition of 50% has been made towards future prospects which ought to have been 40% keeping in view the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** and that the amount awarded under the head loss of consortium is not in consonance with the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**.

8. *Per contra*, learned counsel for the claimants would contend that in the challan it was clearly stated that the driver of the offending vehicle had stepped out after the accident and after seeing the dead body of Chander Shekhar had left the spot. Some numbers were noted by Bhal Singh however he could not note the entire number of the offending vehicle. He further saw the face of the driver and now was able to recognize the driver. Learned counsel further contended that the cross-examination PW2 is in consonance with what had been stated in the Challan and that mere minor discrepancies in the statement of the witness cannot be taken advantage of by the Insurance Company. Learned counsel has further contended that though the accident was denied, however, the driver of the offending vehicle chose not to step into the witness box. Learned counsel has further contended that all the prosecution witnesses including PW2 stood by their version before the

Criminal Court, though the accused was acquitted. Learned counsel has further contended that even an appeal was preferred by the claimants challenging the judgment of acquittal and as such it cannot be said to be a planted case. On quantum, learned counsel has contended that the deceased was merely 21 years of age at the time of accident and had left behind his widow and a minor child who was born after the accident. It is further the contention that PW3-Mukesh had stepped into the witness box and had clearly stated that the deceased was working at his shop. Learned counsel has further contended that though the Tribunal did not believe his statement to the extent that the deceased was drawing a salary of ₹20,000 per month, however, assessed the income as ₹9,000 per month. Learned counsel has further contended that keeping in view the fact that the deceased himself was of 21 years of age and had left behind a widow who was 19 years of age and a minor child who was born after the accident, even if the Deputy Commissioner's rates were to be applied which were ₹9,000 per month qua semi-skilled person and ₹10,000 per month qua skilled person, the income has rightly been assessed. It is further the contention that the minimum wages are merely a yardstick to be used by the Courts for assessing the income and some amount of guess work needs to be applied while arriving at a figure. In support of his contentions, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the cases of **Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors. [2021(4) RCR (Civil) 492], Shri Ram General Insurance Company Ltd. & Ors. vs. Beant Kaur & Ors. [2019 (3) SCT 684]**, **Jakir Hussein vs. Sabir & Ors. [2015(7) SCC 252]** and

Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited [2011 (13) SCC 236]. On compensation of amount awarded under the head loss of consortium, learned counsel for the claimants has candidly admitted that the same is not in consonance with the law laid down by the Hon'ble Supreme Court. Learned counsel has further contended that the amount awarded under the conventional hears i.e. loss of estate and funeral expenses are on the lower side.

9. Heard.

10. In the present case the argument of the learned counsel for the Insurance Company that the present was a planted case and no accident actually took place, as alleged, deserves to be rejected. Bhal Singh, who is the eyewitness, had stated in his cross-examination that he never recorded in his statement that the driver of the Jeep Commander ran away from the spot and as such he could not note the number. The said fact is corroborated from the challan itself, which has been read out in *extenso* by the learned counsel for the Insurance Company, wherein the said witness has clearly stated that the driver of the offending vehicle got down from the vehicle after the accident and Bhal Singh saw the driver however he could not note down all the numbers of the offending vehicle. Further still, all the prosecution witnesses including Bhal Singh (the eyewitness) stood by the case as set up by the prosecution though the accused was acquitted. Thereafter the claimants also filed an appeal which was dismissed. Hence, it cannot be said that there was any connivance between the driver and the claimants and that the case was a planted one.

11. The present is an unfortunate case where a very young life was lost. The deceased was merely 21 years of age and his widow was 19 years of age at the time of the accident. The child was yet to be born as is apparent from the claim petition where it has specifically been stated that the child was expected to be born posthumously. The Tribunal though disbelieved the income as stated by PW3, however, a perusal of the statement reveals that despite lengthy cross-examination nothing could be elicited to hold that the deceased was not working at the shop of Mukesh (PW3). In the absence of any documentary evidence, the Tribunal referring to the minimum wages, assessed the income as ₹9,000 per month. The argument of the learned counsel for the Insurance Company that the said income is in excess deserves to be rejected. Minimum wages are merely a yardstick for assessing the income of the deceased and the Courts have to resort to some guess work in order to arrive at a figure. The Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram** (supra) has held that a certain amount of guesswork can be done in motor accident claim cases while assessing the income when there is no definite proof regarding income. Para 10 of the said judgment reads as under :

> *"10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her*

husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly *proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3rd is to be made from the income of the deceased towards his personal expenses. Accordingly, the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/-. As an amount of Rs.10,99,700/- is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/-. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/-each. The finding of the Tribunal that parents cannot be treated as dependents* *runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited, (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record."*

Further, the Hon'ble Supreme Court in the case of **Beant Kaur** (supra) has held as under :

"15. It has been held in a plethora of judgements by the Hon'ble Supreme Court that it is the duty of the tribunal/Court to award 'just compensation'. Motor Vehicles Act is admittedly a beneficial legislation, therefore to circumscribe the scope of assessment of income of the deceased/injured to the minimum wages as may be notified under the Minimum Wages Act would not be justified. Needless to say, assessment of income in cases where no specific documentary evidence is led in support of the claim, such assessment would be dependent upon the facts and circumstances of each case. There may be instances where oral evidence along with other supporting evidence on record may inspire confidence. There has to be a sound evaluation of the oral evidence and supporting

> *circumstances in the factual matrix of each particular case. The Tribunal/Court while keeping in view the minimum wage fixed under the Minimum Wages Act as the basic criterion at the outset would proceed to determine whether income of the deceased/injured is to be assessed at any higher level keeping in view the evidence on record. This in my considered view, would be the correct approach to follow in such cases."*

The Hon'ble Supreme Court in **Jakir Hussein** (supra) has held as under :

> *"14. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning Rs.4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns Rs.128/- per day, however the wage rate as per the minimum wage*

> *notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at Rs.150/- per day (Rs.4,500/- per month i.e. Rs.54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at Rs.51,000/- for a period of one year and five months. We have to enhance the same to Rs.76,500/- (Rs.4,500 X 17 months).”*

The Hon’ble Supreme Court in **Ramachandrappa** (supra) has held as under:

> *“14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company*

was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to 150/- per day or Rs.4500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason

> *for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-.”*

The Deputy Commissioner’s rate for the State of Haryana at the relevant time for a semi-skilled person was ₹9,000 per month and for a skilled person was ₹10,000 per month. Therefore, the assessment of the income as ₹9,000 per month by the Tribunal cannot be held to be excessive, especially keeping in view the fact that the deceased left behind a widow who was merely 19 years of age and an unborn child. The magnitude of the tragedy, which the family has faced, cannot be compensated by the amount which has been awarded however, the compensation awarded should be just to at least mitigate the hardship of the family to some extent and to restore the claimants to the position prior to the accident. As such, I do not find any reason to interfere with the income as assessed by the Tribunal.

12. Since there is no challenge to the deduction made and the multiplier as applied by the Tribunal, the same are maintained, however, an addition of 50% has been made towards future prospects which ought to have been 40% as per the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra). Further, the amounts awarded under the conventional heads and under the head loss of consortium are not in consonance with the law laid down by the Hon’ble Supreme Court. Hence, 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 claimant-appellants, being the parents, the widow and the minor child of the deceased, would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium.

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

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹9,000
2.	Annual income	[₹9,000 x 12] = ₹1,08,000
3.	Deduction 1/4th	[₹1,08,000 - ₹27,000] = ₹81,000
4.	Future prospects @ 40%	[₹81,000 + ₹32,400] = ₹1,13,400
5.	Multiplier of '18'	[₹1,13,400 x 18] = ₹20,41,200
6.	Funeral expenses	₹18,000
7.	Loss of estate	₹18,000
8.	Loss of consortium i. Spousal ii. Filial iii. Parental	 ₹48,000 [₹48,000 x 2] = ₹96,000 ₹48,000 Total = ₹1,92,000
	Total Compensation	**₹22,69,200**

14. The claimants shall be entitled to interest @ 9.00% 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. The share of the minor claimant shall be kept in an FDR with a nationalized bank fetching maximum rate of interest till the child attains the age of 18 years.

15. Since the entire amount has already been deposited by the Insurance Company, out of which 50% had been released to the claimants, the

amount after calculating upto date interest shall be released to the claimants out of the balance 50% amount lying deposited with the Tribunal and the remaining amount would be returned to the Insurance Company.

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

05.02.2026 **(ALKA SARIN)**
Aman Jain **JUDGE**

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