**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****FAO-5256-2023 (O&M)****Date of decision: 22.01.2026****Sunita and another****...Appellant(s)****Vs.****Kapil and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ajay Gupta, Advocate for the appellants.

Mr. Arman Goyal, Advocate for respondent No.2.

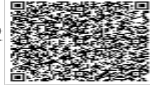
Mr. Punit Jain, Advocate for respondent No.3-Insurance Co.

NIDHI GUPTA, J.

The present appeal has been filed by the claimants seeking enhancement of compensation of Rs.14,58,000/- granted by the learned MACT, Sonipat vide Award dated 24.07.2023 passed in MACP Case No. 120 dated 11.03.2022 filed under Section 166 of the Act. The 5 claimants are the parents; 29-year-old brother; and grandparents of the deceased Ankit Lamba, who was 27 years old at the time of accident.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased- Ankit Lamba had died due to the injuries suffered by him a motor vehicular accident that took place on 19.01.2022 due to the rash and negligent driving of a Truck bearing registration No.46 E-1874 (hereinafter referred to

as "the offending vehicle") being driven by respondent No.1; owned by



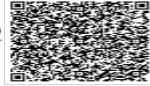
respondent No.2; and insured by respondent No.3. The above said compensation was awarded alongwith interest @ 7% per annum to be paid by respondents No.1 to 3 jointly and severally. However, the learned Tribunal had also held the deceased liable for contributory negligence to the extent of 25% for causing the accident in question.

3. Ld. counsel for the appellants submits that the learned Tribunal was in patent error in holding deceased liable for contributory negligence to the extent of 25% as it is the clear and categoric finding of fact in the impugned Award that Truck was parked in the middle of the road. This also proved from the site plan. Moreover, accident had taken place on 19.01.2022 at about midnight. It is submitted that in view of all the above factors, the deceased could not have been held liable for 25% contributory negligence.

4. It is further submitted that as per PW2 Aman, who filed affidavit Ex. PW2/A in which he deposed that he was informed by some passers-by about the accident and when he reached there, the passers-by disclosed the name of driver of offending vehicle as Kapil. He further disclosed that respondent No.1 had parked his truck in the middle of the road without any barricade or any indicator etc. and due to this, car of deceased had struck in the offending vehicle from back side. Therefore, accident had taken place due to sole negligence on the part of respondent no.1, who had parked the vehicle without any indicator or barricade.

5. It is submitted that in the case of **Manjit Kaur and others**

Versus Jagtar Singh and others (FAO No. 569 of 2006 (O&M)), this Court



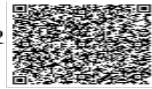
held that “*where during night time moving traffic on road requires some indicators, lights or signal to notice a vehicle parked in middle of road, "The finding of the Tribunal holding drivers of both the vehicles equally liable for accident are set aside and it is held that the accident was caused due to sole negligence of driver of the offending vehicle."* It is submitted that therefore, the deceased could not have been held liable for contributory negligence.

6. As regards quantum of compensation, learned counsel submits that Tribunal had dismissed the claim petition qua the claimants No. 3, 4 and 5, who are the 29-year-old brother; and grandparents of the deceased. It is submitted that however claimants No.1 and 2 being parents of the deceased, were entitled to consortium, which has not been granted to them. It is accordingly prayed that the present appeal be allowed.

7. *Per contra*, learned counsel for respondents No. 2 and 3 opposes submissions made on behalf of the appellants and submits that the impugned Award suffers from no infirmity as the compensation awarded to the appellants is just and fair.

8. Learned counsel for respondent No.3 also points out that against the very same award, the appellants have filed **FAO No. 5328 of 2023** titled as **Sunita and others vs. Kapil and others**, in which notice was issued vide order dated 27.11.2025, which is now fixed before this Court for 03.08.2026. It is submitted that two First Appeals in respect of the same Award, are not maintainable. At this stage, learned counsel for the appellants undertakes that the appellants shall forthwith withdraw the said

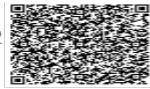
FAO No. 5328 of 2023 ‘Sunita and others vs. Kapil and others.’



9. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of learned counsel for the appellants.

10. Learned Tribunal in para 17 and 18 of the award has recorded that *"The accident had taken place in the night of 19.01.2022 at 12.00A.M. If the site plan Ex. P3 attached with the challan is perused, it becomes clear that the accident had taken place in the middle of the road. Thus, it cannot be said that traulla was parked on left side of the road. Regarding switching on the indicators and back light of traulla, there is self serving statement of respondent no.1 only. The version of respondent no.1, that some Gunda elements had got his vehicle stopped, also could not be proved as he had not lodged any FIR against those gunda elements. He had not even complained about his false implication in the accident case. Even, no suggestion was put to the investigating officer that the indicator lights and back light of traulla were switched on by respondent while fleeing from the spot."*

11. It is my clear view that given the above irrevocable evidence/finding, the deceased could not have been held liable for contributory negligence I find support in my view from judgment of Hon'ble Supreme Court passed in **Sushma v. Nitin Ganapati Rangole, (SC) : Law Finder Doc Id # 2645899** wherein in similar facts and circumstances, it has been observed that: -

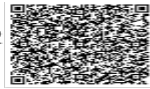


"22. The High Court, after adverting to the evidence available on record, made the following observations on the aspect of contributory negligence: -

"12. The Investigation Officer has filed charge sheet against the driver of the car as also the driver of truck. Exhibit P4-spot mahazar establishes the fact that the offending truck was parked on the middle of the road. Undisputedly, accident took place at 9.10 pm and the truck is a Heavy Goods Vehicle. Exhibit P6-Photograph of the place of accident substantiate that the offending truck was fourteen wheeled heavy truck which was parked on the middle of the road. Though Shri G.N. Raichur, learned counsel submitted that the truck was parked on the extreme left of the road, however, perusal of the photographs would clearly substantiate the fact that the truck was parked on the middle of the road and on the other hand, the learned counsel for the claimants submitted that there was fog at the time of the accident. There are no eye-witnesses to the incident. Taking into consideration the facts in totality, it may be stated that if the driver of the car was cautious, he would have avoided the accident and accordingly, the rule of last opportunity would be squarely applicable to the facts of the case and therefore, the finding recorded by the Tribunal fastening 50% contributory negligence on the drivers of both the vehicles in question, is just and proper. In view of the same, the finding recorded by the Tribunal on issue No.1 is, hereby, affirmed and the appeals filed by the Insurance Company challenging the liability are required to be rejected, accordingly rejected." (emphasis supplied)

XXXXXXXXXXXX

42. As a consequence, the deduction of 50% of compensation awarded to the appellant-claimants on account of contributory negligence, as directed by the Tribunal and affirmed by the High Court, cannot be sustained. The finding recorded by the Courts below on this issue is reversed as being perverse and unsustainable in the facts as well as in law. Resultantly, it is directed that there shall be no deduction from the



compensation payable to the appellant-claimants who shall be entitled to the full compensation as assessed by the Tribunal and modified by the High Court by the impugned judgment.”

12. Similar view has been followed by this Court in **FAO-569-2006** titled as **Manjit Kaur and others Vs. Jagtar Singh and others, Neutral Citation No. 2016:PHHC:129029**; the relevant para of which reads as under:-

“17. In view of facts and law on the point discussed above, I don’t find myself in agreement with observations of the Tribunal that driver of the moving vehicle is required to be more careful and to look out such obstacles 'commonly found on the road. It is not supposed that any obstacle can be placed on the road particularly at night time without proper signals, indicators and precautions. The above observations, if approved, will give licence and approve the act of wrongdoers, who may leave their vehicles in middle of the road thereby jeopardizing the lives of travellers on the road during night time. The finding of the Tribunal holding drivers of both the vehicles equally liable for accident are set aside and it is held that the accident was caused due to sole negligence of driver of the offending vehicle.”

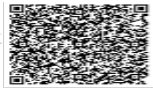
13. Thus, keeping in view the above noted factual and legal position, it is clear that the deceased could not have been held liable for contributory negligence. The said finding of the learned Tribunal is accordingly, set aside.

14. Furthermore, as regards quantum of compensation, it was the pleaded case of the appellants before the learned Tribunal that prior to the



accident, the deceased was running a business and was earning Rs.55,000/- per month. However, the appellants were unable to prove the alleged occupation or income of the deceased. As such, learned Tribunal had assessed notional income of the deceased as Rs.10,000/- p.m. as that of a casual labour. I find no error in the same. Further, age of the deceased was determined to be 27 years as per the pleadings. Accordingly, Tribunal had made addition of 40% towards future prospects; and correctly applied multiplier of 17. As the deceased was a bachelor, deduction of 50% was also correctly made. Learned Tribunal has further awarded Rs.15,000/- towards loss of love and affection; Rs.15,000/- towards transportation and funeral expenses. However, appellants have been granted nothing by way of parental consortium. Accordingly, compensation payable to the claimants is reassessed in the following manner:-

Sr.No.	Details	Before the Tribunal	Revised compensation
1.	Income	Rs.10,000/-	Rs.10,000/-
2.	40% Future prospects	Rs.10,000 + Rs.4,000 =Rs.14000	Rs.10,000 + Rs.4,000= Rs.14,000
3.	50% deduction towards personal expenses of the deceased	Rs.14,000 -Rs.7,000 =Rs.7,000	Rs.14,000 -Rs.7,000 =Rs.7,000
4.	Multiplier of 17	Rs.7,000 x 12 x 17=Rs.14,28,000	Rs.7,000 x 12 x 17=Rs.14,28,000
5.	Loss of parental consortium	N/A	Rs.40,000/- each to claimants No. 1 and 2
6.	Loss of love and affection	Rs.15,000/-	Rs.15,000/-
7.	Transportation and Funeral expenses	Rs.15,000/-	Rs.15,000/-
8.	Total	Rs.14,58,000/-	Rs.15,38,000



9.	Enhanced compensation	Rs.15,38,000-Rs.14,58,000 = Rs.80,000/-	
10.	Interest	7% per annum	7% per annum

15. Finding of contributory negligence is set aside in view of the above noted and factual legal position; and the Appeal filed by the claimants is **partly allowed** in the above terms.

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

22.01.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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