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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-534-2018 (O&M)
Date of Decision : 11.02.2026

National Insurance Co. Ltd. ... Appellant(s)

Versus

Rajbala & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rahul Pathania, Advocate for the appellant.

Mr. Gourav, Advocate for respondent Nos.1 to 3.

Mr. Sumit Sangwan, Advocate for respondent Nos.4 and 5.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Charkhi Dadri, (hereinafter referred to as 'Tribunal') vide the impugned award dated 01.11.2017 as also on the ground that it was a case of contributory negligence.

2. Brief facts relevant to the present *lis* are that on 18.08.2016 the deceased - Manvinder - was coming from Village Rasiwas to Dadri and when he crossed Village Birhi, a truck/dumper bearing Registration No.HR-61C-6704 (hereinafter referred to as 'offending vehicle'), being driven by respondent No.4 herein at a very high speed and in a rash and negligent manner, came from Dadri side and struck into the car of the deceased. The deceased was taken to General Hospital, Charkhi Dadri where he was declared dead. On the statement of Pawan Kumar, FIR No.330 dated 18.08.2016 was

registered under Sections 279 and 304-A of IPC at Police Station Sadar Dadri.

3. Upon notice, respondent Nos.4 and 5 herein filed their joint written statement denying the allegations made in the claim petition. It was further stated that even if any compensation is to be granted, the appellant herein, being the insurer, is liable to pay the same. The appellant-Insurance Company also filed its written statement denying the claim of the claimants on the basis of the facts/merits and it was stated that respondent Nos.4 and 5 had violated the terms and conditions of the policy.

4. On the basis of the pleadings, the following issues were framed:

> 1. Whether the accident in question took place on 18.8.2016 due to rash and negligent driving of truck bearing Registration No.HR-61C-6704 by respondent No.1 and it caused death of Manvinder son of Sh.Sajjan, resident of village Rasiwas, Tehsil Charkhi Dadri, District Bhiwani ? OPP
> 2. If issue No.1 is proved in affirmative, what would be the amount of compensation payable to the petitioners and by whom ? OPP
> 3. Whether the present petition is not maintainable in its present form ? OPR
> 4. Whether the petitioners have no locus standi or cause of action to file the present petition ? OPR
> 5. Whether the petitioners are estopped from filing this claim petition by their own act and conduct ? OPR
> 6. Whether the respondent-insurance company is not liable to pay the amount of compensation, as alleged ? OPR
> 7. Relief.

5. The Tribunal vide the impugned award dated 01.11.2017, while holding the driver, owner and the Insurance Company jointly and severally

liable to pay the compensation, had awarded the following compensation :

Sr.No.	Heads	Compensation Awarded	
1	Monthly Income	₹30,000/-	
2	Annual Income	₹3,60,000/-	[₹30,000 x 12]
3	Future Prospects - 50%	₹5,40,000/-	[₹3,60,000 + ₹1,80,000]
4	Deduction - 50%	₹2,70,000/-	[₹5,40,000 - ₹2,70,000]
5	Multiplier - 17	₹45,90,000/-	[₹2,70,000 x 17]
6	Funeral expenses	₹15,000/-	
7	Love and affection etc.	₹40,000/-	
	Total Compensation	**₹46,45,000/-**	
	Interest	**7.5%**	

6. Learned counsel for the appellant-Insurance Company would contend that it was a case of contributory negligence as the vehicles met with a head-on collision. It is further the contention of the learned counsel that while assessing the income of the deceased, who was working as a Constable, the Tribunal had included the allowances in the income of the deceased, which ought not to have been included.

7. Learned counsel for respondent Nos.1 to 3 has contended that in the present case no issue was framed qua contributory negligence nor any evidence was led by the owner, driver or the Insurance Company qua contributory negligence. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **M. Nithya & Ors. vs. SBI General Insurance Company Limited [SLP (Civil) Nos.833-834 of 2023 decided on 03.01.2025]**. It is further the contention of the learned counsel that as per the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. v. Nalini & Ors. [2024 (2) PLR 671]**, the allowances also have to be taken into account while assessing the income of the deceased, hence, the Tribunal has rightly assessed the income.

8. I have heard the learned counsel for the parties.

9. In the present case, the argument of the learned counsel for the appellant-Insurance Company that it was a case of contributory negligence deserves to be rejected inasmuch as neither any issue qua contributory negligence was framed nor any evidence was led by the owner, driver or the Insurance Company before the Tribunal to even remotely suggest that it was a case of contributory negligence. Hon'ble Supreme Court in the case of **M. Nithya** (supra) has held that in the absence of any specific issue having been framed regarding the contributory negligence, any finding qua the same could not have been returned. Para 7 of the said judgment reads as under :

> *"7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributary negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributary negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributary negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained."*

10. In view of the law laid down by the Hon'ble Supreme Court and in the absence of any evidence and an issue qua contributory negligence, the argument of the learned counsel for the Insurance Company qua contributory negligence is rejected.

11. The argument of learned counsel for the appellant-Insurance Company that while assessing the income of the deceased, the allowances ought to have been deducted deserves to be rejected in view of the law laid down by the Hon'ble Supreme Court in the case of **Nalini & Ors.** *(supra),* wherein it has been held as under :

> *"2. The aforesaid aspect is no longer res integra inasmuch as a three Judges Bench of this Court in Vijay Kumar Rastogi Vs. Uttar Pradesh State Roadways Transport Corporation has clearly held as follows:*
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> > *"11. Strikingly, the High Court noted the taxable income disclosed in tax return of the appellant for the relevant period as Rs.77,480/- (rounded off) and tax deduction of Rs.4,496/-, yet proceeded to hold that the net income of the appellant has been rightly taken into consideration by the Tribunal. It is unfathomable that the High Court, despite having accepted the claim of the appellant founded on his tax return for the relevant period, disclosing the taxable income of the appellant as Rs.77,480/- (rounded off) and deduction of tax of Rs.4,496/- could have affirmed the conclusion of the Tribunal that the net annual income of the appellant was Rs. 44,511/-. It ought to have reckoned the taxable income for computing the head towards loss of income. This, in our opinion, is the manifest error committed by the High Court. The appellant is justified in relying upon the decisions of this Court*

which have taken the view that loss of taxable earning should be reckoned for the purpose of determining just compensation as enunciated in National Insurance Co. Ltd. v. Indira Srivastava2 , which has been followed in Oriental Insurance Company Limited v. Jashuben3 , and Kavita v. Deepak4 . It has been held that the "income" should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax, although some elements thereof may, or may not be taxable due to the exemption conferred thereupon under the statute."

[emphasis added]

3. It is apparent from the observations made in the aforesaid decision that the emoluments and the benefits accruing to the deceased under various heads for the purposes of computation of loss of income, which are described by learned counsel for the petitioner-Insurance Company as personal to him to arrive at the dependency factor, ought to be included irrespective of whether they are taxable or not."

12. In view of the above, I do not find any merit in the present appeal and the same being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.02.2026 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO