



FAO-72-2020

1

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

FAO-72-2020 (O&M)

Dipika Kumari and ors.

.....Appellants

VS.

Suresh Kumar and ors.

.....Respondents

Date of Reserve: 16.01.2026

Date of Pronouncement: 25.02.2026

Uploaded on:- 06.03.2026

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. Rajesh K. Sheoran, Advocate, for the appellants.

Mr. Sandeep Yadav, Advocate, for respondent No. 2.

Mr. P.H.S. Pannu, Advocate, for respondent No. 3.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 11.07.2019 passed by the learned Motor Accident Claims Tribunal, Jhajjar in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Tribunal') for enhancement of compensation granted to the claimants to the tune of Rs.21,73,920/- (i.e half of Rs.43,47,840/- on account of contributory negligence of the deceased) along with interest @6% per annum, on account of death of Amit Kumar in a Motor Vehicular Accident, occurred on 15.10.2017 as well as making appellant liable for contributory negligence.

2. Brief facts of the case are that on 15.10.2017, after giving greetings to his sister Nitu at Village Uhlana (Gohana) on Diwali festival, Amit Kumar (since deceased) was returning to his home in his Swift Car No.HR-63C-7721 which was



being driven by him. At about 9.30 pm, when he reached near Bus Stop of Village Rudiawas, he met with an accident due to the rash and negligent driving of the Truck bearing registration No. HR-19E-4095 (hereinafter called as the offending Truck) which came from the opposite side. Some unknown person informed the petitioners about the accident in question and then, Sutar Singh, the brother of petitioner No.4 Dharambir alongwith other family members went to the spot and found the car of the deceased as well as the offending Truck in damaged condition and thereafter, they reached General Hospital, Jhajjar where they came to know that Amit Kumar had succumbed to the injuries suffered by him in the accident. Accordingly, Sutar Singh got lodged FIR No.273 dated 16.10.2017 under Sections 279 and 304-A of IPC of Police Station, Salhawas.

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

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

“1. Whether the accident, resulting into the death of Amit Kumar son of Dharambir, had taken place on 15.10.2017 at about 9.30 pm near the bus-stand of Village Rudiawas, District Jhajjar due to rash and negligent driving of Truck bearing registration No.HR-19E-4095 by respondent No. 1, as alleged? OPP.

2. If Issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP.

3. Whether the petition is not maintainable in the present form.OPR.



4. Whether respondent no.1 was not holding a valid and effective driving license on the date of alleged accident, if so, its effect?

OPR-3.

5. Whether respondent no.2 had contravened the terms and conditions of insurance policy, if so, its effect? OPR-3.

6. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has awarded compensation to the claimants/appellants. However, 50% of the compensation was awarded to the appellants/claimants on account of contributory negligence of the deceased. Hence the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. The learned counsel for the claimants-appellants contends that the amount assessed by the learned Tribunal is on the lower side and deserves to be enhanced. He further contends that the learned Tribunal has erred in law in holding accident occurred as a result of contributory negligence of the deceased (50% of the driver of the offending vehicle and 50% of deceased-Amit Kumar). Therefore, he prays that the present appeal be allowed and contributory negligence be set aside and amount be enhanced.

7. Per contra, learned counsel for respondents, however, vehemently argues that the award has rightly been passed towards contributory negligence and the amount of compensation, as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.



9. Before proceeding further, it is relevant to reproduce the relevant portion of the award, which reads as under:-

“ISSUE NO.1:

10. In order to prove this issue, petitioner No.1 Smt.Dipika Kumari, herself has appeared in the witness-box as PW1 and tendered her affidavit Ex.PW1/A wherein she has reiterated the averments as pleaded by them in the petition. She has also placed on record copies of FIR as Ex.P1, charge-sheet as Ex.P2, challan as Ex.P3 and post mortem report of her husband Amit Kumar as Ex.P4.

11. Apart from this, petitioners have also examined PW2 Arvind Kumar, the alleged eye-witness of the accident in question, has tendered in evidence his affidavit Ex.PW2/A wherein he has deposed the manner in which the accident in question took place. He has specifically stated that on 15.10.2017, he was coming from Bahujhorli to Rohtak in his car No.HR-12U-7071 and at about 9/9.30 pm when he reached in the area of Village Rudiawas, the offending Truck, which was being driven by respondent No. 1 in a rash and negligent manner, at a very high speed and zig-zag manner, was going ahead of him and all of sudden, the offending Truck went on the wrong side and dashed against the car of the deceased. Thereafter, respondent No.1 fled away from the spot after leaving the offending Truck there. He (PW2) stopped his car and after seeing the serious condition of the deceased, he called the police and the ambulance which came at the spot and then, Amit Kumar (deceased) was shifted to the hospital.

12. On the other hand, respondent No. 1-Suresh Kumar himself has appeared in the witness-box as RW1 and tendered his affidavit



Ex.RW1/A wherein he has stated that on 15.10.2017, he was driving the offending Truck at moderate speed and by observing the traffic rules and the accident in question took place due to the sole rash and negligent driving of the Car by deceased himself, who dashed his car in the offending Truck.

13. *It is not in dispute that the accident in question took place on 15.10.2017 at about 9.00/9.30 pm and that FIR (Ex.P1) was got lodged by Sutar Singh, the uncle of the deceased, who had come at the spot after the accident against the driver of the offending Truck. It is also not in dispute that in the alleged accident, deceased Amit Kumar sustained multiple injuries on his person and due to which, he died on the way to General Hospital, Jhajjar. A perusal of report under Section 173 Cr.P.C(Ex.P3) reveals that in this case, F.I.R. (Ex.P1) was got lodged by Sutar Singh mentioning the registration number of the offending Truck 18 With Police Station Salhawas and thereafter, police conducted the Investigation and found the complicity of respondent no. 1 Suresh Kumar as driver of the offending Truck and filed the Challan against respondent no.1 Suresh Kumar, who is facing criminal trial for causing the accident in question. Moreover, it is settled principle of law that filing of Challan Against respondent no I itself is no ground that he was solely rash and Negligent for causing accident. It is settled principle of law that Motor Accident Claims Tribunal is required to see the evidence which has been Produced before it.*

14. *To prove his innocence, respondent no.1-Suresh Kumar, while appearing in the witness-box as RW1, has admitted the factum of*



accident in question, but he has stated that the accident in question is the result of rash and negligent driving of the car by deceased himself, who came on the wrong side and struck against the offending Truck. Admittedly, Sutar Singh, who was the lodger of FIR (Ex.P1), had neither witnessed the accident in question nor examined in this petition by the petitioners. The case of the petitioners is that PW2 Arvind Kumar had witnessed the accident in question and this witness, after the accident, had intimated the police as well as to the family members of the deceased about the manner in which the accident in question took place and this witness when appeared in the witness-box as PW2, has fully supported the case of the petitioners and categorically testified that the accident in question, resulting into the death of Amit Kumar, took place due to rash and negligent driving of the offending Truck by respondent No.1 Suresh Kumar. However, there is no evidence which could suggest that PW2 Arvind Kumar was the same person, who had seen the accident in question and then, intimated the police as well as the family members of the deceased about the said accident because a perusal of the challan (Ex.P3) would show that the name of PW2 Arvind Kumar has not been cited as witness in the list of witnesses of said criminal case. Moreover, there is no mention in the challan (Ex.P3) that said Arvind Kumar had made any call to the police intimating about the accident in question nor his name has been mentioned in the doctor's ruka (Ex.R9) that he had brought the deceased to the hospital. Thus, his presence at the place of accident is doubtful. Not only this, the Investigating Officer of the criminal case was the best witness, who can very well tell about



the fact that how he came to the conclusion that the accident in question took place due to sole rash and negligent driving of the offending Truck by respondent No.1 Even if it is admitted that PW2 Arvind Kumar had witnessed the accident in question, even then PW2 Arvind Kumar has stated during his cross-examination that it was head on collision In Lachhmi and others versus Ranjit Singh, 1995(2) P.L.R.308, Hon'ble Punjab and Haryana High Court in an appeal in which an accident had occurred due to rash and negligent driving of the deceased who was driving scooter as well as driver of the Car, has held that if the driver of both the vehicles had taken necessary precautions, accident could have been avoid and hold the driver of both the vehicle equally responsible for the accident. Similarly in Bhai Shamsher Singh (died) & others versus Punjab State through General Manager, Punjab Roadways, Moga, 1993(1) P.L.R. 757 (Punjab & Haryana) the case was of head on collision and our own Hon'ble High Court has held the Bus driver and Car driver were equally liable for causing the accident.

15. In the light of foregoing discussion, it is held that there is cogent and sufficient evidence on the file to prove that the accident in question, resulting into the death of Amit Kumar, took place due to contributory negligence on the part of respondent No. 1-Suresh Kumar as well as on the part of deceased Amit Kumar himself and therefore, they both were equally responsible for causing the accident in question. Resultantly, this issue is partly decided in favour of the petitioners and is partly decided against them accordingly.”

10. A perusal of the impugned award reveals that learned Tribunal has fallen into manifest error in holding that the accident in question occurred due to



contributory negligence of both the drivers of the vehicles involved in the accident.

11. The finding of contributory negligence is not borne out from the evidence on record. PW-2, Arvind Kumar, eye-witness to the occurrence, deposed in clear and unequivocal terms that the offending truck was being driven in a rash and negligent manner and that it came onto the wrong side of the road and struck the car of the deceased, resulting in head-on collision. His testimony is categorical with respect to the manner of the accident and attributes specific negligence to the driver of the offending truck. Nothing substantial could be elicited in his cross-examination to discredit his version. His deposition inspires confidence and there is no material contradiction so as to render his presence doubtful or his testimony unreliable.

12. Significantly, FIR (Ex.P1) was registered against the driver of the offending truck immediately after the occurrence. Further, the charge-sheet (Ex.P2) and report under Section 173 Cr.P.C. (Ex.P3) demonstrate that, upon completion of investigation, the police found sufficient material to prosecute the driver of the offending truck for offences arising out of rash and negligent driving.

13. On the other hand, apart from stepping into the witness box and making bald denial, the driver of the offending truck did not adduce any independent evidence, either oral or documentary, to substantiate the plea that the accident occurred due to the negligence of the deceased. The Insurance Company also failed to lead any cogent evidence in support of the plea of contributory negligence. A mere assertion, unsupported by material evidence, cannot form the foundation of a finding reducing the lawful compensation payable to the claimants.



14. It is well settled that the burden to establish contributory negligence lies on the party alleging it. In ***Jiju Kuruvila v. Kunjamma Mohan, 2013 (9) SCC 166***, the Hon'ble Supreme Court held that in the absence of direct or corroborative evidence, it would not be permissible to presume that the driver (s) of both vehicles were equally negligent. The said principle was reiterated in ***Kumari Kiran v. Sajjan Singh, 2015 (1) SCC 339*** wherein it was observed that negligence cannot be inferred on mere conjectures or on the sole ground of a head-on collision without substantive proof.

15. In the present case, the learned Tribunal appears to have presumed contributory negligence primarily on the premise that the accident was head-on collision. Such reasoning is however legally untenable. A head-on collision, by itself, does not necessarily imply negligence on the part of both drivers. In the absence of cogent evidence demonstrating any rash or negligent act on the part of the deceased, the finding of equal responsibility is clearly speculative and contrary to the settled principles of law.

16. It is further noteworthy that no specific issue with regard to contributory negligence was framed by the learned Tribunal. In ***M. Nithya v. SBI General Insurance Co. Ltd.***, arising out of ***SLP (Civil) No. 833-834 of 2023***, the Hon'ble Supreme Court has held that where no issue on contributory negligence has been framed, it would be impermissible to reduce compensation on such a plea. The ratio of the said judgment squarely applies to the facts of the present case, rendering the finding of contributory negligence procedurally and substantively unsustainable.

17. In view of the foregoing discussion and the settled legal position, the finding recorded by the learned Tribunal attributing contributory negligence to the



deceased is perverse, being based on conjectures rather than evidence, and thus cannot be sustained in the eyes of law.

18. Consequently, it is held that the accident in question occurred solely due to the rash and negligent driving of the offending truck by respondent No.1, and the claimants are entitled to compensation on that basis without any deduction towards alleged contributory negligence.

19. Adverting now to the compensation as awarded by learned Tribunal, the same is decided as under:-

SETTLED LAW ON COMPENSATION

20. Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation and Another** [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living



expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

** * * * **

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-



14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

21. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

*“52. As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in *Rajesh*². It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh* refers to *Santosh Devi*, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said*



heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * *

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was



below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”



22. Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

*“21. A Constitution Bench of this Court in **Pranay Sethi**² dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern



jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi². In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.

23. A perusal of the record reveals that learned Tribunal has rightly assessed the income of the deceased as Rs.21000/- per month and the same is hereby affirmed. It further reveals that the learned Tribunal has rightly awarded future prospects and deducted 1/3rd towards personal expenditure and rightly applied multiplier of 17. However, the learned Tribunal has granted meagre amount under the heads of loss of consortium. Therefore, the award requires indulgence of this Court.

CONCLUSION

24. 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 11.07.2019 is modified accordingly. The appellants-claimants are entitled to enhanced amount of compensation as per the calculations made here-under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.21000/-
2	Future prospects @ 40%	Rs.8400/- (40% of 21000)
3	Deduction towards personal expenditure 1/3rd	Rs.9800/- (29400 X 1/3rd)
4.	Total Income	Rs.19600/-(29400-9800)
5	Multiplier	17
6	Annual Dependency	Rs.39,98,400/- (19600X12X17)
7	Loss of Estate	Rs.15,000/-
8	Funeral Expenses	Rs.15,000/-
9	Loss of Consortium Filail : Rs. 40,000/-x2 Spousal : Rs. 40,000/-x1 Parental : Rs. 48,400/-x1	Rs.1,60,000/-
10	Total Compensation	Rs.41,88,400/-
	Deduction Amount Awarded by the Tribunal on account of 50% contributory negligence of the deceased	Rs.21,73,920/-
11	Enhanced amount	Rs.20,14,480/-(4188400-2173920)



25. 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 Nadu 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.

26. Respondent-Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from the receipt of copy of this judgment. The Tribunal is directed to disburse the enhanced amount of compensation along with interest in the accounts of the claimants/appellants, as per award dated 11.07.2019. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

27. Pending applications, if any, also stand disposed of.

25.02.2026

Gaurav Arora

(SUDEEPTI SHARMA)
JUDGE

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