



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.313 of 2019 (O&M)

SUBHASH CHANDER ...Appellant
Vs
SANT LAL AND ORS. ...Respondents

1	The date when the judgment was reserved	23.02.2026
2	The date when the judgment is pronounced	23.03.2026
3	The date when the judgment is uploaded on the website	23.03.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Anil Kumar Gahlawat, Advocate
for the appellant.

Mr. Raghunath Chauhan, Advocate for
Mr. J.K. Sehrawat, Advocate for respondent No.2.

Mr. Sandeep Suri, Advocate for respondent No.3.

HARKESH MANUJA, J.

CM-1198-CII-2019 & CM-1199-CII-2019

These are the applications seeking condonation of delay of 279 and 8 days in re-filing and filing the appeal.

Notice of the applications was issued vide order dated 22.07.2019.

Upon hearing the learned counsels for the parties and considering the averments made in the applications, which are duly supported by affidavits, the prayer is allowed as sufficient cause has been made out. As such, the delay of 279 and 8 days in re-filing and filing the present appeals are thus, hereby condoned.

MAIN CASE

1. By way of present appeal, challenge has been laid to an award dated 05.08.2017 passed by the learned Motor Accident Claims Tribunal, Rohtak (for

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brevity, “the Tribunal”), whereby a sum of Rs.4,45,000/- was awarded as compensation to the appellant/claimant along with interest @ 9% per annum from the date of institution of claim petition till its actual realization on account of death of Sukhbir, after holding that the deceased was contributory negligent to the extent of 50%.

FACTS

2. A claim petition came to be filed before the learned Tribunal, praying for grant of compensation to the tune of Rs. 50,00,000/- (Rupees fifty lakhs only), on account of death of Sukhbir in a vehicular accident which took place on 03.11.2016 while alleging rash and negligent driving of respondent No.1-driver.

3. Upon consideration of the pleadings and appraisal of the evidence adduced by the parties, the learned Tribunal concluded that the accident in question occurred due to the rash and negligent driving of the truck bearing registration No. HR-56A-0067. However, recorded that the deceased, Sukhbir, collided with the said truck from the rear side and did not exercise due care and caution, he was also held to be contributory negligent to the extent of 50%.

4. Being aggrieved of the award dated 05.08.2017 passed by the learned Tribunal, the present appeal was preferred by the appellant/claimant for enhancement of compensation as well as for assailing the finding whereby the deceased was held guilty of contributory negligence to the extent of 50%. Facts, as specified in the claim petition, about the manner of the accident and the issue regarding negligence of the driver recorded in favour of the appellants/claimants by the learned Tribunal, being not under challenge, are not being repeated here for the sake of brevity.



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ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE APPELLANT/CLAIMANT.

5. Learned counsel for the appellant contended that the learned Tribunal erred both on facts and in law while assessing the compensation and while attributing contributory negligence to the deceased. It was submitted that the evidence on record, including the testimony of the eye-witness Sameer (PW-1) and the FIR registered under Sections 279, 283, 304-A IPC, clearly established that the offending truck bearing registration No. HR-56A-0067 was negligently parked in the middle of the road without any indicator, reflector or parking lights, which directly resulted in the accident. Despite these circumstances, the learned Tribunal wrongly held the deceased to be equally negligent, ignoring the settled legal position that parking a vehicle on the metalled portion of the road without proper warning signals constitutes negligence on the part of the driver of such vehicle. Learned counsel further argued that the Tribunal also assessed the income of the deceased on a much lower side at Rs.7,500/- per month despite the unrebutted evidence showing that the deceased, a young electrician aged about 22 years, was earning substantially more. He submitted that the Tribunal failed to grant future prospects and filial consortium in accordance with the principles laid down by the Hon'ble Supreme Court, thereby resulting in inadequate compensation. Hence, it was prayed that the impugned award be suitably modified by setting aside the finding of contributory negligence and by enhancing the compensation payable to the appellant.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR RESPONDENT No.2/OWNER.

6. Per contra, learned counsel for respondent No.2/owner supported the Award and submitted that the deceased himself struck the truck from the rear side,

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which clearly indicates lack of due care and caution on his part while driving the motorcycle; thus, the finding of contributory negligence was justified. Learned counsel submitted that the income of the deceased was rightly assessed in the absence of any cogent documentary evidence regarding his alleged occupation or higher earnings. It was also argued that the learned Tribunal granted compensation by applying the appropriate multiplier and also under the conventional heads, therefore, no further enhancement was warranted. On these premises, learned counsel prayed that the present appeal, being devoid of merit, deserved to be dismissed.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR RESPONDENT No.3/INSURANCE COMPANY.

7. Learned counsel for respondent No.3/Insurance Company argued on the same lines as respondent No.2/owner and supported the impugned award passed by the learned Tribunal. It was contended that the finding regarding contributory negligence recorded by the learned Tribunal was based on proper appreciation of evidence available on record and did not warrant any interference by this Court. Learned counsel further submitted that the compensation awarded was just and reasonable in the facts and circumstances of the case and, therefore, the present appeal seeking enhancement of compensation was liable to be dismissed.

DISCUSSION AND REASONING

8. I have heard learned counsels for the parties and perused the paper-book of the case. I find force in the arguments advanced by learned Counsel for the appellant.

**QUESTION OF CONTRIBUTORY NEGLIGENCE**

9. Upon a careful consideration of the material available on record, this Court finds merit in the contention raised on behalf of the appellant with regard to the finding of contributory negligence recorded by the learned Tribunal. A perusal of the site plan (Ex. R2) clearly reveals that the offending truck was parked on the *pucca* portion of the road. Moreover, there is nothing on record to show that any parking lights, reflectors or warning indicators had been placed or switched on to alert the oncoming traffic about the stationary vehicle. It is also an admitted position that the accident occurred at about 9:30 p.m., when visibility would naturally be reduced. In such circumstances, parking a heavy vehicle on the metalled portion of the road without any warning signal amounts to a clear act of negligence on the part of the driver of the offending vehicle. Once this factual position stands established from the record, the mere fact that the motorcycle of the deceased struck the truck from behind cannot, by itself, lead to an inference of contributory negligence. Consequently, the finding recorded by the learned Tribunal attributing 50% contributory negligence to the deceased cannot be sustained and the same is hereby set aside.

QUESTION OF INCOME ASSESSED

10. In the present case, as far as the income of the deceased is concerned, the Tribunal assessed the same @ Rs.7,500/- per month on a notional basis in the absence of any documentary evidence, though the claimant had asserted that the deceased was earning Rs.25,000/- per month while working as an electrician. Since, the documentary evidence, in the form of ledger or income tax records, has not been placed on record to substantiate the claim of income of Rs.25,000/- per



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month, therefore, this figure cannot be accepted by the Court on its face value. Nevertheless, there is also no material on record to suggest that the deceased was pursuing studies so as to justify the assessment of notional income on the parameters applicable to children. In this situation, observations made by the Hon'ble Apex Court in case of "Chandra @ Chanda @ Chandararam vs. Mukesh Kumar Yadav & Ors.", reported as (2022) 1 SCC 198, held that in the absence of proof of income, the minimum wage notification can be a yardstick but at the same time cannot be absolute one to fix the income of the deceased and some guesswork is required to be done to assess the income. Relevant excerpt thereof is reproduced hereunder:-

".....In the 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 the 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 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. 15,000/- per month....."

10.1 Considering the facts of the present case, wherein it is the case of the claimant/appellant that the deceased was working as an electrician and earning Rs.25,000/- per month, it cannot be denied that the deceased was having a reasonable and steady source of income, sufficient to maintain himself and contribute to his family. Considering the age, nature of work, and prevalent minimum wages applicable to skilled/unskilled labourer during the relevant period,



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this Court reasonably assesses the income of deceased @ Rs.10,650/- per month, which shall form basis for computation of compensation.

QUESTION REGARDING FUTURE PROSPECTS, MULTIPLIER AND DEDUCTION TOWARDS PERSONAL EXPENSES.

11. In the present case, the deceased- Sukhbir was 22 years at the time of his death, which stood duly proved and accepted by the learned Tribunal. However, learned Tribunal fell in error in not granting any addition towards future prospects. In view of the law laid down by the Hon'ble Supreme Court in "National Insurance Company Co. Ltd. vs. Pranay Sethi & Ors. (2017) 16 SCC 680", an addition of 40% towards future prospects is to be made in the income of deceased Sukhbir.

11.1 The Hon'ble Supreme Court in the case of "Smt. Sarla Verma and others vs. Delhi Transport Corporation and another," reported as 2009(3) RCR (Civil) 77, held that in case the deceased was a bachelor and the claimants were the parents, the deduction follows a different principle and with regard to bachelors, 50% needs to be deducted as personal and living expenses. Relevant para of the judgment is culled out as under:-

"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In this 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 dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be dependent, and 50% would be treated as the personal and living



expenses of the bachelor 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.”

In the present case, since the appellant is the sole surviving claimant and even the mother has expired, there being no other dependent, a deduction of 50% towards personal and living expenses of the deceased is made.

QUESTION OF COMPENSATION UNDER CONVENTIONAL HEADS

12. Furthermore, in view of the judgment of the Hon’ble Apex Court in *Smt. Sarla Verma’s case (supra)*, *Pranay Sethi’s case (supra)*” and *“United India Insurance Co.Ltd. vs. Satinder Kaur”*, reported as *(2021) 11 SCC 780*, compensation awarded under conventional heads are also required to be assessed accordingly. Appellant/claimant is thus, held entitled for Rs.18,000/- as compensation under funeral head and Rs.18,000/- towards loss of estate. Loss of consortium is assessed to the tune of Rs.48,000/- (Rs.48,000 x 1) as the appellant being father of deceased is also entitled for filial consortium.

CONCLUSION

13. In view of the discussion made hereinabove, the appellant/claimant is held entitled for the grant of compensation in the following manner:-

S.No.	Nature	Amount (in Rs.)
1.	Annual Income of Deceased	1,27,800/-
2.	Deduction (50%)	63,900/-
3.	Net Income (Rs. 1,27,800 – Rs. 63,900)	63,900/-
4.	Future Prospects (40%)	25,560/-
5.	Total Income (Rs. 63,900 + Rs. 25,560)	89,460/-
6.	Loss of Income after applying multiplier of 18 as per the age of 22 years (89,460 x 18)	16,10,280/-



7.	Loss of estate	18,000/-
8.	Funeral Expenses	18,000/-
9.	Loss of Consortium (48,000 x 1)	48,000/-
10.	Total compensation	16,94,280/-
11.	Amount Awarded by the Tribunal	4,45,000/-
12.	Enhanced Compensation	12,49,280/-

14. In the view of the observations made by the Hon’ble Supreme Court in “Smt. Supe Dei and others vs. National Insurance Company Limited and other, reported as (2009) (4) SCC 513 approved in a subsequent judgment titled as “Puttamma and others vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443, the grant of interest @ 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization is justified. In case the said amount is not paid within three months, the same shall be payable thereafter along with 12% interest from the expiry of period of three months from today. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

15. In view of the aforesaid modification, the present appeal stands disposed of. Pending miscellaneous application(s), if any, shall also stand disposed of.

March 23, 2026
Atik

(HARKESH MANUJA)
JUDGE

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