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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-7147-2019 (O&M)**
Date of Decision : 29.01.2026

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

Versus

Usha Rani & Ors ... Respondent(s)

2. **FAO-7150-2019 (O&M)**

National Insurance Co Ltd ... Appellant(s)

Versus

Usha Rani & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Anjali Goyal, Advocate for
Dr. D.R. Bansal, Advocate for the appellant.

Mr. A.K. Khubbar, Advocate for respondent Nos.1 to 3.

ALKA SARIN, J. (Oral)

1. This order shall dispose off the two above-captioned appeals being **FAO-7147-2019** and **FAO-7150-2019** filed by the appellant-Insurance Company challenging the impugned award dated 02.09.2019 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as 'Tribunal'). The parties are being referred to as Insurance Company, claimants and driver-cum-owner of the offending truck for the sake of clarity.

2. Brief facts relevant to the present *lis* are that two claim petitions (being **MACT Nos.144 and 145 of 2016**) were filed on account of death of Sushil Kumar and his wife - Manisha - who were travelling from village

Aurangabad to Arun Gupta Hospital, Yamuna Nagar on a motorcycle bearing registration No.HR-01-5119 on 23.02.2016. Sushil Kumar was riding the said motorcycle at a moderate speed and in a controlled manner. Parvesh Kumar was following them in his three-wheeler. At about 04.00 pm, when they reached near T Point of Village Isopur, a truck bearing Registration No.HR58-A-3396 (hereinafter referred to as ‘offending truck) being driven by the driver at a high speed and in a rash and negligent manner, came from the opposite side and hit the motorcycle after coming from the wrong side. Because of the impact, both Sushil Kumar and Manisha fell down and the motorcycle was dragged with the offending truck for a distance. Both received multiple grievous injuries. Manisha died on her way to the hospital and Sushil Kumar was referred to PGI Chandigarh after providing first aid. However, while on the way to PGI, Sushil Kumar also succumbed to his injuries. An FIR No.35 dated 23.02.2016 was registered under Sections 279, 337, 304-A, 427 of the Indian Penal Code, 1860 at Police Station Sadar, Yamuna Nagar.

3. The driver-cum-owner of the offending truck (respondent No.4 herein) filed his written statement and pleaded that no accident had taken place and a false case has been registered. The Insurance Company (the appellant herein) also filed its written statement raising various preliminary objections. On merits, the accident was denied. It was the stand taken that it was not liable to pay any compensation.

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

> 1) Whether the accident resulting into death of Sushil Kumar and Manisha, took place on 23.2.2016 on account of rash and negligent driving of respondent No.1 Baljeet Singh while driving

truck No.HR58-A-3396 ? OPP

2) If issue No.1 is proved, to what amount of compensation petitioners of both the respective claim petitions are entitled to and from whom ? OPP

3) Whether the respondent No.1 has violated the terms and conditions of insurance policy, as he was not holding a valid and effective Driving Licence, if so, to what effect ? OPR

4) Relief.

5. The Tribunal vide the impugned award dated 02.09.2019 had awarded the following compensation :

Compensation on account of death of Sushil Kumar		
Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	₹7,996/-
2	Deduction - 1/3rd	₹5,331/- [₹7,996 - ₹2,665]
3	Annual Income	₹63,972/- [₹5,331 x 12]
4	Future Prospects - 40%	₹89,560/- [₹63,972 + ₹25,588]
5	Multiplier - 17	₹15,22,533/- [₹89,560 x 17]
6	Loss of estate	₹15,000/-
7	Funeral expenses	₹15,000/-
8	Loss of consortium	₹40,000/-
	Total Compensation	**₹15,92,533/-**
	Interest	**7.5%**

Compensation on account of death of Manisha		
Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	₹7,996/-
2	Deduction - 1/3rd	₹5,331/- [₹7,996 - ₹2,665]
3	Annual Income	₹63,972/- [₹5,331 x 12]
4	Future Prospects - 40%	₹89,560/- [₹63,972 + ₹25,588]
5	Multiplier - 17	₹15,22,533/- [₹89,560 x 17]
6	Loss of estate	₹15,000/-
7	Funeral expenses	₹15,000/-
8	Loss of consortium	₹40,000/-
	Total Compensation	**₹15,92,533/-**
	Interest	**7.5%**

6. Aggrieved by the same, two appeals being **FAO-7147-2019** and **FAO-7150-2019** have been preferred by the Insurance Company.

7. Learned counsel for the Insurance Company would contend that no eyewitness had appeared in the present case and that PW1 who had appeared was not an eyewitness as he reached the spot after five minutes of the accident and in the absence of any eye-witness having been produced, the claim petitions ought to have been dismissed. It is further the contention of the learned counsel that it was a case of contributory negligence as the vehicles met with a head-on collision. Learned counsel has further contended that the driving licence in the present case was found to be fake and, hence, the Insurance Company ought to have been exonerated.

8. *Per contra* learned counsel for the claimants would contend that in the present case the brother of the deceased Sushil Kumar, who appeared in the witness box as PW1, was following him on the date of accident i.e. 23.02.2016 on his three-wheeler as the son of the deceased Sushil Kumar was admitted in Arun Gupta Hospital, Yamuna Nagar. The said witness clearly deposed that he reached the accident site within five minutes of the accident and despite the cross-examination, nothing could be elicited from the said witness. Learned counsel has further pointed out to the site plan which has been appended by the Insurance Company as Annexure A1/T which was produced in the criminal case wherein it was clearly shown that the motorcycle on which the deceased were travelling was found under the offending truck. Learned counsel has further contended that in the present case it is the offending truck which came from the wrong side of the road and in any case, in the absence of any evidence having been led to show that this was a case of contributory negligence and in the absence of any issue having been

framed, it cannot be said that it was a case of contributory negligence. Learned counsel has further contended that the issue of the driving licence was dealt with by the Tribunal and it was found that Rakesh Kumar – Surveyor, who appeared in the witness box as RW1, stated that he had never visited the RTA office Nagaland and also admitted that the driving licence had been renewed from the RTA Patiala. Learned counsel for the claimants has further contended that though no appeal has been preferred by the claimants however this Court under Order XLI Rule 33 of the Code of Civil Procedure, 1908 is empowered to make or pass any such order as required notwithstanding that an appeal or cross-objections have not been preferred by the claimants. Learned counsel for the claimants states that in the claim petition filed on account of death of Manisha, the income of the deceased - Manisha - has been assessed on the lower side inasmuch as she was a homemaker and her income ought to have been assessed as ₹9,233/- per month which was the minimum wage for a skilled worker at the time of the accident. In support of his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Kirti & Anr. vs. Oriental Insurance Company Ltd. [2021(1) RCR (Civil) 478]**. It has further been contended that the compensation awarded to the parents and minor child on account of death of Sushil Kumar and to the minor child on account of death of Manisha under the conventional heads as well as under the head 'loss of consortium' is not in accordance with the law laid down by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680], Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

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

10. In the present case the argument of the learned counsel for the Insurance Company that no eyewitness had appeared and that PW1 who had appeared was not an eyewitness as he reached the spot after five minutes of the accident, cannot be accepted. The offending truck was found at the spot and the motorcycle was stuck under the truck. It is a case of *res ipsa loquitur* i.e. the thing speaks for itself. Even otherwise, PW1 had clearly stated that he was following the deceased on his three-wheeler and had reached the accident site within a period of five minutes of the accident having taken place. Moreover, the approach in examining the evidence in accident claim cases is not to find fault with non-examination of best eyewitness in the case but to analyze the evidence on record to ascertain whether that is sufficient to answer the happening of the accident on the touchstone of preponderance of probabilities. Reliance can be placed upon the judgment of the Hon'ble Supreme Court in the case of **Rama Murti vs. National Insurance Company Ltd. [Civil Appeal No.4612 of 2017 decided on 30.03.2017]**. Accordingly, the argument of the learned counsel for the Insurance Company stands rejected.

11. The argument of the learned counsel for the Insurance Company that it was a case of contributory negligence also deserves to be rejected inasmuch as no such plea was raised by the Insurance and neither any issue qua contributory negligence was framed nor any evidence was led by it before the Tribunal to even remotely suggest that it was a case of contributory negligence. Further, PW1 - Parvesh Kumar - who had appeared on behalf of the claimants, was not even given a suggestion by the Insurance Company that the deceased - Sushil Kumar - while riding the motorcycle was at fault in any

manner. 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]** 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."*

12. 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 accordingly rejected.

13. The argument of the learned counsel for the Insurance Company qua the driving licence being fake also deserves to be rejected on the ground that the Insurance Company failed to examine any witness to prove the letter which is alleged to have been received from RTA Nagaland. Infact, it is an admitted case that the driving licence had been renewed by the RTA Patiala. RW1 - Rakesh Kumar - Surveyor had categorically admitted that the licence could not have been renewed by the RTA Patiala without obtaining a no objection from the RTA Nagaland. In view thereof, it cannot be said that the driving licence was fake. Accordingly, in the absence of any cogent evidence having been led by the Insurance Company, the argument as regards fake licence also stands rejected.

14. The argument of the learned counsel for the claimants that despite there being no appeal, this Court is empowered under Order 41 Rule 33 CPC to pass any order as may be required, deserves to be accepted. Hon'ble Supreme Court in the case of **Surekha & Ors. vs. Santosh & Ors. [2021(1) PLR 795]** has held as under :

> *"3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants".*

15. In view of the order in the case of **Surekha** (supra) and especially in the present case where a minor child lost both his parents in the accident, though no appeal has been preferred by the claimants, however, in order to complete justice to the claimants, this Court deems it appropriate to invoke

the provisions of Order 41 Rule 33 CPC to enhance the compensation. The argument of the learned counsel for the claimants that the income of the deceased - Manisha - has been assessed on the lower side deserves to be accepted. In the present case the Tribunal has assessed the income of the deceased, who was admittedly a homemaker, as ₹7,996/- per month. A homemaker does much more than a single person can do. Infact, a homemaker performs multiple functions in the house i.e. cooking for the family, cleaning the house, washing clothes and utensils, the list is endless. A homemaker is also a caretaker of her children as well as all the members of the house. In the case of **Kirti** (supra), Hon'ble Supreme Court while emphasizing upon the contribution made by a homemaker and the services rendered by a woman in a household observed that there can be no exact calculation or formula that can ascertain the actual value provided by a homemaker gratuitously. In order to streamline the calculation of notional income for homemakers and the grant of future prospects with respect to them for the purposes of assessing the compensation, the following principles were laid by Hon'ble Supreme Court in the case of **Kirti** (supra) :

> *"42. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:*
>
> > *a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.*
> >
> > *b. Taking into account the gendered nature of housework, with an overwhelming percentage of*

> *women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.*
>
> *c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.*
>
> *d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.*
>
> *e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation."*

16. The deceased in the present case was admittedly more than 25 years of age at the time of the accident and was admittedly a homemaker. The minimum wage for a skilled worker prevailing at the time of the accident was ₹9,233/- per month and accordingly the income of the deceased - Manisha - is assessed as ₹9,233/- per month.

17. The argument of the learned counsel for the claimants that the compensation awarded to the parents and minor child on account of death of Sushil Kumar and awarded to minor child on account of death of Manisha under the conventional heads as well as under the head 'loss of consortium' is not 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)* deserves to be accepted. Hence, in MACT No.145 of 2016 the claimants being parents and minor child of the deceased would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses and they would also be entitled to ₹48,000/- each (₹40,000 + 20% increase) towards loss of consortium. In MACT No.144 of 2016 the claimant being minor child of the deceased would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses and he would also be entitled to ₹48,000/- (₹40,000 + 20% increase) towards loss of consortium. The compensation awarded by the Tribunal on the other heads in both the claim petitions is maintained. Accordingly, the reworked compensation is as under :

Compensation on account of death of Sushil Kumar		
Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	₹7,996/-
2	Annual Income	₹95,952/- [₹7,996 x 12]
3	Deduction - 1/3rd	₹63,968/- [₹95,952 - ₹31,984]
4	Future Prospects - 40%	₹89,556/- [₹63,968 + ₹25,588]
5	Multiplier - 17	₹15,22,452/- [₹89,556 x 17]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 1] (ii) Filial [₹48,000/- x 2]	 ₹48,000/- ₹96,000/- (Total ₹1,44,000/-)
	Total Compensation	**₹17,02,452/-**

Compensation on account of death of Manisha		
Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	₹9,233/-
2	Annual Income	₹1,10,796/- [₹9,233 x 12]

3	Deduction - 1/3rd	₹73,864/-	[₹1,10,796 - ₹36,932]
4	Future Prospects - 40%	₹1,03,410/-	[₹73,864 + ₹29,546]
5	Multiplier - 17	₹17,57,970/-	[₹1,03,410 x 17]
6	Loss of estate	₹18,000/-	
7	Funeral expenses	₹18,000/-	
8	Loss of consortium (i) Parental [₹48,000/- x 1]	₹48,000/-	
	Total Compensation	**₹18,41,970/-**	

18. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

19. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [AIR 2025 SC 1713 = 2025 SCC OnLine SC 567]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimants within six weeks from today and the apportionment thereof shall be as per the percentage directed by the Tribunal and the share of the minor claimant shall be kept in an FDR. The particulars of the bank account(s) alongwith the requisite documents(s) in support thereof shall be furnished by the claimant-appellants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

20. In view of the above discussion, the award passed by the Tribunal is modified and the present appeals filed by the Insurance Company are accordingly dismissed. Pending applications, if any, also stand disposed off.

29.01.2026
Yogesh Sharma

(ALKA SARIN)
JUDGE

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