IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1563-2025(O&M)
Date of decision: 16.04.2026

Smt. Vandana Virmani & Others

...Appellant(s)

Vs.

Rahul Yadav & Others

...Respondent(s)

***

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Shekhar Verma, Advocate
Mr. Jagraj Singh, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No.3/Insurance Company.

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NIDHI GUPTA, J.

CM-4850-CII-2025

This is an application under Section 5 of Limitation Act for condonation of delay of 302 days in filing the appeal.

It is inter alia submitted by learned counsel for the applicants that the delay of 302 days has been occasioned on account of the fact that there is a dispute in the family and the original documents of the case were with the father-in-law of the appellant No.1 and filing of appeal was delayed.

It is mentioned in Para 4 of the present application that:-

"4. Father-in-law of the appellant no.1 tried to introduce the married sister-in-law as the dependent of the deceased and in this regard, without the knowledge of the Appellants, he

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impleaded married sisters-in-law of Appellant No.1 for claiming the awarded amount in the District Court, Gurugram."

It is accordingly prayed that the delay of 302 days in filing the present appeal be condoned.

Heard.

The above cited reason does not constitute sufficient cause to condone extraordinary delay of 302 days in filing the present appeal. It is cardinal principle of law that delay of each day has to be explained. In this regard, reliance may be placed upon recent judgment of Hon'ble Supreme Court in **"Shivamma (Dead) by LRs Vs. Karnataka Housing Board & Others" Civil Appeal No.11794 of 2025 decided on 12.09.2025.** As such, no ground is made out for condoning inordinate delay of 302 days. Present application accordingly stands **dismissed**.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.1,57,77,000/- awarded by the Motor Accident Claims Tribunal, Gurugram (hereinafter 'the learned Tribunal') vide Award dated 17.10.2023 passed in MACP-47 dated 29.01.2016 filed under Section 166 of Motor Vehicles Act (hereinafter "the Act"). The 5 claimants are the 41-year-old widow, 14-year-old daughter, 4-year-old son, 79-year-old father and 73-year-old mother of deceased Jatin Virmani, who

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was 43 years old at time of accident. Present appeal has been filed by claimants No.1 to 3 only.

2. Brief facts of the case are that the ld. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the deceased Jatin Virmani had died due to the injuries suffered by him in a motor vehicular accident that took place on 03.11.2015 due to the rash and negligent driving of Vehicle bearing registration No.HR-26-CB-8577 (hereinafter "the offending vehicle") being driven by respondent No.1, owned by respondent No.2, and insured by respondent No.3. The said compensation has been awarded along with interest @ 6% per annum. Respondents were held jointly and severally liable for payment of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation by submitting that income of the deceased has been wrongly assessed. It is submitted that the appellants had duly brought on record the Income Tax Returns of the deceased for the relevant years. Learned Tribunal ought to have assessed income as per the Income Tax Return for the Assessment Year 2015-16 wherein gross income of the deceased was Rs.19,42,844/-; whereas the learned Tribunal has assessed income of the deceased as Rs.17,87,705/- as per the Income Tax Return for the Assessment Year 2014-15. It is contended that therefore, the Tribunal has wrongly assessed income of the deceased.

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4. Moreover, from the Income Tax Returns brought on record by the appellants, it was clear that there was a steady growth in the income of the deceased. Thus, the said increase ought to have been taken into account by the learned Tribunal while assessing the income.

5. It is further submitted that the addition of 30% was liable to be made towards future prospects; whereas the learned Tribunal has mistakenly made an addition of only 25% towards future prospects. It is contended that even the dependency has been wrongly assessed by the learned Tribunal. The Insurance Amount received by the appellants has been wrongly deducted/adjusted by the learned Tribunal. Even consortium amount has been wrongly granted by the learned Tribunal. It is accordingly prayed that the present appeal be allowed; and the impugned Award be modified.

6. Per contra, learned counsel for respondent No.3/insurance company opposes the submissions advanced on behalf of the appellants and submits that the impugned Award suffers from no error; and the present appeal deserves to be dismissed.

7. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

8. It may be pointed out that in respect of the accident dated 03.11.2015, the appellants had previously preferred MACT Petition No.10 of 2016 which had been allowed by the learned Tribunal vide Award dated

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23.11.2016, thereby granting a compensation of Rs.58,47,000/- to the appellants. The said Award had been challenged by the appellants before this Court by way of FAO-1455-2017; which was allowed by this Court vide order dated 31.08.2022; to the effect that finding of the learned Tribunal on issue No.2 was set aside and matter was remanded back to the learned Tribunal to return a finding on issue No.2 afresh after affording two effective opportunities to the parties to lead their evidence. Pursuant to which the present Award dated 17.10.2023 has been passed, thereby awarding compensation of Rs.1,57,77,000/-to the claimants; of which further enhancement is sought on the above grounds.

9. A perusal of record of the case shows that it was the pleaded case of the appellants before the learned Tribunal that deceased was running business of Event Management; and was also Consultant in various Firms and Organisations; and was earning more than Rs.2 lakh per month. To prove their said assertions, the claimants had examined PW7 Manish Luhera, Clerk, Punjab National Bank, New Railway Road, Gurugram who had proved certified copy of Statement of Account No.00712010003220 of deceased from 01.04.2012 to 31.03.2016 as Ex.PW7/C. PW8 Rahul Pandey, MTS, Office of Income Tax Department, Ward 51(1), New Delhi produced Income Tax Record of deceased Jatin Virmani for last 10 years i.e. from Assessment Year 2007-08 to 2016-17 as Ex.PW-8/1. PW-9 Yogesh Aggarwal, BRO, Grade Manger, Axis Bank, MG Road, Gurugram placed on record copy

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of Statement of Account No.912010040154177 of deceased from 01.09.2012 to 31.12.2017 as Ex.PW-9/1; and Statement of Account No.912010064005707 of deceased from 08.12.2012 10 31.12.2015 as Ex. PW-9/3. As per the law, Income Tax Returns for the three years preceding the date of accident have to be taken into account while computing the income of the deceased. Learned Tribunal however, duly took note of the gross income of the deceased for all the Assessment Years from 2007-08 till date. It was noted that income for the Assessment Year 2007-08 was ₹3,21,710/-; for the Assessment Year 2008-09 was ₹6,90,024/-; for the Assessment Year 2009-10 was ₹4,11,890/-; for the Assessment Year 2010-11 was ₹5,16,356/-; for the Assessment Year 2011-12 was ₹13,69,195/-; for the Assessment Year 2012-13 was ₹3,15,733/-; for the Assessment Year 2013-14 was ₹15,92,218/-; for the Assessment Year 2014-15 was ₹17,87,705/-; for the Assessment Year 2015-16 was ₹19,42,844/-; and for the Assessment Year 2016-17 was ₹14,73,555/-.

10. While assessing, learned Tribunal duly took note of the fact that Income Tax Returns of the deceased for the Assessment Year 2016-17 was filed on 30.03.2018 i.e. more than 16 months after the previous Award dated 23.11.2016; whereas Income Tax Returns for the Assessment Year 2015-16 had been filed only on 27.01.2016 i.e. just two days prior to filing of previous MACT Petition No.10 dated 29.01.2016. Accordingly, the learned Tribunal had opined that: -

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> *"14… … …In the opinion of this Court, the ITRs filed after the death of Jatin Virmani cannot be taken into consideration for assessing his income because there is every probability that they were filed while keeping in mind for using the same in the said claim petition. It would be in the fitness of things if, ITR filed by deceased during his lifetime for the Assessment Year 2014-15, wherein his gross total income has been recorded as ₹17,87,705/-, say ₹17,88,000/- (rounded) is taken into consideration."*

11. I find no error in the same. As noted above, as per law, average of Income for the three years preceding the date of accident have to be taken into account while computing the income of the deceased. In the present case, the average of income of the deceased for the preceding 3 years i.e. Assessment Years 2014-15, 2015-16, 2016-17, comes to ₹17,34,701.33. Thus, ld. Tribunal has already taken income of the deceased on the higher side.

12. Further, age of the deceased was determined to be 43 years at the time of accident on the basis of his Account Opening Form (Ex.PW7/B) wherein his date of birth is mentioned as 17.10.1972. Accordingly, the learned Tribunal has correctly made an addition of 25% towards future prospects. The contention of the appellants that future prospects ought to have been added @ 30% is misplaced as, as per the judgments of the Hon'ble Supreme Court in "**Sarla Verma Vs. Delhi Transport Corporation" (2009) AIR (SC) 3104 Law Finder Doc ID # 188882;** and **"National Insurance**

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Company Ltd. VS. Pranay Sethi & Others" Law Finder Doc ID # 918174, future prospects are added to income of deceased person between 40-50 years in a permanent Government job.

13. Further reliance may be placed upon three-Judge Bench judgment of the Hon'ble Supreme Court in **"Reshma Kumari v. Madan Mohan (SC) 2013(5) Scale 160; Law Finder Doc ID # 421379; Civil Appeal No.4646 and 4647 of 2009 decided on 02.04.2013,** wherein after discussing the judgment in case of "**Sarla Verma Vs. Delhi Transport Corporation" (2009) AIR (SC) 3104 Law Finder Doc ID # 188882** in minute detail, learned Apex Court had held as follows:-

> *"F. Motor Vehicles Act, 1988, Sections 166 and 163A - Death of person in motor accident who had a permanent job - What should be the addition to income for future prospects - Method of addition of income towards future prospects as stated in which* ***Sarla Verma's case (2009(3) RCR (Civil) 77)*** *approved which is reiterated below :-*
>
> *(i) An addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years.*
>
> *(ii) Where annual income is in the taxable range, the actual salary shall mean actual salary less tax.*
>
> *(iii) <u>Where deceased was self employed or was on a fixed salary without provision for annual increments, the actual income at</u>*

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<u>the time of death without any addition to income for future prospects will be appropriate - A departure from the above principle can only be justified in extraordinary circumstances any very exceptional cases.</u> 2009(3) RCR (Civil) 77, Approved.

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*35. With regard to the addition to income for future prospects, in **Sarla Verma,** this Court has noted earlier decisions in **Susamma Thomas, Sarla Dixit** and **Abati Bezbaruah** and in paragraph 24 of the Report held as under:*

> *"24. …… In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. <u>Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.</u>"”*

(Emphasis mine)

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14. Further, keeping in view the age of the deceased, the Tribunal has correctly applied multiplier of 14. As regards dependency, the learned Tribunal has discussed in detail in Paras 16, 17 and 18 of the impugned Award to demonstrate that the claimant No.1/widow, claimant No.4/father and claimant No.5/mother of the deceased were not financially dependent upon the deceased. Accordingly, the learned Tribunal made a deduction of 1/3rd towards personal and living expenses. I find no error in the same as the said claimants are shown to have sufficient and independent source of income of their own.

15. Under the conventional heads, the learned Tribunal has awarded an amount of Rs.16,500/- towards funeral expenses; Rs.16,500/- towards loss of estate; and Rs.44,000/- to claimant No.1 towards loss of spousal consortium. As regards consortium, reasoning of the learned Tribunal is in Para 22 of the Award, which reads as follows:-

> *"22. The law laid down in National Insurance Company Limited Versus Pranay Sethi and Others Special Leave Petition No.25590 of 2014 was relied upon by the Hon'ble Apex Court in Civil Appeal No.2410- 2412/2023 titled as Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat and others. So, the petitioners are entitled for a total consortium of ₹40,000/ - and not ₹40,000/- each In view of above findings, this Tribunal with utmost regard, is not following the ratio of law in Civil Appeal No. 9581 of 2018 titled as Magma General Insurance Co. Ltd Vs. Nanu Ram @ Chuhru Ram and others. They are also*

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entitled for a sum of ₹15,000/- on account of loss of estate and ₹15,000/-on account of funeral expenses respectively."

16. Learned counsel for the appellant has not been able to distinguish the above said judgment relied on by the Tribunal in case of **Shri Ram General Insurance Co. Ltd. v. Bhagat Singh Rawat, (SC) : Law Finder Doc ID # 2251622,** wherein it is held that:-

> *"Motor Vehicle - Quantum of compensation - Appeal by Insurance company - Escalation of account of interest - Allegedly, the sum for loss of love and affection being Rs. 50,000/- and for loss of consortium for Rs. 40,000/- could not have been granted to each of the three dependents separately - Total amount has to be assigned under a particular heading and that will go depending on the number of legal heirs present - Amounts fixed in terms of Pranay Sethi's are Rs. 50,000/- and Rs. 40,000/- respectively - Impugned judgment modified to the aforesaid extent - Appeals allowed."*

17. Thus, no error can be found in the amounts awarded by the Tribunal under the conventional heads. The ld. Tribunal has also correctly made a deduction of Rs.4 lakh i.e. Rs.2 lakh each received by the claimants No.2 and 4 towards Insurance Claim from LIC India towards Accidental Benefit of the deceased.

18. From the above, it is clear that in the facts and circumstances of the case, a more than just and fair compensation has been awarded to

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the appellants. Nothing whatsoever has been shown to this Court that would merit enhancement of the compensation granted to the appellants. No doubt Chapter-12 of the Act is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Hon'ble Supreme Court in '**State of Haryana & Another Vs. Jasbir Kaur & Others' Law Finder Doc ID # 64043** and **'Divisional Controller K.S.R.T.C. Vs. Mahadeva Shetty', (2003) 7 SCC 197,** has held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance. In the case of **"General Manager, KSRTC Vs. Susamma Thomas & Others" 1994 Volume-II SCC 176,** the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

19. The Hon'ble Supreme Court an a 3-Judge Bench judgment in the case of ***"Reshma Kumari v. Madan Mohan (SC) 2013(5) Scale 160; Law Finder Doc ID # 421379;*** has held that: "*Motor Vehicles Act, 1988, Section 168 - Section 168 provides that amount of compensation awarded by the Claims Tribunal which appears to it to be just - The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery - Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation - The just compensation*

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principle requires examination of the particular situation obtaining uniquely in an individual case.”

20. Learned counsel for the appellants is unable to dispute or controvert the aforesaid factual and legal position.

21. In view of the above, present appeal stands **dismissed** on grounds of delay as well as on merits.

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

16.04.2026 **(Nidhi Gupta)**
Sunena **Judge**

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

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