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

**FAO-7870-2016 (O&M)
and XOBJC-62-CII-2018
Date of Decision : 26.09.2025**

Neetu @ Neetu Sharma & Ors

... Appellant(s)

Versus

Sukhraj Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Ghuman, Advocate for the appellants.

None for respondent Nos.1 and 2.

Mr. Sehaj Bir Singh Advocate for respondent Nos.3 and 4.

Mr. Punit Jain, Advocate for respondent No.5/cross-objector.

ALKA SARIN, J. (Oral)

CM-26611-CII-2016

1. For the reasons mentioned therein, the application seeking condonation of delay of 64 days in filing the appeal is allowed and the delay of 64 days in filing the appeal is condoned.

FAO-7870-2016 and XOBJC-62-CII-2018

2. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'Tribunal') vide the impugned award dated 23.03.2016 in a motor vehicle accident which occurred on 25.12.2014. The cross-objections have been preferred by respondent No.5- Insurance Company challenging the impugned award dated 23.03.2016 on the

ground that it was a case of contributory negligence and also on the issue that an addition of 50% has been made towards future prospects which ought to have been 40%. The parties are being referred to as the claimants, owner and driver of the offending truck (PB-02-AW-8192) and the Insurance Company for the sake of clarity.

3. Brief facts relevant to the present *lis* are that on 25.12.2014 at about 01.30/02.00 am, Vikas Sharma (hereinafter referred to as 'deceased') alongwith his cousin, namely, Sushil Kumar son of Narinder Nath was going from Amritsar to their village after completing the work in their car bearing registration No.PB-06-U-4119, which was being driven by the deceased and his cousin was travelling as a passenger in the car. When they reached near village Walha Bye Pass, one truck bearing No.PB-02-AW-8192 (hereinafter referred to as 'offending truck') which was loaded with iron poles of the Punjab State Power Corporation Limited was wrongly parked on the wrong side of the road by its driver without any indicator/reflector/signage on the iron poles, which were sticking out of the offending truck. The deceased struck in the stationary offending truck loaded with iron poles leading to the accident in which the deceased received multiple grievous injuries and died on the spot. An FIR was registered on the statement of Sushil Kumar who was travelling as a passenger in the car.

4. On notice the Insurance Company filed its written statement taking various preliminary objections regarding maintainability, non-joinder of the necessary parties etc. The factum of the accident was also denied. It was further stated that the driver of the offending truck was not having a valid and effective driving licence and that the offending truck was being plied without valid permit and without any fitness certificate.

5. The owner and driver of the offending truck filed their separate written statement denying all the averments and prayed for dismissal of the claim petition.

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

- 1) Whether Vikas Sharma son of Pardeep Kumar died on 25.12.2014 at about 2.00 P.M., in the area of P.S. A Division Amritsar District Amritsar due to accident caused by respondent no.1 by driving the truck no.PB-02-AW-8192 rashly and negligently ? OPA
- 2) If issue no.1 is proved, then whether claimants are entitled to compensation, if so to what extent and from whom ? OPP
- 3) Whether the claim petition is not maintainable in the present form as alleged ? OPR
- 4) Whether the claim petition is bad for non joinder of necessary parties ? OPR
- 5) Relief.

7. The Tribunal vide the impugned award had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹7,000/-
2	Future Prospects - 50%	₹10,500/- [₹7,000 + ₹3,500]
3	Deduction - 1/4 th	₹7,875/- [₹10,500 - ₹2,625]
4	Annual Income	₹94,500/- [₹7,875 x 12]
5	Multiplier - 16	₹15,12,000/- [₹94,500 x 16]
6	Funeral expenses	₹25,000/-
7	Love and affection	₹1,00,000/-
8	Loss of consortium	₹1,00,000/-
	Total Compensation	₹17,37,000/-
	Interest	7.5%

8. Learned counsel for the claimants states that he does not challenge the income, deduction, future prospects and multiplier as applied by the Tribunal. He, however, states that the compensation awarded 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. Chola mandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

9. Learned counsel for the Insurance Company while pressing his cross-objections would contend that it was a case of contributory negligence as the car being driven by the deceased hit the stationary truck from behind. It is further the contention of the learned counsel that an addition of 50% has been made by the Tribunal towards future prospects which ought to have been 40% as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra).

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

11. In the present case the accident took place on 25.12.2014 at about 01.30/02.00 am and near village Walha Bye Pass. The offending truck was loaded with iron poles of the Punjab State Power Corporation Limited and itself was parked on the wrong side of the road by the driver without any indicator/reflector/signage on the iron poles which were sticking out of the truck. The deceased struck into the stationary truck loaded with iron poles leading to the accident in which the deceased received multiple grievous injuries and died at the spot. An FIR was also registered on the statement of

Sushil Kumar, who was travelling as a passenger in the car. In the present case there was no issue which was framed qua contributory negligence. Further still, it was the case set up by the claimants that the truck had been parked on the wrong side of the road without any indicators on 25.12.2014 in the early morning hours. The offending truck was parked without any signage or hazardous lights. Despite the evidence led by the Insurance Company, nothing could be brought on the record to counter the evidence led by the claimants that the offending truck was parked on the wrong side of the road. In the absence of any evidence that the truck was parked correctly or the said truck had the indicators on, it cannot be held to be a case of contributory negligence. 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 as under :

“7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory 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 contributory 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 contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained.”

12. In view thereof, the argument of the learned counsel for the Insurance Company that it was a case of contributory negligence stands rejected.

13. The argument of the learned counsel for the Insurance Company that an addition of 40% ought to have been made towards future prospects deserves to be accepted in view of the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra). The deceased was admittedly 33 years of age at the time of the accident and was working in an unorganized sector, hence, 40% addition would be applicable.

14. In the present case, since no challenge has been laid by the learned counsel for the parties to the income, deduction and multiplier as applied by the Tribunal, the same are accordingly maintained.

15. The argument of the learned counsel for the claimants that the compensation awarded under the conventional heads and 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, the

claimants 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 the claimants (widow, two children and parents of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly Income	₹7,000/-
2	Annual Income	₹84,000/- [₹7,000 x 12]
3	Deduction - 1/4 th	₹63,000/- [₹84,000 - ₹21,000]
4	Future Prospects - 40%	₹88,200/- [₹63,000 + ₹25,200]
5	Multiplier - 16	₹14,11,200/- [₹88,200 x 16]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 2] (ii) Filial [₹48,000/- x 2] (iii) Spousal's	₹96,000/- ₹96,000/- ₹48,000/- (Total ₹2,40,000/-)
	Total Compensation	₹16,87,200/-

16. The difference in the amount of compensation awarded by the Tribunal and the amount of compensation as reworked out by this Court is **₹49,800/-**.

17. At this stage, learned counsel for the claimants has pointed out that the amount of compensation has already been disbursed to the claimants and, therefore, the same should not be recovered from them in view of the judgment of the Hon'ble Supreme Court in the case of **Usha Devi & Ors. vs. The New India Insurance Company Limited & Ors. [2019 SCC OnLine SC 2425]**.

18. Since the amount of compensation awarded by the Tribunal already stands disbursed to the claimants, it is directed that the amount so

disbursed shall not be recovered from them as per the law laid down by the Hon'ble Supreme Court in **Usha Devi's** case (supra).

19. In view of the above discussion, the present appeal as well as the cross-objections stand disposed off. Pending applications, if any, also stand disposed off.

26.09.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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