



FAO-6025-2019 (O&M)

-1-

218

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

-.-

FAO-6025-2019 (O&M)**Date of Decision : 20.04.2026**

Illiya Khan and Another

....Appellants

VERSUS

Wasif Khan and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Kanwar Satbir Singh, Advocate, for the appellants.

Mr. Om Pal Sharma, Advocate and

Mr. Anmol Sharma Vashisht, Advocate for respondent No.3.

-.-

NIDHI GUPTA, J.**CM-20040-CII-2019**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 150 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and delay of 150 days in filing the accompanying appeal is condoned.

FAO-6025-2019

1. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.6,45,000/- awarded by the learned Motor Accident Claims Tribunal, Nuh (hereinafter referred to as "the learned Tribunal") vide Award dated 09.01.2019 passed in MACT Claim Petition No.629 dated 19.04.2016 filed under Section 166 and 140 of the Motor Vehicles Act, (hereinafter referred to as "the

**FAO-6025-2019 (O&M)****-2-**

Act”). Out of total awarded compensation of Rs.6,45,000/-; 50% was deducted towards contributory negligence, thereby granting compensation of Rs.3,22,500/- to the appellants. The two claimants are the 39-year-old father and 35-year-old mother of the deceased Mohd. Sajid, who was about 06 years and 03 months old at the time of accident.

2. Brief facts of the case are that the learned Tribunal upon appraisal of the pleadings and oral and documentary evidence adduced before it had concluded that deceased Mohd. Sajid had died due to injuries suffered by him in a motor vehicular accident that took place on 26.03.2016 due to rash and negligence driving of tanker bearing registration No.RJ-20GB-5959 (hereinafter ‘the offending vehicle’) being driven by respondent No.1; owned by respondent No.2; and insured by responding No.3. The above compensation has been awarded along with interest @ of 7% p.a. Liability to pay the compensation amount was affixed upon respondent No.3/Insurance Company. Furthermore, Tribunal has held that the deceased is liable to reduction of 50% compensation towards contributory negligence as the accident had taken place when the deceased child was crossing the Road.

3. Ld. counsel for the appellants submits that the learned Tribunal was in error in making a deduction of 50% towards contributory negligence without any pleading or any evidence to this effect. It is submitted that even no issue was framed in this regard by the Tribunal. Therefore, the Tribunal is in error in foisting 50% contributory negligence upon the deceased child. Ld. Counsel argues that in doing so the learned Tribunal has ignored that the deceased was a minor 10-year-old child only, who did not have the capacity to understand his good or bad and was incapable of taking rational decisions for himself. Moreover, contributory

**FAO-6025-2019 (O&M)****-3-**

negligence cannot be imposed in every case where anyone is crossing the road. It is contented that it was the over speed and rash and neglecting driving of respondent No.1 which has caused the accident. Therefore, no contributory negligence can be imposed upon the deceased. It is contended that in this view of the matter fixing of 50% contributory liability upon the deceased child shows total lack of application of judicious mind.

4. Ld. counsel further submits that the Tribunal has erred even in determining the age of the deceased as 6 years and 3 months. It is submitted that in the postmortem report Ex.P14 age of the deceased has been clearly mentioned as 10 years. Even in the FIR No. 88, dated 26.03.2016, the age of deceased is mentioned as 10 years. Even claimant No.1, father of the deceased, while appearing as PW4, has clearly stated that the deceased was 10 years old at the time of accident. However, the Id. Tribunal has ignored all these factors and has wrongly assessed age of the deceased.

5. Ld. Counsel further contends that income of the deceased has been taken on the lower side as only ₹30000/- per annum, whereas the same ought to have been taken as ₹50,000/- per annum. Even, interest of 7% is on the lower side and it should be enhanced to 18% per annum. It is, accordingly, prayed that the impugned Award be modified and the present appeal be allowed.

6. *Per contra*, learned counsel for respondent No.3 – Insurance Company vehemently opposes the submissions advanced on behalf of the appellants and submits that the Tribunal has given cogent reasons in para 13 of the impugned Award in holding that there was contributory negligence on part of the deceased and causing the accident in question.



FAO-6025-2019 (O&M)

-4-

7. As regards quantum of compensation, ld. counsel relies upon judgment of this Court in *Surender Singh & Another Vs. Rajpal Singh & Others, FAO No.3736 of 2018, decided on 11.03.2026*, wherein in similar circumstances amount of ₹6,00,000/- awarded by way of compensation was upheld. It is accordingly prayed that the present appeal deserves to be dismissed being meritless.

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

9. A perusal of the record of the case shows that it is the pleaded case of the appellants before the Tribunal that the deceased was 10 years old at the time of accident. However, the claimants had placed on record the Aadhar card of the deceased as Ex.P13, wherein his date of birth is mentioned as 01.01.2010. Accordingly, the learned Tribunal had determined age of the deceased to be 6 years and 3 months at the time of accident i.e. on 26.03.2016. I find no error in the same. It has been vehemently argued by the learned counsel for the appellant that age of the deceased ought to have been taken as 10 years at the time of accident on the basis of Post Mortem Report Ex.P14. However, for the sake of arguments, even age of deceased is taken as 10 years, even then, there shall be no change in compensation to be awarded to the appellants.

10. The learned Tribunal has assessed notional income of the deceased as ₹30,000/- per annum by placing reliance upon the landmark judgment of the Hon'ble Supreme Court in *Kishan Gopal and another Vs Lala and others, 2013 ACJ 2594 (SC)*. Nothing to the contrary has been shown by the appellants, which would merit enhancement of the income of the deceased as ₹50,000/- per annum.



FAO-6025-2019 (O&M)

-5-

Keeping in view, the age of the deceased, the learned Tribunal has correctly applied multiplier of 15, which is also in consonance with the Constitutional Bench judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* [(2017) 16 SCC 680]; thereby calculating compensation amount to be ₹4,50,000/- (30000 × 15). Learned Tribunal has further awarded an amount of Rs. 80,000/- (₹40,000/- each) to both the claimants by way of loss of filial consortium; ₹1,00,000/- towards non-pecuniary damages; and ₹15,000/- towards funeral expenses and transportation, thereby awarding ₹6,45,000/- as total compensation in the following manner: -

Sr. No.	Heads	Calculation (in Rs.)
1.	Notional Income	₹30000/- per annum
2.	Compensation after multiplier of 15 is applied	₹30000 × 15 = ₹4,50,000/-
3.	Loss of filial consortium	₹40,000/- each i.e. amounting to ₹80,000/-
4.	Non pecuniary damages	₹1,00,000/-
5.	Funeral expenses and cost of transportation	₹15,000/-
6.	Total	₹6,45,000/-

11. I find no ground is made out for enhancement of compensation. Perusal of record of the case shows that it was the pleaded case of the appellants before the learned Tribunal that prior to the accident, the deceased was a student and was an intelligent student with a bright future ahead of him. However, nothing has been brought to the notice of this Court to show that deceased was a student at the time of accident. It is not even the assertion of the appellants that deceased was earning anything. In this situation, no error can be found in the amount of compensation of ₹6,45,000/- awarded to the claimants along with interest @7% per annum. In this regard, reference is made to judgments of the Hon'ble Supreme Court in *Rajendra Singh and others vs National Insurance Company Limited*



FAO-6025-2019 (O&M)

-6-

and others, 2020 (3) RCR (Civil) 26 - wherein deceased was 12 years old and the Court had awarded compensation of Rs.2.95 lacs; and *Kishan Gopal and another vs Lala and others, 2013 ACJ 2594 (SC)* -wherein deceased was 10 years old and compensation of Rs.5 lacs was awarded; and of this Court in *Shashi Bala Vs. Sudarshan Kumar and Others, 2015 ACJ 1728* – wherein deceased was 17 years old and compensation of Rs.5.00 lacs was awarded.

12 Now, coming to the question of contributory negligence, learned counsel for the appellants has been at great pains to impress upon this Court, that there was no contributory negligence on part of the deceased child, who was only 10 years old and was crossing the road, when the accident had transpired. However, I find no merit in the said submission on behalf of the appellants. In this regard, the findings/observations of the learned Tribunal in Para 13 and 14 of the impugned Award are comprehensive and cogent, which read as follows:-

*“13. In case titled **Kusum Lata and others vs. Satbir and others 2011(3) SCC 646**, the Hon'ble Supreme Court of India has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. It was further held that the claimants were merely to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt could not have been applied. The evidence on record clearly shows that the accident had taken place in a residential-cum-commercial area. The speed limit in such an area is always controlled and driving at a high speed can be risky. The child in question was crossing the street to go back to the shop of his father. Now it has to be seen whether the deceased had contributed in any manner to the present accident as claimed by respondent number 3.*



The question of contributory negligence arises only when there has been some act or omission on the claimant's part which has materially contributed to the damage caused and is of such a nature that it may properly be described as 'negligence'. Contributory negligence means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".

14. In case the vehicle was being driven at a permissible speed limit, the accident in question could have been avoided or in case of sudden appearance of the child on the road, the accident may have resulted in minor injuries. The accident could also have been avoided in case the child was accompanied by his parents or some elder person, who would have taken the necessary precautions while crossing the road. The said person, would have watched the traffic before crossing the road. In case any vehicle was approaching, the deceased should have waited before crossing the road. Had he been careful, the accident in question could have been avoided. It cannot be denied that people cross the roads without caring for the traffic and expect the vehicle to stop on seeing them. It is quite possible that the vehicle, which is coming at a speed, may not be able to stop immediately on application of brake. It is also possible that the driver of such a vehicle is unable to comprehend any sudden turn by another vehicle on the road or sudden arrival of another vehicle from the side and therefore, is unable to stop his vehicle to avoid such type of accidents. Nevertheless the fact remains that respondent No.1 has not explained the manner, in which, the accident had taken place and it was his duty as well to be cautious and careful to avoid any accident. Resultantly, it has to be presumed that the deceased, the claimants and respondent No.1, were responsible for the present accident. In these circumstances, claimants and respondent No.1 are liable to share equal responsibility that is to say in the ratio of 50:50."



FAO-6025-2019 (O&M)

-8-

13. Learned counsel for the appellants is unable to dispute or controvert the above-said facts, findings and legal position. In view of the same, I find no merit in the present appeal, which is accordingly **dismissed** on grounds of delay, as well as on merits.

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

April 20, 2026
tripti

(NIDHI GUPTA)
JUDGE

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