



Petition No.4-S/2 of 2015, titled as Najma Begum and Others versus Akash Sharma & Others.

2. By way of award dated 10.07.2018, the learned Tribunal has allowed the claim petition, filed by respondents No.1 to 3 and awarded a sum of Rs.16,27,000/- along with interest @ 6% per annum, from the date of filing of the petition till the realization/deposit of the amount. However, the ultimate liability to pay the amount of compensation, along with interest, has been fastened upon the Insurance Company (appellant).

3. For the sake of convenience, parties to the present appeal, are hereinafter referred to, in the same manner, in which, they were referred to by the learned Tribunal.

**Brief Facts:-**

4. Brief facts, leading to the filing of the present appeal, as borne out from the record, may be summed up, as under:-

4.1. The petitioners, being mother, father and sister of Amir Ahmad, had filed the claim petition, under Section 166 of M.V. Act, before the learned Tribunal, against the respondents, being owner, driver and insurer of vehicle No.HP52-0678, (hereinafter referred to as 'the offending vehicle').

4.2. According to the petitioners, Amir Ahmad was travelling in the offending vehicle on the intervening night of 29/30<sup>th</sup> November, 2014. At about 12.30 a.m. in the midnight, when the offending vehicle reached near Kali Mata Mandir Shamti Rajgarh Road, Solan, then, the said vehicle collided with a Tipper, parked on the hill side of the road.

4.3. In the accident Amir Ahmad sustained multiple fractures over his skull bones. He was taken to Regional Hospital, Solan, where, he was declared dead. Postmortem examination of the dead body was conducted by the Medical Officer, Regional Hospital Solan, District Solan H.P.

4.4. The matter was also reported to the police of Police Station, Solan, where, FIR No.270, dated 30.11.2014, under Sections 279, 337 and 304-AA IPC, has been registered, against respondent No.2.

4.5. According to the petitioners, Amir Ahmad was 22 years of age and was working with Mona Lisa Garments, Mohan Complex Upper Bazar Solan, District Solan and was earning Rs.17,000/- per month, along with all incentives/commissions.

4.6. Since, the accident, in question, has solely been attributed to the rash and negligent driving of respondent No.2,

as such, the petitioners have sought an amount of Rs.30,00,000/-, along with interest, as compensation from the respondents, by pleading their bright past and bleak future.

**Stand of the respondents before the learned Tribunal**

5. When, put to notice, the claim petition has been contested by the respondents.

5.1. Respondents No.1 and 2 have filed their joint reply, in which, they have denied the contents of the claim petition, mainly for want of knowledge. The factum of accident has been admitted, but the allegations, which have been levelled against the driver, have been denied by them.

5.2. Elaborating their stand, it has been pleaded that respondent No.2 had tried his level best to avoid the accident, but the tipper was parked at the sharp curve on the wrong side of the road. According to respondents No.1 and 2, the accident in question had taken place due to the negligence of the driver of the tipper.

6. Insurance Company of the offending vehicle has filed its separate reply, by taking the preliminary objections that the claim petition is not maintainable; the offending vehicle was being plied, in violation of the terms and conditions of the insurance policy; and respondent No.2, i.e., driver of the

offending vehicle was not having a valid and effective license, at the time of accident.

6.1. On merits, the contents of the claim petition have been denied mainly for want of knowledge, however, registration of the FIR has not been disputed.

7. Thus, the respondents have prayed for dismissal of the claim petition.

8. From the pleadings of the parties, following issues were framed by the learned Tribunal, vide order dated 23.11.2015:

- 1) *Whether the accident was result of rash and negligent driving of the vehicle in question by respondent No.2 and the deceased died in the said accident?* OPP
- 2) *If issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation. If so what amount and from whom?* OPP
- 3). *Whether the driver of the vehicle in question was not holding valid and effective driving license at the time of accident. If so its effect?* OPR-3
- 4) *Whether the vehicle in question was being plied without valid documents and in violation of terms and conditions of the insurance policy. If so its effect?* OPR-3
- 5) *Whether the petition is not maintainable?* OPR-3
- 6) *Whether the petition is bad for non-joinder of necessary parties?* OPR-3

7) *Whether the deceased was travelling as gratuitous passenger in the vehicle in question. If so its effect?* OPR-3

8) *Relief.*

9. Thereafter, parties to the lis were directed to adduce evidence.

10. After closure of the evidence, the learned Tribunal, upon hearing learned counsel for the parties, has allowed the claim petition of the petitioners, by awarding the compensation, as referred to above.

**Contentions of the appellant (Insurer-Company)**

11. Aggrieved from the said award, the present appeal has been preferred by the Insurance Company, before this Court, mainly, on the ground that the learned Tribunal has passed the award merely on the basis of surmises and conjectures, without appreciating the evidence, so adduced, as, there is no evidence on the file to prove that Amir Ahmad was earning Rs.10,000/- per month.

11.1. According to the appellant, the salary certificate Ex.PW-5/A, has been proved by a person, who is not the owner of the Mona Lisa Garments at Solan and he is father of Gaurav Sahani, who appeared as PW-6.

11.2. The award has further been assailed on the ground that in the absence of any documentary proof, learned Tribunal has wrongly taken the income of Shri Amir Ahmad as Rs.10,000/- per month, whereas, the same is required to be taken on the basis of the minimum wages, prevalent at the relevant time, i.e., in the year 2014. According to the appellant, the minimum wages of unskilled labourer, at that time, was not more than Rs.170/- per day.

11.3. The award has also been assailed on the ground that the learned Tribunal has also not considered the fact that the deceased had studied upto 5<sup>th</sup> or 6<sup>th</sup> standard and no one will pay Rs.10,000/- per month, to a person, whose educational qualification was upto 5<sup>th</sup> or 6<sup>th</sup> standard.

12. On the basis of the above grounds of appeal, Mr. Jagdish Thakur, learned counsel for the appellant, has prayed that the appeal may kindly be allowed and the amount of compensation may kindly be reduced.

**Contentions of learned Counsel for the respondents (petitioners before the Tribunal)**

13. Per contra, Mr. Tara Singh Chauhan, learned Senior Advocate assisted by Mr. Surya Chauhan, Advocate, has supported the award and prayed that the awarded amount may

kindly be enhanced, so that the same could fall within the definition of 'just compensation'.

### **Discussion and Analysis**

14. It is no longer *res integra* that the endeavour of the Court/Tribunal, while deciding the claim petition, should be to grant 'just compensation' as the M.V. Act, is beneficial piece of legislation. Moreover, the proceedings under the M.V. Act, are summary in nature, where the liability of the tortfeasor is to be fixed on the basis of touch stone of preponderance of the probability.

15. Now, this Court would proceed further to ascertain the fact whether the amount of compensation, which has been awarded to the petitioners, falls within the definition of 'just compensation' or not.

16. It is worth while to mention here that the award has only been assailed by the Insurance Company and not by the petitioners, but, this does not bar the Court to grant 'just compensation', even in the absence of any appeal or cross-objection, filed by the petitioners.

17. The age of the deceased Amir Ahmad, at the time of his death has been pleaded as 22 years. In the postmortem report Ex.PW-1/A, same age has been mentioned. As such, in

the absence of any evidence, there is no occasion for this Court to take age of the deceased contrary to the same. Learned Tribunal has rightly taken the age of deceased as 22 years, at the time of his death. Admittedly, he was bachelor.

18. In this case, the Insurance Company has assailed the findings of the learned Tribunal qua the income of the deceased during his life time. The learned Tribunal has taken the income of deceased as Rs.10,000/- per month. The petitioners in their petition has pleaded the income of deceased Amir Ahmad, during his life time, as Rs.17,000/- per month. According to them, he was working as salesman with Mona Lisa Garments, upper Bazar Solan, Tehsil and District Solan.

19. Since, the onus was upon the petitioners to prove the income of the deceased, during his life time, as such, the mother of Amir Ahmad, appeared in the witness-box and tendered his affidavit Ex.PW-4/A, in which, she has again asserted the fact that her son was working as salesman with Mona Lisa Garments and was earning Rs.17,000/-. According to her, this amount includes his monthly salary and incentives. When a suggestion was given to her that her son was not earning Rs.17,000/-, by working as Salesman, the same has been denied by petitioner No.1.

20. In the cross-examination by learned counsel for respondent No.3, petitioner No.1 has admitted that her son had studied upto 5<sup>th</sup>-6<sup>th</sup> standard.

21. In addition to this, the petitioners have examined Sita Ram Sahani, as PW-5, who has categorically stated that Amir Ahmad was working as salesman with him and he has proved the salary certificate Ex.PW-5/A. According to this witness, Amir Ahmad worked with them for about two years i.e., from 2012 to 2014. The accident, in question, had taken place, in the intervening night of 29/30.11.2014.

22. In the opening of his cross-examination, this witness has admitted that shop, in which, Amir Ahmad was working as salesman, was in the name of his son. Certificate Ex.PW-5/A bears his signatures. However, he has admitted that he is neither the proprietor, nor, has been authorized to issue Ex.PW-5/A.

23. PW-6 Gaurav Sahani, who is son of PW-5, deposed that he is proprietor of Mona Lisa Garments. He has categorically stated that certificate Ex.PW-5/A has been issued, which bears signature of his father. As stated above, the claim petition is decided on the basis of touch stone of probability and the proceedings under the M.V.Act are summary in nature.

24. The arguments of Mr. Jagdish Thakur, learned counsel appearing for the Insurance Company/appellant, qua the fact that it cannot be expected from a person to earn Rs.17,000/- per month, as pleaded in the claim petition or to earn Rs.10,000/-, as held by learned Tribunal, are devoid of merits, as no universal yardstick can be fixed that a person, who had studied upto 5<sup>th</sup>-6<sup>th</sup> standard, can not earn Rs.10,000/- per month. It depends upon the skills of an individual.

25. Merely, because the person, who has issued the certificate, deposed that he was not owner of the shop, does not make the said certificate inadmissible. Owner, when appeared, in the witness-box, as PW-6, also supported the version of his father PW-5. Shop/establishment of PW-6, has duly been registered with the Department of Excise and Taxation, as depicted from the document Ex.PW-6/A. As such, this Court is of the view that the learned Tribunal has rightly taken the income of deceased Amir Ahmad as Rs.10,000/-. The said findings do not require any interference by this Court.

26. Deceased Amir Ahmad was working in unorganized sector and in view of the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and others, (2017) 16 SCC 680***, addition

of 40% on the established income is required to be given on account of future prospects. Thus, his monthly income for determining the amount of compensation comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-).

27. Admittedly, deceased Amir Ahmad was bachelor. As such, in view of the decision of Hon'ble Supreme Court in **Sarla Verma versus Delhi Transport Corporation and Another, (2009) 6 Supreme Court Cases 121**, 50% of his income is liable to be deducted, towards his personal expenses, had he been alive. Thus, his monthly income comes to Rs.7,000/- per month.

28. The learned Tribunal, in the present case, has applied the multiplier of '18', which is the appropriate multiplier, in view of the decision of Hon'ble Supreme Court in **Sarla Verma's** case supra. Thus, the learned Tribunal has rightly assessed the amount of Rs.15,12,000/- on account of loss of contribution.

29. In the present case, the learned Tribunal, has erred in awarding a sum of Rs.1,00,000/- under the head 'loss of love and affection'. In view of the decision of Hon'ble Supreme Court in **Pranay Sethi's**, case supra, the petitioners are only

entitled to compensation under the conventional heads, namely, 'loss of estate', 'loss of consortium' and 'funeral expenses'. The increase of 10%, after every three years, has also been mandated.

30. In view of the decision of Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, (2018) 18 SCC 130***, all the petitioners are entitled to the compensation, under the head 'loss of consortium'.

31. The entitlement of the petitioners, thus, is ascertained as under:-

1.	Loss of contribution	= ₹15,12,000/-
2.	Loss of estate	= ₹19,500/- (₹15,000/- + ₹4500/-)
3.	Funeral expenses	= ₹19,500/- (₹15,000/- + ₹4500/-)
4.	Loss of consortium	= ₹1,56,000/- (₹40,000x3+ ₹36,000/-)
	Total	= ₹17,07,000/- (₹15,12,000 + ₹19,500 + ₹19,500 + ₹1,56,000)

32. Consequently, the present appeal is dismissed. The awarded amount is enhanced from ₹16,27,000/- to ₹17,07,000/-. So far as the rate of interest is concerned, the said findings do not require any interference by this Court.

33. The award passed by the learned Tribunal is modified, in the above terms.

34. Memo of costs be prepared.

35. Pending application(s), if any, are also disposed of.

Record be sent back.

**(Virender Singh)**  
**Judge**

**June 20, 2026** *(ps)*