

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

(221)

**F.A.O. No. 5 of 2002(O&M)&
XOBJC-70-CII-2002(O&M)
Reserved on: 23.03.2026
Pronounced on: 30.03.2026
Uploaded on: 30.03.2026**

Balwinder Singh and Another

...Appellants

Versus

Nirmala Devi and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWALPresent: Mr. B.D.Sharma, Advocate
for the appellants.Mr. G.S. Bains, Advocate for
Mr. Vijay Sharma, Advocate
for the respondents/Cross-Objectors.**VIRINDER AGGARWAL, J.**

1. The present judgment shall dispose of FAO No. 5 of 2002 filed by the owner and driver as well as Cross-Objection No. 70 of 2002 preferred by the claimants, both arising out of the same award dated 22.09.2001 passed by the learned Motor Accident Claims Tribunal, Patiala. The appellants have assailed the award primarily on the ground that the deceased was under the influence of alcohol and, therefore, guilty of contributory negligence. On the other hand, the claimants, by way of cross-objections, seek enhancement of compensation.

BACKGROUND FACTS

2. The case of the claimants, as set up in the claim petition, is that on 19.04.1998 at about 2:45 PM, the deceased Raj Krishan Prashar was driving a scooter bearing registration No. PB-11A-8308, proceeding on the correct side of



the road in a lawful manner. It is pleaded that at the said time and place, a Maruti car bearing registration No. PB-11C-8118, being driven by respondent No. 1, came from the opposite direction at a high speed and in a rash and negligent manner. The said vehicle, instead of remaining on its correct side, wrongly came onto the side of the road meant for the deceased and struck the scooter head-on. Due to the forceful impact, the deceased fell down and sustained multiple grievous injuries. He was immediately taken for medical treatment, where his Medico Legal Report (MLR) (Ex. R-7) was prepared. Despite treatment, the injured succumbed to his injuries on 23.04.1998, as is evident from the Post-Mortem Report (PMR) (Ex. A-7), which records the cause of death as injuries sustained in a road traffic accident. It is further the case of the claimants that the accident occurred solely due to the rash and negligent driving of respondent No. 1, and that the deceased was not at fault in any manner, as he was driving his scooter on the correct side while observing due caution. On account of the untimely death of the deceased, the claimants, being his legal representatives, filed a claim petition under Section 166 of the Motor Vehicles Act seeking compensation to the tune of ₹20,00,000/- on account of loss of dependency and other heads, along with ₹10,000/- towards damage to the scooter.

3. Upon cumulative appreciation of the oral as well as documentary evidence, the learned Tribunal recorded a categorical finding that the accident in question occurred due to the rash and negligent driving of the offending Maruti car by respondent No. 1, who had come on the wrong side of the road and struck against the scooter being driven by the deceased. The learned Tribunal concluded that the negligence stood duly proved against respondent No. 1. While appreciating the medical evidence, including the MLR (Ex. R-7),



the learned Tribunal also noticed that the deceased had consumed alcohol; however, no finding of contributory negligence was recorded against him, as no blood sample of the deceased was taken by the doctor from which it could be said that how much alcohol was consumed by him and as to whether whether conclusion of doctor was correct or not. Having so held, the learned Tribunal proceeded to assess the compensation payable to the claimants. While determining the compensation, the learned Tribunal took into consideration the age, income, and dependency of the deceased, applied the appropriate multiplier, and awarded a total compensation of ₹5,13,120/- to the claimants. The liability to satisfy the award was fastened upon the respondent driver and owner of the offending vehicle, as they failed to produce any document to prove that their vehicle was insured. Aggrieved against the said findings, the present appeal has been preferred by the appellants-driver and owner of the offending vehicle, primarily contending that once the learned Tribunal itself had noticed that the deceased had consumed alcohol, it ought to have held him guilty of contributory negligence and reduced the compensation accordingly.

CONTENTIONS

4. Learned counsel for the appellants contends that the learned Tribunal has erred in fastening the entire negligence upon them, inasmuch as the deceased had consumed alcohol at the time of the accident. It is argued that a person under the influence of alcohol cannot be said to be exercising due care and caution while driving, and therefore, the deceased himself was negligent. On this premise, it is submitted that the learned Tribunal ought to have held the deceased guilty of contributory negligence. It is further contended that driving under the influence of alcohol, by itself, constitutes negligence, and consequently, the claimants are not entitled to full compensation.



5. Per contra, learned counsel for the claimants submits that mere consumption of alcohol, in the absence of any cogent evidence to show impaired driving or a causal connection with the occurrence of the accident, cannot lead to a finding of contributory negligence. It is argued that the uncontroverted evidence on record clearly establishes that the offending car came on the wrong side of the road and struck the scooter being driven by the deceased on the correct side, and therefore, the entire negligence is attributable solely to the driver of the offending vehicle. It is further submitted that the claimants are entitled to enhancement of compensation, as the compensation awarded by the learned Tribunal is grossly inadequate and not assessed in accordance with the settled principles governing determination of just compensation. It was submitted that the learned Tribunal failed to grant amounts under the essential conventional heads, made no addition towards future prospects.

OBSERVATIONS AND FINDINGS

6. I have heard learned counsel for the parties and perused the record with their assistance.

7. At the outset, the claimants examined AW-5 Ujjagar Singh (eye-witness), who categorically deposed that the deceased was driving his scooter on the correct side of the road when the offending Maruti car came from the opposite direction on the wrong side and struck against it with force, leaving no opportunity to avoid the accident. The witness further stated that the impact was direct and forceful, leaving no opportunity for the deceased to avoid the accident. His testimony remained consistent on material particulars and could not be shaken in cross-examination. The said ocular version stands duly corroborated by the medical evidence, including the MLR (Ex.R-7) and Post-



Mortem Report (Ex.A-1), which establish that the deceased sustained multiple grievous injuries in a high-impact vehicular accident resulting in his death. There is no rebuttal to evidence of the claimants. Moreover, the respondent no.1 and 2 in their written statement have not alleged that the injured was under the influence of liquor at that time or he was already lying on the road and at the asking of him they had taken him to the hospital. Their case was only of denial of the accident. In these circumstances, the learned Tribunal rightly held that the accident occurred due to the rash and negligent driving of the offending car, and the said finding, being based on proper appreciation of evidence, calls for no interference.

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8. The principal contention raised by the appellants is that since the deceased had consumed alcohol at the time of accident, he ought to have been held guilty of contributory negligence and the compensation should have been reduced accordingly. The learned Tribunal, while appreciating the medical evidence, including MLR (Ex. R-7), did notice that the deceased had consumed alcohol. However, it consciously refrained from recording any finding of contributory negligence, observing that no blood sample of the deceased had been taken to determine the exact level of alcohol, nor was there any reliable evidence to conclude that such consumption had impaired his driving or contributed to the accident.

9. The law relating to contributory negligence is well settled that the same cannot be presumed and must be established on the basis of cogent evidence. It is required to be shown that the victim failed to take reasonable care for his own safety and that such failure had a direct nexus with the



occurrence of the accident. The Hon'ble Supreme Court in *Sudhir Kumar Rana v. Surinder Singh, 2008 (12) SCC 436*, contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so, and that such a plea would arise only where both parties are found to be negligent. It was further clarified that the claimant must be shown to have committed an act or omission which materially contributed to the accident and resulted in injury and damage, the concept of contributory negligence would apply.

10. Significantly, the mere fact that the deceased had consumed alcohol does not ipso facto lead to a conclusion of negligence, unless it is shown that he committed some act or omission which contributed to or aggravated the cause of the accident, or that he failed to take reasonable care which could have avoided the accident. In claim proceedings, what is required to be established is a clear causal nexus between the alleged act and the occurrence of the accident. Though driving under the influence may constitute an offence under law, the same, by itself, is insufficient to fasten contributory negligence unless it is affirmatively proved that such intoxication had impaired the driver's capacity and materially contributed to the accident. A Co-ordinate Bench of this Court in *United India Insurance Co. Ltd. v. Rani, 2025 NCPHHC 14849 (decided on 31.01.2025)* has also held that mere presence of alcohol in the body, in the absence of evidence showing its impact on the manner of driving, cannot be a ground to attribute contributory negligence.

11. Applying the aforesaid principles to the facts of the present case, it is evident that the evidence on record consistently establishes that the offending



car came on the wrong side of the road and struck against the scooter of the deceased, who was admittedly driving on the correct side. The ocular testimony of AW-5 clearly proves that the accident occurred due to the wrongful act of the driver of the offending vehicle, and the same stands duly corroborated by the medical and documentary evidence. There is no material whatsoever to suggest that the deceased was driving in a rash, negligent, or erratic manner, or that he had lost control over the vehicle at any point of time. Significantly, no evidence has been led by the appellants to demonstrate that the alleged consumption of alcohol had any effect on the manner of driving of the deceased or that it, in any manner, contributed to the occurrence of the accident. In the absence of any such evidence establishing a nexus between the consumption of alcohol and the occurrence of the accident, the plea of contributory negligence raised by the appellants remains purely speculative and cannot be accepted. In such circumstances, the element of contributory negligence on the part of the scooter driver becomes wholly irrelevant, irrespective of fact of any prior consumption of alcohol. Even a person exercising due care and not under any such influence would have been rendered incapable of avoiding the accident in the face of such wrongful conduct of the offending vehicle. Hence, no part of the blame can be attributed to the deceased so as to hold him guilty of contributory negligence or of having aggravated the impact of the accident.

12. Therefore, this Court upon independent re-appreciation of evidence, finds no reason to take a different view. Accordingly, it is held that the accident occurred solely due to the rash and negligent driving of the offending vehicle, and the deceased cannot be held guilty of contributory negligence merely on account of alleged consumption of alcohol. The findings recorded by the learned Tribunal are well reasoned, based on proper appreciation of evidence,



and do not suffer from any perversity warranting interference. Consequently, the appeal filed by the appellants is **dismissed**, being devoid of merit.

CROSS-OBJECTION

13. The cross-objection filed by the claimants primarily assail the quantum of compensation, necessitating a fresh determination of the income of the deceased. The record reveals that as per Ex. A-3, the deceased was drawing a monthly salary of ₹8,203/- while serving as a Senior Assistant in the office of the Commissioner, Excise and Taxation, Patiala. Out of the said amount, certain deductions were made towards GPA and GIS. In addition, as per Ex. P-3, the deceased was also receiving a monthly pension of ₹1,275/- on account of his prior service in the Army. The learned Tribunal, however, assessed the income of the deceased by reducing the salary after deductions and thereafter adding the pension, thereby computing the total monthly income at ₹6,414/- (₹5,173/- + ₹1,275/-). Such an approach, in the considered view of this Court, cannot be sustained, as the deductions towards GPA and GIS are in the nature of savings and do not diminish the actual earning capacity of the deceased. For the purpose of determining just compensation, what is required to be considered is the real and substantive income available to the family. Accordingly, for the purpose of reassessment, this Court considers it appropriate to take into account the entire salary of ₹8,203/- without deducting amounts towards GPA and GIS, and to add thereto the pension of ₹1,275/-, both of which formed part of the regular financial contribution of the deceased to the family. The monthly income of the deceased is, thus, determined at ₹9,478/-.

14. Compensation requires reassessment strictly in terms of the principles laid down by Hon'ble the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi*, 2017 (16) SCC 680, *Magma General Insurance Co. Ltd. v.*



Nanu Ram alias Chuhru Ram, 2018 (18) SCC 130 and Sarla Verma v. DTC, 2009 (6) SCC 121, wherein the framework for computation of “loss of dependency” by addition towards future prospects as per the nature of employment, deducting personal expenses of deceased, and applying appropriate multiplier on the basis of age of the deceased, and standardized amounts for conventional heads such as loss of estate, funeral expenses and loss of consortium, has been settled. The present matters, therefore, call for recalculation of the amount under each of these heads by applying the correct deduction on basis of dependency and correct multiplier relatable to the age of the deceased and by granting the admissible sum towards consortium and other conventional heads as mandated in the aforesaid decisions. The reassessment in the present appeal is, therefore, undertaken as under:

Particulars	Awarded by Tribunal (₹)	Reassessed Award (₹)
Monthly Income	6,414/-	9,478/-
Income With Future Prospects (15%)	x	10,900/-
Income After Deduction (2 Dependents)	4,276/- (1/3rd For Personal Expenses)	7,267/- (1/3rd For Personal Expenses)
Annual Contribution To Family	51,312/- (4,276 x 12)	87,204/- (7,267 x 12)
Multiplier (age 51 yrs)	10	11
Loss Of Dependency	5,13,120/-	9,59,244/- (87,204 × 11)
Spousal Consortium	x	40,000/-
Parental Consortium	x	40,000/-
Loss Of Estate	x	15,000/-
Funeral Expenses	x	15,000/-
Total Compensation	5,13,120/-	₹10,69,244/-



16. Thus, the compensation is enhanced from ₹5,13,120/- to ₹10,69,244/-, along with interest at the rate of 7% per annum from the date of filing of the claim petition till the date of realization. Any amount already deposited by the respondent–driver and owner of the offending vehicle shall be duly adjusted against the enhanced amount of compensation.

17. Consequently, the appeal filed by the appellants–respondents (FAO No. 5 of 2002) stands **dismissed**, whereas Cross-Objection No. 70 of 2002 preferred by the claimants is **allowed**. The award passed by the learned Tribunal is accordingly modified to the extent indicated hereinabove, and the claimants shall be entitled to the enhanced compensation as determined by this Court.

18. Since the main appeals stands decided, pending application(s), if any, also stand disposed of.

30.03.2026
Saurav Pathania

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking? *Yes / No*
Whether reportable? *Yes / No*