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

264

FAO-2912-2003 (O&M)
Date of decision: 17.08.2026

RISHI PAL **....Appellant**

Versus

OSJWAR AND ORS **...Respondents**

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Rahul Verma, Advocate for
Mr. Rajinder Goyal, Advocate for the appellant.

Mr. Ashok Jindal, Advocate for the respondent No.1.

Respondent No.2 (1-A before Tribunal) ex parte before the Tribunal.

YASHVIR SINGH RATHOR. J.(Oral)

1. Present appeal has been instituted against the Award dated 13.05.2003 passed by Motor Accident Claims Tribunal, Kaithal (**for short "Tribunal"**) for enhancement of compensation awarded in MACT Case No.10 of 2001 in a petition under Section 166 of Motor Vehicles Act, 1988 **(for short "Act")** vide which a sum of Rs.20,069/- has been awarded as compensation to the claimant/appellant along with interest @ 9% per annum on account of injuries suffered by him in a motor vehicular accident which took place on 29.01.2001,

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

due to rash and negligent driving on the part of driver of three-wheeler bearing No. HNE-5442 as well as driver of vehicle make Tata-407, whose identity could not be ascertained (**hereinafter referred to as offending vehicles**). Three-wheeler bearing No. HNE-5442, owned by respondent No.1-A and both the vehicles were not insured.

2. From the pleadings of parties, following issues were framed:-

"1. Whether the accident resulting multiple injuries to the claimant took place on 29.1.2001 due to rash and negligent driving of three-wheelers No.HNE-5442 by respondent No.1 and TATA 407 by its driver, as alleged?OPP

2. If issue No.1 is proved, whether the claimant is entitled to any compensation and if so from whom and at what rate?OPP

3. Whether the petition is not maintainable?OPR

4. Whether the claimant has no locus standi?OPR

5. Relief."

3. Thereafter, the parties led evidence in support of their case.

4. After hearing the parties and going through the material on the file, learned Tribunal awarded a sum of Rs.20,069/- as compensation to the claimant alongwith interest @ 9% per annum from the date of filing of claim petition till realization.

5. Feeling aggrieved, the appeal in hand has been preferred by claimant. The material on file has been perused and parties have been heard.

6. Under Issue No.1, Tribunal held that accident in question had taken place on account of rash and negligent driving on the part of driver of three-wheeler bearing No.HNE-5442, being driven by respondent No.1 and driver of vehicle make Tata-407, whose identity could not be ascertained and it was a case

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

of contributory negligence on the part of drivers of both the vehicles. Under issue No.2, the claimant was held entitled to total compensation of Rs.20,069/- but it was ordered that claimant shall be entitled to recover 50% of the amount from respondent No.1 and respondent No.1A i.e. driver and owner of the offending three-wheeler bearing No.HNE-5442 alongwith interest @ 9% per annum and remaining 50% amount shall be recoverable from owner and driver of Tata-407 but they had not been impleaded as the details of the vehicle and the names of its driver and owner were not available.

7. Learned counsel for the appellant argued that the compensation has not been adequately assessed in respect of the injuries suffered by the claimant. He had suffered grievous injuries and huge amount was spent on the treatment but Tribunal has failed to award compensation under all the pecuniary and non-pecuniary heads and the compensation be suitably enhanced. Learned counsel next contended that the Tribunal has held that the accident in question had taken place due to contributory negligence of drivers of three-wheeler in which claimant was travelling and one Tata-407 vehicle, whose particulars could not be ascertained but Tribunal has wrongly ordered that 50% amount shall be recoverable from the driver and owner of three-wheeler and 50% amount shall be recoverable from the owner and driver of Tata-407. Learned counsel further contended that the claimant was a third party *qua* drivers and owners of both the offending vehicles and he could have claimed entire compensation from either of the tortfeasors, without impleading the other one as a party and learned counsel contended that the finding of Tribunal in this regard be set aside and appeal in hand be accepted.

8. On the other hand, the learned counsel for respondent argued that the

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

award in question is well reasoned and justified. The material on file has been appreciated in the correct perspective while assessing the compensation and no interference in the same is thus called for.

ISSUE OF LIABILITY

9. The first point to be determined is as to whether the Tribunal was justified in directing the claimant to recover 50% of the compensation from respondents No.1 and 1A i.e. the driver and owner of the three-wheeler bearing No.HNE-5442, and the remaining 50% from the driver and owner of Tata 407, who were not impleaded before the Tribunal. The answer to this question is in the negative. The law in this regard has been settled by the Hon'ble Supreme Court in Law Finder Doc ID #669171**, Khenei Vs. New India Assurance Co. Ltd. and Others** in which it has been held that in the case of composite negligence, the claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation, as the liability of joint tortfeasors is joint and several. It has been further held that it will not be appropriate for the Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of the impleadment of the other joint tortfeasors. In such a case, the impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after the passing of the decree or award. Hon'ble Supreme Court has also drawn a distinction between contributory negligence and composite negligence and has held that there is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident, but the outcome is a combination of the negligence of two or more other persons and claimant is entitled to recover the compensation from any of the tortfeasors.

10 In the present case also, claimant was a third party *qua* drivers of both the offending vehicles and he is entitled to sue both or any of the joint tortfeasors and to recover entire compensation from them, as the liability of joint tortfeasors is joint and several and the Tribunal thus gravely erred while holding that 50% compensation shall be recoverable from the owner and driver of the three-wheeler and 50% from the owner and driver of the Tata-407 vehicle, whose details could not be ascertained. Accordingly, it is held that claimant is entitled to recover the entire amount from respondent No.1 and 1-A i.e. driver and owner of the offending three-wheeler.

11. Coming to the assessment of compensation, the law is well settled that the compensation to be awarded for injuries suffered by victim in a motor vehicular accident should be just and equitable. Courts have consistently held that while money cannot erase the pain, suffering, or trauma but it is the only legal means to provide restitution and restore the victim to his previous position as far as possible for which ‘just compensation’ has to be assessed. It is also well settled that while it is impossible to fully compensate for the loss of limb, life, or quality of life, the compensation must be ‘Just’, meaning thereby, that it should be fair, reasonable, and equitable based on the evidence and not merely a ‘Windfall’ or a ‘Pittance’. The core objective is to put the injured/victim in the same position he

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

would have been if the accident had not taken place, to the extent money can do so. This approach ensures that the law provides a realistic recompense for the trauma endured, rather than just providing normal relief.

12. Hon'ble Supreme Court in 2013 (3) RCR (Civil) 934 - **G.Ravindranath @ R. Chowdary Vs. E. Srinivas and another**, has held that in a case of accident resulting in injuries to the victim, the compensation in personal injury cases should be determined under the following heads:-

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing expenditure, food and miscellaneous

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded under heads (i), (ii) (a) and (iv) It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi)

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

13. To prove the injuries suffered by him, claimant has examined PW2-Dr. V.K. Nagpal, who deposed that on 09.02.2001, patient Rishi Pal was referred from PGI Chandigarh, when he was posted as a Medical Officer in General Hospital, Kaithal. The patient had suffered head injury with fractures patella and femur condile and was examined by Surgeon and Orthopaedic Surgeon. The patient was operated upon for patella on 23.3.2001 and discharged on 13.4.2001 and he tendered the bed head ticket and treatment record Ex. PA. Learned Tribunal awarded a sum of Rs.10,000/- on account of pain and sufferings, which in my opinion is grossly inadequate. The claimant had suffered head injury with fracture patella and fracture femur condile and he was operated upon for fracture patella. It is a matter of common knowledge that pain component in such injuries is enormous, which take a considerable time to heal. Therefore, taking into consideration the severity of injuries suffered by the claimant, he is held entitled to a sum of **Rs.20,000/- for pain and sufferings**.

14. As per version of claimant, he remained bedridden for several months and could not do any work and has suffered loss of income. Now, the point to be seen is as to how much was the monthly income of the claimant. Hon'ble Supreme Court in *2025 ACJ 1624* ***Karuna Parmar Vs. Prakash Sinha and others*** while relying upon judgment rendered by the Hon'ble Supreme Court in *2024 SCC Online SC 3692,* ***Baby Sakshi Greola Vs. Manzoor Ahmad Simon,*** has held that minimum wages payable to a skilled worker in the concerned State have to be

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

taken into consideration while assessing income in the case of a child because that would be the minimum amount which a child would have earned on attaining the age of majority. In **Karuna Parmar's case (supra)**, a girl aged 6 years had died and taking into consideration the minimum wages for skilled workers in the year 2014 to be Rs.223 per day, annual income was assessed as Rs.80,280/- and thereafter, future prospects were applied and after applying multiplier of 18, the compensation was assessed. Hon'ble Supreme Court in (2022) 1 SCC 198, ***Chandra alias Chander alias Chanda Ram and another Vs. Mukesh Kumar Yadav***, has held that merely because claimants are unable to produce documentary evidence to show the monthly income of the deceased/victim is not a ground to discard the oral evidence and in such cases, the Court is required to ensure just compensation based on preponderance of probabilities. Minimum wage notification may serve as a yardstick but cannot be the sole basis for assessing the income. Moreover, it is also well settled that where the injured belongs to unorganized sector, strict proof of income is not mandatory and notional income can be reasonably assessed based on the social status and facts and circumstances of the case. As such, some amount of guess work has to be applied while assessing the income. In the present case, claimant was 18 years of age and was a student of 10th class and the accident had taken place on 29.01.2001 and during those days, minimum wages earned by a skilled person were around Rs.3,000/- per month and accordingly, income of claimant is taken as **Rs.3,000/- per month**.

15. It must have taken atleast three months for the injuries to heal and during this period claimant would not have been able to do any work. He must have also spent some amount on transportation, in engaging an attendant and on

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

nutritious diet. Accordingly, he is held entitled to a sum of **Rs.9,000/- for loss of income, Rs.5,000/- for transportation, Rs.5,000/- for engaging an attendant and Rs.5,000/- for expenses incurred on nutritious diet.**

16. As per version of claimant, he had spent more than Rs.1,00,000/- on his treatment but no cogent and convincing evidence has been led in this regard. Tribunal awarded him a sum of Rs.7,069/- on account of expenses incurred on treatment as per bills Ex. P1 to P20. However, it is a matter of common knowledge that the patients or their attendants generally do not preserve all the bills and some amount of guesswork has to be applied while assessing the expenses incurred on treatment. Accordingly, he is held entitled to a sum of **Rs.10,000/- towards cost of present and future treatment**.

17. Resultantly, the compensation to be paid to the claimant is assessed as under:-

S. No.	Head of Compensation	Amount
1.	Pain and sufferings	Rs.20,000/-
2.	Loss of income during treatment	Rs.9,000/-
3.	Transportation expenses	Rs.5,000/-
4.	Attendant charges	Rs.5,000/-
5.	Nutritious diet	Rs.5,000/-
6.	Cost of present and future treatment	Rs.10,000/-
7.	Total Compensation	Rs.54,000/-

18. Resultantly, the appeal in hand is partly accepted with costs and claimant is held entitled to a sum of Rs.54,000/- as compensation. The enhanced compensation thus comes out to Rs.33,931/- (Rs.54,000/- - Rs.20,069/-) (rounded off to Rs.34,000/-) over and above the compensation awarded by the Tribunal along with interest at the rate of 9% per annum from the date of filing of claim petition i.e. 26.02.2001 till realization payable by respondents No.1 and 1-A

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment

jointly and severally.

19. Pending miscellaneous application(s), if any, shall also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

17.08.2026
amandeep

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No

AMANDEEP GOSAIN
2026.08.18 19:45
I attest to the accuracy and
integrity of this
order/judgment