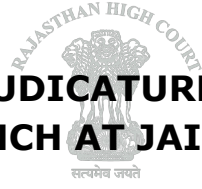




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 292/2016

United India Insurance Company Limited through Manager,
Sahara Chambers, Tonk Road, Jaipur

----Appellant/Non-Claimant No. 3

Versus

1. Smt Mamta Sharma age 35 years W/o late Santosh Kumar Sharma
2. Kumari Priya Sharma D/o late Santosh Kumar Sharma, age 13 years
3. Abhishek Sharma S/o late Santosh Kumar Sharma, age 11 years
4. Sampati Devi Sharma W/o late Radhy Shaym Sharma, age 75 years

(Respondent No. 2 & 3 are being represented through their natural guardian and their mother Smt. Mamta Sharma, all R/o Ganpati Nagar Khatava Kasba Lalsot, Tehsil Lalsot, District Dausa

----Respondents/Claimants

Connected With

S.B. Civil Miscellaneous Appeal No. 293/2016

United India Insurance Company Limited through Manager,
Sahara Chambers, Tonk Road, Jaipur

----Appellant/Non-Claimant No. 7

Versus

1. Parvati @ Asha W/o late Jagdish Prashad, age 27 years
2. Chajulal S/o Panchuram, age 50 year
3. Kisturi age 49 years W/o Chajulal
4. Ravi age 10 years S/o late Jagdish (Minor through her natural guardian and mother Parvati @ Asha
5. Reena @ Khusboo age 8 years D/o late Jagdish Minor through her natural guardian and her mother Parvati @ Asha





6. Rahul age 6 years S/o late Jagdish Prashad, minor through his natural guardian and mother Parvati
(All R/o Aamvali Dhani Panchayat Rajoli Tehsil Lalsot, District – Dausa)
7. Rohitash Singh S/o Hari Singh R/o Govind Singh Baas Rajgad, District – Choru
8. M/s Advance Chemical Industries M I A Alwar through Power of Attorney Rajpal Singh son of Tejpal Singh by caste Rajput R/o Phool Bhagh Rothak Road, Rampura Delhi
9. New India Insurance Company Ltd. through Branch Manager Branch Office near Poonam Takij Lalsot Road, Dausa
10. M/s. Advance Chemical Industries M I A Alwar through Partner S.K. Agarwal Son of G.K. Agarwal C/o 13 Phoolbhag Rothak Road Rampura, Delhi
11. Battilal son of Jainaryan, R/o Mahuklal Tehsil Gangapur City Sawai Madhopur
12. Hemant Kumar Shukla S/o Ishwar Lal Shukla R/o Near Chaumunda Devi Mandir Chuligate, Gangapur City, District –Sawai Madhopur

----Respondents / Non-Claimants

S.B. Civil Miscellaneous Appeal No. 294/2016

United India Insurance Company Ltd. through Manager, Sahara Chambers, Tonk Road, Jaipur

----Appellant-Non/Claimant No. 3

Versus

1. Girraj Prashad Khandal (Sharma) S/o Sitaram Sharma R/o Kuldeep Nagar Khatava Road Lalsot, District – Dausa.
2. Rohitash Singh S/o Hbari Singh, R/o Govind Singh Ka Baas, Police Station Mehira Baas Jajgad, District - Choru
3. M/s Advance Chemical Industries, 3/9 Amar Park Rohthak Road, New Delhi, District – Delhi
4. New India Insurance Company Ltd. through Branch Manager Branch Office near Poonam Takij Lalsot Road, Dausa





5. Rajpal Singh S/o Tejpal Singh, R/o 13 Phool Bag Rothak Road, Rampura New Delhi at present Manager – Advance Chemical Industries, Rothak Road, New Delhi
6. Battilal S/o Jainaryan, R/o Nayapura Mhakil, Tehsil Gangapur City, Sawai Madhopur
7. Hament Kumar Shukla S/o Ishwar Lal Shukla, R/o near Chamunda Devi Mandir, Chuligate, Gagnapur City, District – Sawai Madhopur

-----Respondents/Non-Claimants

S.B. Civil Miscellaneous Appeal No. 2823/2016

1. Smt Mamta Sharma, age 40 years, W/o late Santosh Kumar Sharma
2. Kumari Priya Sharma, age 18 years, D/o late Santosh Kumar Sharma
3. Abhishek Sharma, age 16 years, S/o late Santosh Kumar Sharma, minor through natural guardian mother Smt. Mamta Sharma
4. Smpatti Devi Sharma, age 80 years, W/o late Radheyshyam Sharma
All R/o Ganpati Nagar, Khatwa Road, Lalsot, Tehsil Lalsot, District – Dausa

-----Claimants / Appellants

Versus

1. Batti Lal Saini Saini S/o Jainarayan Saini, R/o Nayapura, Mahukalan, P.S. Gangapur City, District - Sawai Madhopur (Driver RJ 25 UA 0453)
2. Hemant Kumar Shukla S/o Iswhar Lal Shukla, R/o Near Chamunda Devi Temple, Chuli Gate, Gangapur City, District Sawai Madhopur (Owner RJ 25 UA 0453)
3. United India Insurance Company Limited, through Branch Manager, Branch Office, Kamaldeep, Near Railway Crossing, Agra Road, Dausa (Insurance Company RJ 25 UA 0453)
4. Rohitash Singh S/o Hari Singh, R/o Govindsingh Ka Baas, P.S. Mihirbaas, Rajgarh, District – Churu (Driver RJ 02 GA 0879)





5. Advance Chemical Industries, 3/9, Amar Park, Rohtak Road, New Delhi, District – Delhi (Owner RJ 02 GA 0879)
- 5-A Rajpal Singh S/o Tejpal Singh, R/o 13, Phoolbagh, Rohtak Road, Rampura, New Delhi, At present Manager, Advance Chemical Industries, Rohtak Road, New Delhi (Owner RJ 02 GA 0879)
6. The New India Assurance Company Limited, Through Branch Manager, Branch Office, Near Poonam Cinema, Lalstot Road, Dausa (Insurance Company RJ 02 GA 0879)

----Non Claimants / Respondents

For Appellant(s) : Ms. Archana Mantri

For Respondent(s) : Mr. Gunjan Pathak
Mr. Ritesh Jain with
Dr. Ramdeo Arya
Mr. Ram Singh Bhati
Mr. Ravindra Kumar Paliwal with
Mr. Abhishek Paliwal
Mr. Rahul Sharma with
Ms. Anjali Sharma for
Mr. Mukesh Kumar Goyal
Mr. Naman Gurjar for
Mr. K.K. Bhinda

HON'BLE MR. JUSTICE SANDEEP TANEJA

Judgment

Date of Conclusion of Arguments	23.03.2026
Date on which judgment was reserved	23.03.2026
Whether the full judgment or only operative part is pronounced	Full Judgment
Date of Pronouncement	06.05.2026

1. These appeals are directed against a common judgment and award dated 01.12.2015 passed by the learned Motor Accident Claims Tribunal, Dausa, District Dausa (Raj.) (for short 'Tribunal') in MAC cases No. 167/2011, 240/2011, 242/2011, 243/2011 and 244/2011, whereby the claim petitions filed by the claimants therein were partly allowed.





2. Brief facts of the case giving rise to these appeals, are that on 07.01.2011 Jagdish Prasad, Santosh Kumar Sharma, Giriraj Prasad, Vinod Kumar and Lalit Kumar were travelling in a Scorpio car bearing Registration No.RJ-25-UA-0453, from Lalsot to Delhi. At around 3:00 AM, when they reached near Jajor on Alwar – Bhiwadi Highway, the car dashed into a truck bearing Registration No.RJ-02-GA-0879 which was standing on the road without any indicator or signal or obstruction around it. As a result of which, Jagdish Prasad and Santosh Kumar Sharma died on the spot, whereas Giriraj Prasad, Vinod Kumar and Lalit Kumar sustained grievous injuries.

3. In relation to the said accident, a First Information Report (for short 'FIR') was lodged by Lalit Kumar at Police Station, Sadar Alwar and after investigation, police filed a charge-sheet under Section 283 IPC against the driver of the truck and under Sections 279, 337, 338 & 304A IPC against the driver of the car.

4. The truck was insured with The New India Insurance Company (for short 'NIIC'), and the car was insured with United India Insurance Company (for short 'appellant-Insurance Company').

5. The legal representatives of both the deceased persons, as also injured namely, Giriraj Prasad, Vinod Kumar and Lalit Kumar filed separate claim petitions before the learned Tribunal against both the insurance companies and also against the drivers and owners of both the vehicles.

6. On the basis of pleadings of parties, the learned Tribunal framed five issues. In support of the claim petitions, the claimants





therein examined five witnesses namely, Smt. Mamta Sharma (AW-1), Giriraj Prasad (AW-2), Vinod Kumar Sharma (AW-3), Lalit Kumar Sharma (AW-4) and Parvati @ Asha (AW-5), and produced documents which were marked as Exhibit-1 to Exhibit-138. The NIIC and appellant-Insurance Company produced certain documents, however, they did not lead any oral evidence.

7. After considering the submissions of the parties and evaluating the evidence on record, the learned Tribunal concluded that the accident resulted due to the negligence of drivers of both the vehicles and attributed 75% negligence to the driver of the car and 25% negligence to the driver of the truck. Accordingly, while partly allowing the claim petitions, the learned Tribunal apportioned the liability to pay compensation between the appellant-Insurance Company and NIIC in the ratio of 75:25.

8. Being aggrieved by and dissatisfied with the impugned judgment and award, following appeals have been filed:-

S.No.	Appeal No.	Claim Petition No.	Claim Petition filed by
1.	292/2016 (by appellant-Insurance Company)	240/2011	Legal representatives of Santosh Kumar Sharma
2.	293/2016 (by appellant-Insurance Company)	167/2011	Legal representatives of Jagdish Prasad
3.	294/2016 (by appellant-Insurance Company)	242/2011	Injured - Giriraj Prasad
4.	2823/2016 (by legal representatives of Santosh Kumar Sharma)	240/2011	Legal representatives of Santosh Kumar Sharma



**S.B. Civil Miscellaneous Appeal No. 292/2016, 293/2016
and 294/2016**

9. Learned counsel for the appellant-Insurance Company submitted that the accident occurred on 07.01.2011 at about 3:00 AM, when there was dense fog. It was further submitted that the accident took place due to the sole negligence of the truck driver, who had parked the vehicle in the middle of the road without any indication, light, or warning sign such as placing stones or other obstructions around the truck.

9.1 It is further submitted that if there had been any indication, such as lights or warning obstructions, the car would not have collided with the truck, and the accident could have been avoided.

9.2 On the basis of the aforesaid submissions, the learned counsel assailed the impugned judgment and award and prayed to allow the appeals and dismiss the claim petitions, qua the appellant-Insurance Company, filed by the claimants. The learned counsel relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Sushma Vs. Nitin Ganapati Rangole and Ors.**, reported in **AIR 2024 SC 4627**.

10. *Per contra*, learned counsel for the respondents opposed the submissions made by learned counsel for the appellant- Insurance Company and supported the findings given by the learned Tribunal.

11. Heard learned counsel for the parties and perused the material available on record.

12. Upon perusal of the record, it is apparent that the accident took place on 07.01.2011 at approximately 3:00 AM, when the car





collided with the stationary truck near Jajor on the Alwar–Bhiwadi Highway and dense fog was prevailing on that day. Lalit Kumar who was also travelling in the car and got injured in the said accident lodged the FIR (Exhibit-1) on the same date which reads as under:-

“आज दिनांक 7/1/11 को स्कार्पियो गाडी नम्बर RJ-25-UA-0453 से मैं व संतोष कुमार, विनोद कुमार, जगदीश, गिर्राज, शण्डल, कननी लाल अपने गांव लालसोट से दिल्ली जा रहे थे। हमारी गाडी स्कार्पियो को बत्तीलाल सैनी चला रहा था तो आज दिनांक 7/1/11 समय करीब 3 बजे सुबह जैसे ही जाजौर के पास अलवर भिवाडी हाइवे पर पहुंचे तो एक ट्रक RJ-02-GA-0879 जो रोड पर साईड से पहले से खडा था लेकिन हमारी गाडी के चालक बत्तीलाल ने गाडी को तेजी व लापरवाही से चलाकर सामने खडे एक ट्रक RJ-02-GA-0879 में पीछे टककर मार दी जिसमें हमारी गाडी में बैठे संतोष कुमार व जगदीश प्रसाद के शरीर आई गंभीर चोटों के कारण मौके पर ही मृत्यु हो गई।”

(emphasis supplied)

From the aforesaid FIR, which is the first version of the claimants about the accident, it is clear that the truck was standing on the road side only and the accident occurred due to negligence of the driver of the car.

12.1 The police started investigation in relation to the said incident and during this process prepared *Naksha Mauka* (Site Plan) (Exhibit-3), as per which also the location of the truck was on the road side.

12.2 The police, after concluding the investigation, filed charge-sheet under Sections 279, 337, 338, 304A IPC against the driver of the car, meaning thereby, the offence of rash and negligent driving was *prima facie* found proved against the said driver, whereas, charge-sheet against the driver of the truck was





submitted under Section 283 IPC for causing obstruction in a public way or line of navigation.

12.3 The claimants, after filing of the charge-sheet, filed the claim petitions seeking compensation jointly and severally from drivers, owners and insurance companies of the vehicles. It is apposite to mention here that the claimants, in their claim petitions, specifically pleaded that the car was driven at high speed, rashly and negligently and due to which it collided with the truck. The relevant portion of the Claim Petition No. 167/2011 is reproduced hereunder for ready reference:-

“दिनांक 07.01.2011 को मृतक जगदीश प्रसाद अपने परिचित व जानकार के वाहन स्कॉर्पियो संख्या आरजे 25 यूए 0453 में बैठकर अपने अन्य साथियों के साथ लालसोट से दिल्ली जा रहे थे जैसे ही उक्त वाहन स्कॉर्पियो समय करीब सुबह 3 बजे जाजौर के पास अलवर भिवाड़ी हाईवे पर पहुंचे तो विपक्षी संख्या 1 का वाहन ट्रक संख्या आरजे 02 जीए 0879 सड़क के बीचोंबीच बिना किसी इंडिकेटर या सिग्नल के सड़क नियमों एवं यातायात नियमों का उल्लंघन करते हुए खड़ा था जिसकी विपक्षी संख्या 5 ने अपने उक्त वाहन स्कॉर्पियो संख्या आरजे 25 यूए 0453 को तेजगति, लापरवाही व गफलत से चलाते हुए उक्त सड़क के बीचोंबीच खड़े वाहन ट्रक संख्या आरजे 02 जीए 0879 के पीछे से टककर मार दी जिससे मृतक जगदीश प्रसाद के शरीर में गंभीर चोटें आईं व घटनास्थल पर ही जगदीश प्रसाद व संतोष की मौके पर ही मृत्यु हो गयी तथा अन्य बैठे व्यक्तियों के शरीर में भी गंभीर चोटें आयीं।”

(emphasis supplied)

Similar averments have been made in other claim petitions as well. It is, thus, evident that the case of the claimants before the learned Tribunal was that the driver of the car was driving the car rashly and negligently which led to the occurrence of the accident. Although it was also alleged that the truck was stationed in the middle of the road. This contention, however, is





contradictory to the contents of the FIR and the *Naksha Mauka*, both of which clearly indicate that the truck was parked on the roadside.

12.4 During trial, the claimants produced three eye-witnesses namely, Giriraj Prasad (AW-2), Vinod Kumar Sharma (AW-3) and Lalit Kumar Sharma (AW-4), who were travelling in the car at the time of the accident and also sustained injuries. It is relevant to note that the said eye-witnesses, in their examination-in-chief, stated that the driver of the car was driving at a high speed, rashly and negligently and hit the stationary truck from its behind. Although, it was also mentioned that the truck was standing in the middle of the road without parking lights and indicator.

12.5 Giriraj Prasad (AW-2) during cross-examination stated that the truck was standing 1-2 feet away from the side of the road, towards footpath. He further stated that the rest of the road towards divider was clear. The car was being driven at an approximate speed of 50-60 kmph. He also stated that they could see the truck standing, from a distance of about 10-15 feet and as soon as they saw the truck, they asked the driver to apply brakes, but the driver did not do so, and the car dashed into the truck. It was also stated that if the driver had driven the car at slow speed, the accident would not have occurred as the vehicle would have stopped. He, however, stated that the truck was standing in the middle of the road and indicators were not lit. There was dense fog, hence the truck was not visible and therefore, the accident occurred.





12.6 Vinod Kumar Sharma (AW-3) during his cross-examination stated that the place of occurrence was 20-22 km from Alwar and the car was being driven at an approximate speed of 70-80 kmph. He further stated that he could see the truck from 50 metres and thereafter warned the driver of the car to drive slowly. He further stated that the width of the road was 24 feet and the space towards the conductor side was 2 feet. Thereafter, again he said that they could see the truck from 150 metres. He also stated that if the truck driver had lit the indicator or had put stones around the truck as indicator, the accident would not have occurred.

12.7 Further, Lalit Kumar Sharma (AW-4) during his cross-examination stated that there was space of approximately 2-3 feet towards the left side of the truck. He further stated that at that time, the speed of the car was about 50 kmph and he could see the truck standing from a distance of 15-20 feet and when he saw the truck he asked the driver that there was a truck in the front, and the driver instead of applying brakes, tried to take the car from the side of the truck. He further stated that, if the driver had applied the brakes or had tried to stop the car, probably the accident would not have occurred. He also stated that if the truck driver had put any indicator, the accident would not have occurred.

13. It is a well settled principle of law that a claim petition should be decided on the basis of preponderance of probability rather than strict proof beyond reasonable doubt as is the requirement in criminal cases. In this regard, it is relevant to refer to the observations made by the Hon'ble Supreme Court in the





case of **ICICI Lombard General Insurance Co. Ltd. Vs. Rajani Sahoo & Ors.** reported in **(2025) 2 SCC 599**, which read as under:

"8. As regards the reliability of charge-sheet and other documents collected by the police during the investigation in motor accident cases, this Court in *Mangla Ram v. Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656, held in para 27, thus:

"27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 and 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes*, (2013) 10 SCC 646, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent No. 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the tribunal."

(emphasis supplied)

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.





10. *In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510, this Court held thus:*

"12. ... A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi, (2009) 13 SCC 530."

11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible."

From the above, it is also clear that while deciding the claim petition, it is permissible for the Tribunal to look into the police records.

14. In the instant case, it is evident that at every stage, namely (i) in the FIR, (ii) in the pleadings of the claim petitions, (iii) in the examination-in-chief, and (iv) in the cross-examination, the claimants have consistently maintained that the car was being driven at a high speed and that the accident occurred due to the rash and negligent driving of its driver. In such circumstances, some contradictions in statements during cross-examination cannot outweigh the constant version put forth by the claimants throughout the proceedings. Moreover, the police has also found a





prima facie case against the driver of the car for offences punishable under Sections 279, 337, 338, and 304A of IPC. Further, the testimony of AW-2 & AW-4 also point out that as soon as they saw the truck, they cautioned the driver, but the driver did not apply the brakes. If the driver had applied the brakes, the car could have stopped in time and the accident could have avoided. It is, thus, established that the accident occurred due to negligence of the driver of the car.

15. In so far as location of the truck is concerned, it is necessary to note that drivers of both the vehicles were not examined. However, from the contents of the FIR, *Naksha Mauka* report and the testimonies of AW-2 & AW-4, it is established that the truck was parked on the road side and not in the middle of the road. However, it is also clear from the evidence that truck was parked on the roadside without any warning signals, indicators, or precautionary measures to alert oncoming traffic. If the truck driver had put any warning signal or indication, the accident could have been avoided. It is, thus, also established that the truck driver was also negligent and was also responsible for the occurrence of the accident.

16. The learned counsel for the appellant - Insurance Company has relied on the case of **Sushma** (supra). In that case there was a concurrent finding of fact by the Tribunal and the High Court that the truck was left abandoned in the middle of the road. Moreover, in that case, the Tribunal while holding the passengers of the car vicariously liable for the negligence of the driver had reduced their compensation which was affirmed by the High Court.





In the above facts and circumstances, the Hon'ble Supreme Court observed that the passengers of a vehicle are not vicariously liable for the negligence of the driver and therefore, the compensation payable to the passengers or their legal representative cannot be reduced. With respect to the negligence of the driver of the car, the Hon'ble Supreme Court observed that since the truck was standing in the middle of the road without any warning signals, the entire negligence was of the truck and not that of the driver of the car. However, in the present case, evidence clearly point out that the truck was standing on the side of the road and the driver of the car was also driving the car rashly and negligently.

17. In light of the above discussion, this Court is of the considered opinion that the learned Tribunal after examining the entire factual matrix of the case and evaluating the whole of the evidence available on record, rightly concluded that the accident occurred due to negligence of drivers of both the vehicles wherein the primary liability was of the driver of the car due to his rash and negligent driving, and accordingly, rightly determined the liability of the appellant-Insurance Company and NIIC in the ratio of 75:25. Hence, there is no legal infirmity or illegality in the said finding of the learned Tribunal. Resultantly, the appeals preferred by the appellant-Insurance Company are dismissed.

S.B. Civil Miscellaneous Appeal No. 2823/2016

18. Being dissatisfied with the impugned judgment and award, the present appeal has been preferred by the legal representatives of deceased - Santosh Kumar Sharma (for short 'claimants') seeking enhancement of compensation so awarded.





19. Learned counsel for the claimants submitted that the learned Tribunal has erred in assessing the monthly income of the deceased by calculating it on a notional basis at Rs.5,000/-, however, it should have been determined on the basis of income reflected in Income Tax Returns filed by the deceased. He further submitted that out of last three Income Tax Returns filed by the deceased, the last Income Tax Return i.e. for the Assessment Year 2010-2011, reflects the highest income of the deceased, therefore, it should be considered for assessing the income of the deceased. He also submitted that the gross income for the Assessment year 2010-2011 was declared as Rs.1,75,110/- and after deducting the income tax of Rs.715/-, the annual income for the same year would amount to Rs.1,74,395/-. In support of his contention, the learned counsel placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of **Malarvizhi & Ors. Vs. United India Insurance Company Limited & Anr.**, reported in **(2020) 4 SCC 228**.

19.1 Learned counsel further contended that the learned Tribunal further erred in assessing the age of the deceased as 48 years, by relying on the post-mortem report, whereas his age should have been determined on the basis of Driving Licence (Exhibit-25) and Permanent Account Number (PAN) Card (Exhibit-26) which clearly reflect that deceased was 41 years old at the time of accident.

19.2 Learned counsel also contended that under the head of loss consortium, the learned Tribunal has awarded a lump-sum amount of Rs.1,00,000/-, whereas the each of the claimants is entitled to Rs.40,000/-, separately.





19.3 Learned counsel for the claimants further contended that the learned Tribunal has erred in directing the insurance companies to pay compensation to the claimants in the ratio of 75:25. Since, it is a case of composite negligence, the claimants should be allowed to claim compensation from any of them.

20. Learned counsel for the insurance companies opposed the submissions made hereinabove by learned counsel for the claimants and supported the impugned judgment and award.

21. Heard learned counsel for the parties and perused the material available on record.

22. In respect of the first issue raised by the learned counsel for the claimants, it is not in dispute that the claimants produced the Income Tax Returns of deceased for the last three assessment years i.e. 2008-2009, 2009-2010 and 2010-2011 (Exhibit-22-24) which were filed by the deceased himself with the Income Tax Department. It is also undisputed that in the Income Tax Return for the assessment year 2010-11, the deceased had declared the highest income as Rs.1,74,395/-.

22.1 The Hon'ble Supreme Court in the case of **Nidhi Bhargava & Ors. Vs. National Insurance Company Ltd. & Ors.**, reported in **2025 SCC Online SC 872**, has observed that determination of income should be made on the basis of Income Tax Returns. For ready reference, the relevant para of the said judgment is reproduced below:-

*"13. The Income Tax Return is a legally admissible document on which the income assessment of the deceased could be made. This Court in **Malarvizhi v United India Insurance Co. Ltd., (2020) 4 SCC 228** affirmed that the determination of income must proceed*





on the basis of Income Tax Return(s), when available, being a statutory document. In **S Vishnu Ganga v Oriental Insurance Company Limited, 2025 SCC OnLine SC 182**, we opined:

'11....It is no longer res integra that Income Tax Returns are reliable evidence to assess the income of a deceased, reference whereof can be made to Amrit Bhanu Shali v National Insurance Co. Ltd., (2012) 11 SCC 738 [Para 17]; Kalpanaraj v Tamil Nadu State Transport Corporation, (2015) 2 SCC 764 [Para 7] and K Ramya (supra) [Para 14 of 2022 SCC OnLine SC 1338].' (emphasis supplied)"

22.2 Therefore, relying on the afore-mentioned judgment, this Court is of the opinion that the determination of the annual income of the deceased for the purpose of calculation of loss of dependency would be made on the basis of the Income Tax Returns filed by him.

22.3 Further, in the case of **Malarvizhi & Ors.** (supra), the Hon'ble Supreme Court, affirmed the determination of annual income of the deceased on the basis of the Income Tax Return pertaining to the financial year reflecting the highest income. The relevant paragraphs of the said judgment are reproduced hereunder:-

"6. In appeal, the High Court concluded that on an analysis of the income tax returns filed by the deceased for the financial years 1995-1996 to 2000-2001, the income declared for the financial year 1997-1998 was the highest and must be taken as the annual income of the deceased....."

xxxx

10.The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. Mr Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the





benefit of the appellants, the High Court has proceeded on the basis of the income tax return for Assessment Year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased."

(emphasis supplied)

22.4 Undisputedly, in the case at hand, the highest income of the deceased is reflected in the last Income Tax Return filed by the deceased. Hence, Income Tax Return pertaining to the last assessment year i.e. 2010-11, reflecting Rs.1,74,395/-, as the annual income shall be considered for calculating the compensation towards loss of dependency.

23. In connection with the issue of the age of the deceased, from a bare perusal of the record, it is revealed that the claimants in the claim petition mentioned the age of deceased as 41 years and in support of the same, produced the Driving Licence (Exhibit-25) and the Permanent Account Number (PAN) Card (Exhibit-26) of the deceased on record. Both of these documents reflect the date of birth of deceased as 08.11.1969, as per which his age, at the time of the accident, was 41 years. However, the learned Tribunal, after relying upon the post-mortem report of the deceased, determined his age as 48 years.

23.1 The post-mortem report is a document to ascertain nature of injuries and cause of death. The age mentioned in the post-mortem report is estimated on the basis of anatomical examination and the same does not reflect the accurate age. In the case in hand, the claimants have relied upon driving licence and PAN card of the deceased, issued by respective government agencies, which have higher degree of reliability as compared to that of the post-mortem report.





23.2 In view thereof, in the opinion of this Court, the learned Tribunal erred in relying upon the post-mortem report to determine the age of the deceased. Accordingly, the age of the deceased is determined as 41 years.

24. With respect to the issue regarding the compensation under the head of loss of consortium, this Court is of the view that in accordance with the principles laid down by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Vs. Nanuram @ Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130**, each of the claimants is entitled to get compensation of Rs. 40,000/- towards the loss of consortium. Since, the age of the deceased at the time of accident is determined as 41 years, addition @ 25% will be made in the income of the deceased towards future prospects.

25. In so far as the last contention of the claimants regarding liability of the insurance companies to make payment of compensation to the claimants, is concerned, it is pertinent to refer to the judgment passed by Hon'ble Supreme Court in **T.O. Anthony v. Karvarnan and Ors.** reported in **2008 (3) SCC 748**, wherein the Hon'ble Supreme Court has expounded that when a person dies or is injured as a result of negligence on the part of two or more wrong doers and not because of the negligence of the deceased / injured, then it will be a case of composite negligence of those wrong-doers and in that case, each wrong doer, will be jointly and severally liable to the claimants for payment of the damages and the claimants have the choice of





proceeding against all or any of them. The relevant portion of the aforesaid judgment is reproduced herein below:-

"6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence."

(emphasis supplied)

26. In the instant case, the claimants are the legal representatives of the deceased and none of them is the driver of the vehicles involved in the accident, i.e., truck and car. Hence, the present is a case of composite negligence as there was no negligence on the part of the deceased. Therefore, despite apportionment of liability between the insurance companies, it is open for the claimants to claim compensation from any of them.

27. As a result of above discussion, the compensation payable to the claimants is re-assessed as under:-

S.No.	Particular	Amount assessed
1.	Annual Income	Rs.1,74,395/-
2.	According to the age of the deceased i.e. 41 years, multiplier 14 to be applied	Rs.1,74,395 x 14 = Rs.24,41,530/-
3.	Add 25% towards future prospects (+)	Rs.24,41,530/- + Rs.6,10,383/- = Rs.30,51,913/-





4.	As per dependency, 1/4th income to be deducted for personal expenses of the deceased (-)	Rs.30,51,913/- - Rs.7,62,978 = Rs.22,88,935/-
5.	Loss of consortium (four dependants)	Rs.40,000 x 4 = Rs.1,60,000/-
6.	Loss of Estate	Rs.15,000/-
7.	Funeral Expenses	Rs.15,000/-
	Total Compensation (S.No.4+5+6+7)	Rs.24,78,935/-
	Less amount awarded by the Tribunal (-)	Rs.8,85,500/-
	Enhanced amount of compensation	Rs. 15,93,435/-

28. Accordingly, the compensation awarded by the learned Tribunal is enhanced by **Rs.15,93,435/-**. The insurance companies are directed to deposit the enhanced amount within a period of two months from today. The rest of the impugned award shall remain intact.

29. It is directed that the enhanced amount shall carry the rate of interest in terms of the award passed by the learned Tribunal, from the date of filing of the claim petition. The enhanced amount shall be disbursed in terms of the award passed by the learned Tribunal.

30. The impugned award is modified in the above terms and the present appeal is partly allowed.

31. All pending applications, if any, also stand disposed of.

32. Registry is directed to send back the record of the case to the concerned Tribunal forthwith.

(SANDEEP TANEJA),J

SKS/19-22

