104 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3426-2001 (O&M)
Date of Decision: 02.11.2026

SURESH KUMAR SETHI AND ANR

...Appellants

Versus

SANJEEV KUMAR AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. A. S. Virk, Advocate
for the appellants.

Service of respondent Nos.1 and 2 dispensed with vide order dated 08.09.2026.

Mr. Raj Kumar, Advocate
for respondent No.3 (through VC).

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by appellants-claimants (parents) being aggrieved by award dated 10.05.2000 passed by learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as '**Tribunal**'), whereby claim petition preferred under section 166 of the motor vehicles act, 1988 by appellants-claimants on account of death of their unborn child(hereinafter referred to as 'deceased') in motor vehicular accident dated 08.06.1997 allegedly caused due to rash and negligent driving of respondent-driver while driving scooter bearing registration No.CHQ 824 (hereinafter referred to as '**offending vehicle**'), was dismissed.

2. Brief facts relevant to the present case are that on 08.06.1997 at about 10.30 pm appellants-claimants were on their way back to their home from PGI on their motorcycle bearing registration number HR-25/4650

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being driven by the appellant-claimant No.1. On reaching near Bitta Petrol Pump on Chandigarh-Panchkula road at about 10.45 pm, due to blockage on the road appellant-claimant no.1 put his motorcycle on the kacha portion of the road. Appellant-claimant no. 2 got down from the motorcycle and started walking ahead to see the passage of the motorcycle. When she had hardly covered 7/8 steps, respondent-driver of the offending vehicle came from behind and struck his scooter against the appellant-claimant no.2 dragging her eight to ten feet. Resultantly the appellant-claimant no.2 struck against the cement pipe lying on the road and got stuck between the scooter and the pipe. The appellant-claimant No.2 was 28 weeks pregnant and suffered multiple injuries including fractures. Unborn child also died due to injuries in the accident.

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

i. Whether the accident in question has taken place on account of rash and negligent driving of scooter No.CHQ-824 by its driver Sanjeev Kumar alias Kaka-respondent No.1? OPP

ii. That what amount of compensation, the petitioner is entitled to any if so from whom? OPP

iii. Whether respondents no.1 and 3 are not liable to pay the amount of compensation in view of the pre-objections raised by them in their respective written statement? OPR

iv. Relief

4. Though, learned Tribunal decided issue No.1 in favour of claimants and had held that accident had taken place on account of rash and

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negligent driving of respondent-driver, however, had dismissed the claim petition on the ground that claim petition seeking compensation of loss of foetus/unborn child is not maintainable by relying upon judgment of Hon'ble Himachal Pradesh High Court titled as **Rakesh Kumar Vs. Prem Lal,** 1996 ACJ 980.

5. Learned counsel for the appellants-claimants has argued that Motor Vehicle Act, 1988 does not prescribe nature of loss which can be compensated under its provisions. He argues that all sorts of loss which may be pecuniary or non-pecuniary are bound to be granted/compensated under the provisions of Motor Vehicles Act, 1988 and therefore, loss of foetus/unborn child is a grave loss to the parents of such child and accordingly, they are entitled to compensation under the provisions of Motor Vehicles Act, 1988. The issue whether foetus can be treated as a child for the purpose of compensation under Section 166 of Motor Vehicles Act, 1988 was duly taken for consideration by Hon'ble Kerala High Court in **Abhulasees, P.P. and others Vs. Abdumanaf and others,** 2017(4) RCR(Civil) 1065. The Hon'ble Full Bench had held as under :-

> *"15. Verdicts rendered by different High Courts on the subject came to be considered and discussed by the Delhi High Court (Single Bench), when judgment was rendered in* ***Prakash & others v. Arun Kumar Saini & another, (2010) ACJ 2184****. Rights of an unborn child, as recognized in different legal contexts have been dealt with in paragraph 16 of the said verdict; relevant portion of which is reproduced below, for convenience of reference.*
>
> > *"16. The rights of an unborn child are well recognized in various different legal contexts which are as under:*
> >
> > *(i) section 6 of the Limitation Act, 1963 provides that where a person entitled to institute a suit or make an application for execution of the decree is, at the time from which the prescribed period is to be reckoned, a minor, he*

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may institute the suit or make the application within the same period after the disability has ceased. Explanation to Section 6 reads thus:

Explanation.-For the purposes of this section, 'minor' includes a child in the womb."

(ii) section 20 of the Hindu Succession Act, 1956 recognises the right of a child in the womb, Section 20 reads thus:

Section 20.-Right of child in womb:

"A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born, before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate."

(iii) Mulla on Hindu Law, Fifteenth Edition, contains a commentary by the author while dealing with Section 20. The commentary reads thus:

"It is by fiction or indulgence of the law that the rights of a child born just matrimonial are regarded by reference to the moment of conception and not of birth and the unborn child in the womb if born alive is treated as actually born for the purpose of conferring on him benefits of inheritance. The child in embryo is treated as in esse for various purposes when it is for his benefit to be so treated. This view is not peculiar to the ancient Hindu law but one which is adopted by all mature systems of jurisprudence. This section recognises that rule of beneficent indulgence and the child in utero although subsequently born is to be deemed to be born before the death of the intestate and inheritance is to be deemed to vest in the child with effect from the date of the death of the intestate."

(iv) In the Indian Succession Act, 1925, 'minor' is defined under Section 2(e), which reads as follows:

"Section (2)(e) 'minor' means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and 'minority' means the status of any such person;"

section 7 of the Indian Succession Act provides that the domicile of origin of every person of legitimate birth is in

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> *the country in which at the time of his birth his father was domiciled and in the case of a posthumous child, in the country in which his father was domiciled at the time of the father's death. Section 112 of the Indian Succession Act recognises the rights of a person coming into existence after the death of a testator.*
>
> *(v) section 13 and 20 f the Transfer of Property Act deal with situations in which on a transfer of property, an interest therein is created for the benefit of a person not in existence. As per Section 20, where on a transfer of property an interest therein is created for an unborn person, he acquires on his birth, a vested interest.*
>
> *(vi) Section 313 to 316 the Indian Penal Code provide for punishment for the offence of miscarriage; for doing any act with intent to prevent child being born alive; for causing death of quick unborn child by act amounting to culpable homicide etc."*

XXXX XXXX XXXX XXX

20. For compensating the loss, the 'foetus/still born child' could be equated as a living child and the quantum of damages fixed could be ordered to be given to the Husband and Wife/Appellants. The stage of the foetus is having some importance/relevance in fixation of quantum. After fertilization, the 'Embryo' starts development and on completing 'five months' (20 weeks), formation of different organs will be almost nearing completion. The "viability of the child" as explained in "Modi's Medical Jurisprudence" (25th Edition) is extracted below:

> *"Viability of Child.-The term 'viability' means the ability of neonate to lead a separate existence outside the mother. Viability denotes the stage of maturity at which a normally developed neonate is potentially able to survive. Generally, the term 'viability' is used in its legal rather than in its biological sense, the legal definitions of viability ranging from 180 to 210 days of intra-uterine development. Viability, it should be noted, is not synonymous with live birth.*

It is clear from the above authentic version, that formation of the child becomes complete after 180 days and in the remaining period growth of the child takes place, to take birth in the due course. In other words, the 'Embryo' in the womb of the mother would be viable as a 'child' between 180-210 days. If for any reason, a pre-mature delivery takes place after the said stage, it is quite possible to save the child with all faculties and without any deformities, by virtue of the

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> *advanced technology and infrastructure available as on the date. In the instant case, the pregnancy had advanced by 'eight months' and as such, the 'foetus' had attained foil viability, even if there occurred a premature birth and it was quite possible for the Husband and Wife to have saved the child, by appropriate means. Because of the road traffic accident occurred in 10-10-2006, such a chance is lost for ever and this being the position, the parents/claimants/appellants are entitled to be compensated for the 'loss of baby' treating the 'foetus' as a 'child'. We hold it accordingly. The reference is answered to the effect that, in all cases where the pregnancy has advanced beyond 'six months' and if any miscarriage occurs because of a road traffic accident, it is open to claim compensation in respect of the 'loss of baby', treating the 'foetus' as a viable 'child', apart from the compensation payable under other appropriate heads."*

6. In the present case, the foetus was 28 weeks old and has to be treated as a child. It is further worth noticing that the judgment of Hon'ble Himachal Pradesh High Court **Rakesh Kumar Vs. Prem Lal** (supra) which was taken into consideration by learned Tribunal, was specifically dealt with by Hon'ble Full Bench of Kerala High Court while passing judgment titled as **Abhulasees, P.P. and others Vs. Abdumanaf and others** (supra). Therefore, in the present case also, learned Tribunal has erred in not granting compensation on account of death of unborn child due to injuries suffered by the mother i.e. appellant-claimant No.2.

7. Next question which arises is as to what amount would be just and proper compensation for loss suffered by appellants-claimants.

8. In the present case the appellant-claimant was 28 weeks pregnant at the time of accident. Learned counsel for appellants-claimants has argued that notional income of deceased equivalent to minimum wages being earned by unskilled worker ought to have been taken as after attaining adulthood that was the minimum amount which deceased would have earned if survived. It is also argued that appropriate multiplier needs to be applied

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after taking into consideration future prospects.

9. In **Devendra Kumar Tripathi & Ors. Vs. The Oriental Insurance Company Ltd. & Anr.**, 2026 (1) DNJ 12, wherein deceased was child, Hon'ble Supreme Court had held as under :-

> *"7. Be that as it may, we are of the opinion that the monthly notional income can be adopted as per the Minimum Wages Act, 1948, which both learned Counsel agree, for a Class B city is at Rs. 5400/- per month. A 40% increase has to be adopted for future prospects and the multiplier is 15 as held in Reshma Kumari (supra) and one-half deduction for personal expenses. The provision of Rs. 50,000/- as medical expenses is retained. The claimants are further entitled to loss of estate and funeral expenses at the rate of Rs. 15,000/- each and loss of filial consortium at the rate of Rs. 40,000/each."*

10. Hon'ble Supreme Court in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, 2017 (16) SCC 680 had prescribed multiplier of '18' for age group of 15 to 20 years and 21 to 25 years. In **Birbal & Anr. Vs. Bhalla & Ors.**, FAO No.3408 of 2004 decided on 03.02.2026, by this Court the multiplier method for children of different age group was adopted by this Court. It was held as under :-

> *"Hon'ble Supreme Court in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.,** 2017 (16) SCC 680 had prescribed multiplier of '18' for age group of 15 to 20 years and 21 to 25 years. It was further prescribed that multiplier on the basis of age groups needs to be applied to ensure uniformity. Multiplier of '5' was recommended for 65 to 70 years. Taking clue from multiplier based system upon reduced dependency with age similar method needs to be adopted in a*

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> *case of child, who would remain dependent on his parents for number of years before he attains adulthood, to achieve uniformity in payment of compensation. Therefore, children/adult from 15 to 20 years are entitled to award of 18 as multiplier. Multiplier of '15' for the children falling in the age group of 11 to 14 would be appropriate as applied by Hon'ble Supreme Court in* ***Devendra Kumar Tripathi & Ors. Vs. The Oriential Insurance Company Ltd. & Anr.****, (supra). It would be appropriate if the multiplier of '12' is awarded in a case of child aged between 06 to 10 years and multiplier of 10 would be appropriate in case of child between 03 to 05 and multiplier of '9' would be appropriate in case of child in the age group of 0 to 03 years. The above noted multiplier would offset period of dependency of deceased on his/her parents. In present case, since deceased was 13 years old, multiplier of '15' would be appropriate for the purposes of determining loss of dependency."*

11. Therefore, in a case of minor child notional income needs to be determined as per minimum wages and for determining loss of dependency 40% future prospects needs to be added.

12. In present case, since deceased was unborn child, multiplier of '9' would be appropriate for the purposes of determining loss of earning capacity. Accordingly, multiplier of '9' is taken for calculating loss of dependency. As per the judgment **Devendra Kumar Tripathi & Ors. Vs. The Oriental Insurance Company Ltd. & Anr.** (supra), notional income of the deceased has to be taken as per minimum wages payable to an unskilled worker in the year 1997, when accident had occurred. Accordingly, income of deceased is taken as **Rs.1,548/- per month**.

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13. Deduction of 50% is required to be made towards personal expenses of deceased, survived by parents. Further compensation has to be granted under the head funeral expenses, loss of estate and loss of consortium. Therefore, appellant- claimant would be entitled to **Rs.15,000/- towards loss of estate** and **Rs.15,000/- towards funeral expenses**. Appellants-claimants no. 1 & 2 would also be entitled to **Rs.40,000/- each towards filial consortium**. It is however made clear that in case Hon'ble Supreme Court answer the reference regarding quantum of compensation under conventional head made in **Hasina Yasmin & Ors. Vs. National Insurance Co. Ltd.**, 2025 SCC Online SC 2919 in favour of appellants, appellants shall be free to seek said amount by moving appropriate application in this regard.

14. Accordingly, the reworked compensation payable to appellants-claimants is as under:-

Income of deceased	Rs.1,548/- per month	Rs.1,548/- per month
Future Prospects	40% (Rs.1,548/- + 619)	Rs.2,167/-
Deduction	50% (Rs.2,167/- -1083)	Rs.1,084/-
Multiplier	9	9
Total loss of dependency	Rs.1,084 x 12 x 9	Rs.1,17,072/-
Loss of estate		Rs.15,000/-
Funeral expenses		Rs.15,000/-
Loss of Filial consortium to Claimant Nos.1& 2	Rs.40,000 x 2	Rs.80,000/-
Compensation awarded in appeal		Rs.2,27,072/-

15. Appellants/claimants shall be entitled to compensation awarded in appeal along with 7.5% interest from the date of filing of claim petition

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till realization (except under the conventional heads i.e. loss of consortium, funeral expenses, loss of estate). Under conventional heads interest shall be payable from August 2017 onwards till realization. Apportionment and liability to pay compensation shall be as per award.

16. Present appeal is allowed in above terms.

17. Pending application(s), if any, is/are disposed of accordingly.

(PARMOD GOYAL)
JUDGE

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Whether Speaking/Reasoned : Yes
Whether Reportable : Yes/No

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