

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

**(1)**

FAO No.2164 of 2014 (O&M)  
Date of Decision: November 8, 2019

Smt. Anjana Devi and others

...Appellants

Versus

Desh Raj and others

...Respondents

**(2)**

FAO No.320 of 2014 (O&M)

Hans Raj

...Appellant

Versus

Desh Raj and others

...Respondents

**(3)**

FAO No.321 of 2014 (O&M)

Smt. Sudha Devi and others

...Appellants

Versus

Desh Raj and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Gurinder Pal Singh, Advocate  
for the appellants.

Mr. Vinod Chaudhary, Advocate  
for respondent No.3-Insurance Company.

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**JAISHREE THAKUR, J.**

1. Through this common order, this court shall dispose of all the above captioned three FAOs i.e. FAO No.2164 of 2014 titled as ***“Anjana Devi and others vs. Desh Raj and others”***, FAO No.320 of 2014 titled as ***“Hans Raj vs. Desh Raj and others”*** and FAO No.321 of 2014 titled as ***“Sudha Devi and others vs. Desh Raj and others”*** as the same arise out of the one accident and questions of law involved in these FAOs are common.

2. In brief, the facts are that on 25.08.2010 at about 9.00 p.m. Hans Raj was waiting for a vehicle at Dharuhera bus stand. Sunil Kumar, his co-villager, stopped his motorcycle bearing registration No.HR36-L-0126 and gave him a lift. When Hans Raj and Sunil Kumar reached in front of Police Station Dharuhera, they saw Shamsher Singh, who was also waiting for a vehicle. Sunil Kumar stopped his motorcycle and gave him a lift as well. When they reached the bridge of Sahibi river on National Highway No.8 in the area of village Masani, a dumper bearing registration No.HR55-C-2658 came from the side of Dharuhera and without blowing a horn struck the motorcycle. Resultantly, the motorcycle fell down and Shamsher Singh, Sunil Kumar and Hans Raj sustained injuries. The driver of the offending dumper stopped the vehicle. Hans Raj noted down the registration number of the offending dumper as HR55-C-2658 and when the

driver of the offending dumper alighted from the vehicle, on asking he disclosed his name as Desh Raj, but thereafter, he fled from the spot along with the offending vehicle. The injured persons were brought to the hospital, where Shamsher Singh succumbed to the injuries on 26.09.2010 whereas, Sunil Kumar succumbed to the injuries on 01.09.2010. An FIR No.275 came to be registered on 01.09.2010 under Sections 279, 337 and 304-A of Indian Penal Code.

3. With the aforesaid allegations, Hans Raj filed a claim petition claiming ₹ 5,00,000/- on account of injuries sustained by him. Wife, son, daughter and mother of deceased Shamsher Singh filed a claim petition claiming ₹ 25,00,000/- as compensation whereas, wife, son, daughter and mother of deceased Sunil Kumar filed a claim petition claiming ₹ 25,00,000/-. All the three claim petitions were contested by the respondents *inter alia* denying the factum of accident as well as involvement of dumper No.HR55-C-2658. All the three claim petitions were consolidated by the Tribunal by an order dated 14.06.2011. Thereafter, issues were framed and evidence was led. On appreciating the evidence, the Tribunal came to hold that Shamsher Singh, Sunil Kumar and Hans Raj were guilty of contributory negligence to the extent of 50% on the ground that driver of the motorcycle was carrying two pillion riders, which is not permitted by the law.

4. In the claim petition filed by Hans Raj injured, the Tribunal assessed a sum of ₹ 72,450/- as compensation and after deducting 50% on account of contributory negligence, awarded a sum of ₹ 36,225/- as compensation to injured Hans Raj.

5. In the claim petition filed by the dependents of deceased Shamsher Singh, the Tribunal awarded a total compensation of ₹ 16,04,520/- and on account of 50% deduction towards contributory negligence, ultimately a sum of ₹ 8,02,260/- was awarded as compensation.

6. So far as the claim petition filed by the dependents of deceased Sunil Kumar is concerned, the Tribunal assessed a total compensation of ₹ 15,89,524/- and on account of 50% deduction towards contributory negligence, awarded a sum of ₹ 7,94,762/- as compensation to the dependents of deceased Sunil Kumar. Aggrieved against the award of the Tribunal, the instant three appeals have been filed by the injured as well as dependents of the deceased respectively.

7. Learned counsel appearing on behalf of the appellants argues that the Tribunal has erred in making 50% deductions in the compensation towards contributory negligence only on the ground that the defending motorcycle was being driven with triple riding. He relies upon judgments rendered in ***Karnail Singh vs. Balwinder Singh, 2014(7) RCR (Civil) 177, Bimla Devi vs. Surjeet Singh and others, 2016(3) RCR (Civil) 891 and New India Assurance Company Limited vs. Jaswinder Kaur and others, 2015(9) RCR (Civil) 905*** to contend that three persons travelling on a motorcycle may have been guilty of traffic offence, but there is no reason for the court to make any inference regarding contributory negligence only on the fact that three persons were sitting on the motorcycle. It is also argued that compensation awarded to the injured Hans Raj is liable to the enhanced, while further arguing that the compensation awarded to the

dependents of the deceased in other two cases is liable to be enhanced in view of the judgment rendered by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.***

8. Per contra, learned counsel appearing on behalf of respondent No.3-Insurance Company argues that the Tribunal has rightly deducted 50% of compensation towards contributory negligence and already adequate compensation has been awarded in all the three cases, as such, no interference is called for.

9. I have heard learned counsel for the parties.

10. The first question, which this court has to adjudicate upon is, whether the Tribunal has rightly deducted 50% of the compensation on the ground that the accident in question had occurred due to the contributory negligence of the driver of the defending motorcycle. In this regard, in para 17 of its award, the Tribunal has concluded that respondent No.1 (driver of the offending vehicle) was driving the offending vehicle in a rash and negligent manner. However, in para 20 of its Award, the Tribunal has observed as under:-

*“20. I find no substance in the plea raised on behalf of the petitioners. The fact that deceased Sunil Kumar was carrying two pillion riders on a motorcycle in violation of the provision of Section 128 of the Motor Vehicles Act, cannot be ignored. If a vehicle, which is designed to carry two persons only, is used to carry more than two, it can be assumed that the driver will not be able to control the vehicle effectively and the weight on account of third passenger will affect its stability. This, by itself,*

*contributes to the negligence of the driver as well as the pillion riders of motorcycle bearing registration No.HR36-L-0126. The authorities cited by learned counsel for the petitioners are of no consequence in view of the law laid down by our own Hon'ble High Court in Angrejo Devi and others versus Jai Parkash and others (supra) wherein it has been categorically held that if the rash and negligent driving of the offending vehicle is proved, the vehicle used for triple riding cannot be absolved of negligence on the part of the driver as well as pillion rider. As such, Shamsher Singh, Sunil Kumar and Hans Raj are held guilty of contributory negligence to the extent of 50% and similarly respondent No.1 being driver of the offending vehicle is also liable to the extent of 50% in causing the accident. Accordingly, issue is partly decided in favour of the claimants and partly in favour of the respondents.”*

11. So far as the finding recorded by the Tribunal in para 20 of its award regarding contributory negligence of the defending motorcycle is concerned, this court is of the considered view that three persons travelling on a motorcycle may have been guilty of traffic offence, but in such an eventuality, there is no reason for the court to make any inference regarding negligence as contributory only by the fact that three persons were going on a motorcycle. A finding of contributory negligence is not a matter of conjectural inference in the manner done by the Tribunal, but it shall be on the basis of specific evidence. In this case, in para 17 of its award, the Tribunal came to conclude that the accident in question has occurred due to rash and negligent driving of driver of the offending dumper i.e. respondent No.1. However, in para 20 of its award, the Tribunal held the driver of the

defending motorcycle liable for contributory negligence, without any evidence to this effect on the record, but merely on the ground that the defending motorcycle was being driven with triple riding, which is violation of the provision of Section 128 of the Motor Vehicles Act. This court is of the considered view that once it is proved on record that driver of the offending dumper was negligent for the accident in question, merely triple riding on a two wheeler/motorcycle without any further proof of negligence on the part of the motorcyclist contributing to the accident, is no ground to hold the driver of the motorcycle negligent for the accident. Under these circumstances, findings so recorded by Tribunal in para 20 of its award are liable to be set aside in view of the law laid down by this High Court in ***Karnail Singh vs. Balwinder Singh, Bimla Devi vs. Surjeet Singh and others, and New India Assurance Company Limited vs. Jaswinder Kaur and others (supra).***

12. Once the findings recorded by the Tribunal as to the contributory negligence have been set aside, now the next question that arises for adjudication is whether the appellants are entitled to enhancement of compensation.

13. So far as the claim petition filed by Hans Raj injured is concerned, the Tribunal assessed the compensation to the tune of ₹ 72,450/- (though deducted 50% towards contributory negligence) on the grounds that injured Hans Raj remained in hospital from 25.08.2010 to 30.08.2010 for which he produced on record bill Ex.PG worth ₹ 54,094/-. After discharge from hospital, he attended the hospital in OPD for his follow up treatment

and purchased medicines vide bills Ex.PH/3 and Ex.PH/4, of which bills total comes to ₹ 845/-. The Tribunal also allowed a sum of ₹ 3000/- towards special diet. Considering the facts that the injured might have visited the hospital for his follow up treatment, he must have spent money on conveyance, an attendant was also supposed to have remained on duty, though the injured did not prove these incidental expenses, the Tribunal allowed a sum of ₹ 5000/- under these heads. The Tribunal, after taking into consideration the fact that the injured remained in hospital from 25.08.2010 to 30.08.2010 and at the time of his discharge, his condition was quite stable, he must have by fair estimate remained out of job for about a month, allowed a sum of ₹ 4500/- towards loss of income of one month. The Tribunal also allowed a sum of ₹ 5000/- towards pain and suffering etc. In this way, a total sum of ₹ 72,450/- was allowed to him as compensation. There is no evidence available on record that the compensation awarded to the injured Hans Raj is on the lower side. Under these circumstances, the compensation awarded to the injured Hans Raj by the Tribunal is maintained.

14. In the claim petition filed by the dependents of deceased Shamsher Singh, in the absence of proof of earning of deceased as ₹ 10,000/- per month by tailoring work, the Tribunal has taken his income as ₹ 4500/- per month as per minimum wages for unskilled worker, as applicable for the relevant year. The compensation awarded to the dependents of deceased Shamsher Singh by the Tribunal is tabulated as under:-

| <b><i>Sr. No.</i></b> | <b><i>Heads</i></b>                                               | <b><i>Calculation</i></b>              |
|-----------------------|-------------------------------------------------------------------|----------------------------------------|
| (i)                   | Name of the deceased                                              | Shamsher Singh                         |
| (ii)                  | Date of accident                                                  | 25.08.2010                             |
| (iii)                 | Age of the deceased                                               | 27 years                               |
| (iv)                  | Monthly income of the deceased                                    | ₹ 4500/-                               |
| (v)                   | 50% of (iv) was added towards future prospects                    | (₹ 4500+₹2250)=<br>₹ 6750/- per month  |
| (vi)                  | 1/4 <sup>rd</sup> of (v) above deducted towards personal expenses | (₹ 6750-₹1688) =<br>₹ 5062/- per month |
| (vii)                 | Compensation calculated after applying the multiplier of 17       | (₹5062X12X17) =<br>₹ 10,32,648/-       |
| (viii)                | Funeral expenses                                                  | ₹ 25,000/-                             |
| (ix)                  | Compensation for loss of consortium                               | ₹ 1,00,000/-                           |
| (x)                   | Compensation for loss of care and guidance to minor children      | ₹ 25000                                |
| Total                 |                                                                   | ₹11,82,650/-                           |

To this, a sum of ₹ 4,21,870/- was added towards medical expenses spent on the deceased on the basis of bills Ex.PB and Ex.PN and thus, the Tribunal awarded a sum of ₹ 16,04,520/- towards compensation. However, on account of 50% deduction towards contributory negligence, ultimately a sum of ₹ 8,02,260/- was awarded as compensation to the dependents of deceased Shamsher Singh, which findings have been set aside by this court. As such, the Tribunal has already awarded a compensation of ₹ 16,04,520/- to the appellants-claimants on account of death of Shamsher Singh, which is over and above the amount as per their entitlement in terms of the judgment rendered in ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***.

15. So far as the claim petition filed by the dependents of deceased Sunil Kumar, the Tribunal assessed the income of deceased as ₹ 5400/- per

month on the basis of minimum wages as applicable for the skilled worker at the relevant time, as the dependents failed to establish on record that deceased Sunil Kumar was running a tractor mechanic workshop and earning ₹ 12,000/- per month, however, the dependents brought on record National Trade Certificate of deceased as Ex.PJ, which established on record that deceased had completed the course of tractor mechanic in the year 1999. The compensation awarded to the dependents of deceased Sunil Kumar is tabulated as under:-

| <i><b>Sr.<br/>No.</b></i> | <i><b>Heads</b></i>                                         | <i><b>Calculation</b></i>              |
|---------------------------|-------------------------------------------------------------|----------------------------------------|
| (i)                       | Name of the deceased                                        | Sunil Kumar                            |
| (ii)                      | Date of accident                                            | 25.08.2010                             |
| (iii)                     | Age of the deceased                                         | 30 years                               |
| (iv)                      | Monthly income of the deceased                              | ₹ 5400/-                               |
| (v)                       | 50% of (iv) was added towards future prospects              | (₹ 5400+₹2700)=<br>₹ 8100/- per month  |
| (vi)                      | 1/4th of (v) above deducted towards personal expenses       | (₹ 8100-₹2025) =<br>₹ 6075/- per month |
| (vii)                     | Compensation calculated after applying the multiplier of 17 | (₹6075X12X17) =<br>₹ 12,39,300/-       |
| (viii)                    | Funeral expenses                                            | ₹ 25000/-                              |
| (ix)                      | Compensation for loss of consortium                         | ₹ 1,00,000/-                           |
| (x)                       | Compensation for care and guidance for minor children       | ₹ 25000                                |
| Total                     |                                                             | ₹13,89,300/-                           |

To this, in the basis of bill Ex.PE, a sum of ₹ 2,00,224/- was added towards treatments charges, thus, the total compensation assessed as ₹ 15,89,524/- and on account of 50% deduction towards contributory negligence, ultimately a sum of ₹ 7,94,762/- was awarded as compensation to the dependents of deceased Sunil Kumar, which findings have been set

aside by this court. As such, the Tribunal has already awarded a compensation of ₹ 15,89,524/- to the appellants-claimants on account of death of Sunil Kumar, which is over and above the amount as per their entitlement in terms of the judgment rendered in ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***.

16. In view of the above, the findings recorded by the Tribunal to the extent of contributory negligence of the defending motorcycle are hereby set aside and the claimants would be entitled to the entire compensation as assessed by the Tribunal without any deductions or enhancements. The claimants will share the amount of compensation as per the award of the Tribunal. The appeals are partly allowed accordingly.

**November 8, 2019**  
*vijay saini*

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No