

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

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**FAO-608-2021 (O&M)
Decided on : 19.07.2021**

United India Insurance Company Ltd.

... Appellant

Versus

Ashwani Kumar & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Satpal Dhamija, Advocate, for the appellant.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral):-

The present appeal is directed against the award of the MACT, Karnal dated 28.01.2021 wherein a sum of Rs.4,09,763/- has been awarded to Ashwani Kumar, respondent No.1 on account of the injuries in the accident which took place on 22.11.2017 at 6.15 PM.

Counsel for the appellant has submitted that the insured was triple riding on the motorcycle and therefore, is a case of contributory negligence which has not been appreciated by the Tribunal.

A perusal of the paperbook would go on to show that the insured along with Nagender Kumar and Om Harish Sharma were riding on the motorcycle driven by Ashwani Kumar when the offending Indica car hit their motorcycle near Madhuban from behind. All the three occupants had fallen down and Om Harish Sharma died at the spot. The driver of the vehicle of the car had stopped and at that point of time, the complainant, Nagender Kumar, the other pillion riders had noted the number of the offending car. An FIR was registered on the next date i.e. on 23.11.2017 and the driver of the car was arrested on 23.12.2017. In such circumstances, it is apparent that the contributory negligence on behalf of the motorcycle is not made out as the vehicle had been struck from behind.

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The Tribunal has relied upon the judgments passed in **United India Insurance Company Ltd. Vs. Ram Murti & others 2014 (1) PLR 485** and **New India Assurance Company Ltd. Vs. Rakesh Vashisht & others 2005 (4) RCR (Civil) 804** where a two-wheeler was hit from behind and the presumption of rash and negligent driving was held not to be made out. One of the victim of accident in the present case, Om Harish Sharma died at the spot on account of the Indica car hitting the motorcycle from the back and therefore, the fact would go on to show the impact of the accident. The said version has been narrated by the injured and therefore, he is the best person to have described the manner in which the accident took place. It is also to be noticed that the driver of the car did not appear in the witness-box to take the plea that the motorcycle was being driven in a rash and negligent manner or had come in the way of the car suddenly which led to the accident taking place. In such circumstances, the Tribunal has rightly found that no contributory negligence can be attributed to the injured.

The said issue has also been decided against the Insurance Company by the Apex Court recently in **Mohammed Siddique & another Vs. National Insurance Company Ltd. & others 2020 (3) SCC 57**. In the said case, 10% of the compensation awarded by the Tribunal had been deducted by the High Court on account of contributory negligence on account of the fact that the deceased was riding as a pillion on a motorcycle along with 2 other persons. The Apex Court noticed that the accident was caused by the car which had hit the motorcycle from behind and thus, there might be violation of the provisions of Motor Vehicles Act, 1988 but the principle of contributory negligence could not be invoked. Relevant para read as under:

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. [Section 128](#) of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the

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motor cycle. [Section 194C](#) inserted by the [Amendment Act 32](#) of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.”

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In the present case, the injured was operated for the fracture of his femur and fracture acetabulum left side and was operated twice in the hospital which charged Rs.2,90,000/-, as per Ex.PW3/C. Similarly, Rs.36,049/- which was incurred on account of medicine charges was also brought on record.

It is in such circumstances the Tribunal has awarded Rs.50,000/- on account of pain and suffering and loss of income of Rs.33,714/-, to arrive at the amount of compensation of Rs.4,09,763/-. The said loss of income was based upon the earnings of Ashwani Kumar-injured who was drawing a salary of Rs.16,857/- per month (Ex.PW5/A), which is the basis to grant the said compensation for the period he was not able to do duties on account of the fracture sustained. Resultantly, this Court is of the opinion that no case is made out to interfere in the well reasoned order passed by the Tribunal since just and adequate compensation has been awarded.

Accordingly, in view of the above discussion, the present appeal is dismissed in limine.

July 19, 2021

Sailesh

(G.S. SANDHAWALIA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No