



FAO-2342 of 2006 (O&amp;M)

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

FAO-2342-2006 (O&amp;M)

Date of Decision: November 08, 2024

The New India Assurance Co. Ltd.

.....Appellant(s)

vs.

Deepak Kumar and others

.....Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**Present: Mr. Suman Jain, Advocate and  
for the appellant.Mr. Rajesh Sethi, Advocate with  
Mr. Arun Biriwal, Mr. Anshuman Sethi, Mr. Paramdeep Singh  
and Ms. Preeti Bansal, Advocates  
for respondent Nos. 1 and 2.Mr. Neeraj Khanna, Advocate  
for respondent No. 5

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**SUDEEPTI SHARMA J.**

1. The present appeal has been preferred by the appellant-Insurance Company against the award dated 16.03.2006 passed in the claim petition bearing No. 63-MACT-2003/2004 filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal').

**BRIEF FACTS OF THE CASE**

2. Brief facts of the case are that on 13.8.2002, Deepak Kumar with his father Ramesh Kumar (since deceased), mother Kanta Rani (since deceased) and one Ashok Kumar was going in the Jeep bearing registration No. HR-05H/2675 (hereinafter referred to as the ill-fated jeep) driven by Rajender Kumar-respondent No. 7 and he started from Sirsa for Amritsar. The driver of the ill-fated jeep was driving the jeep rashly, negligently and carelessly and when they reached just

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ahead of Tarantaran-Amritsar main road within the jurisdiction of P.S. City Tarantaran, in the meantime the bus bearing registration No. PB-02C/9499 (hereinafter referred to as the offending bus) driven by Sukhchain , rashly, negligently and carelessly came from the opposite side and both the vehicles struck against each other. In the accident, Ramesh Kumar and Kanta Rani suffered multiple grievous and serious injuries. They were shifted to General Hospital, Tarantaran. Ramesh Kumar died in the hospital as a result of the injuries suffered by him in the accident. Kanta Rani was given first aid in the General Hospital, Tarantaran and on medical advice, she was shifted to Muni Lal Chopra Memorial Hospital, Amritsar for specialized treatment where she remained admitted from 13.08.2002 to 23.08.2002 and ultimately, she died on the way to hospital.

**SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES.**

3. Learned counsel for the appellant-Insurance Company of the ill fated jeep bearing registration No. HR-05-H-2675 vehemently argues that the learned Tribunal has erred in law to conclude that it is a case of contributory negligence and the Tribunal failed to discuss the statement of the owner of the jeep who appeared as PW5-Harbans Lal, and admitted that it is a Pick Up Mahendra and the trolley attached with it, was for carrying goods. Further, it was proved on record that the driver of the jeep was not negligent for the accident in question. The jeep was on the extreme left side and the bus driver hit the jeep on the right side. Therefore, he prays that the present appeal be allowed and the appellant-Insurance Company be absolved from the liability.

4. Per contra, learned counsel for the Insurance company submits that the award has rightly been passed and the liability in the ratio of 50:50 has rightly been fixed by the learned Tribunal. Therefore, he prays for dismissal of the appeal.

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5. Before proceeding further, it is necessary to reproduce the relevant portion of the award of the Tribunal:-

*“Issue No. 1*

*It is for the petitioners Deepak Kumar etc. to prove that the accident in question took place due to the contributory negligence of the driver of the ill-fated jeep by respondent No. 4 Rajender Kumar, wherein Rasiesh Kumar and Kanta Rani died whereas respondent No. 4 Rajender Kumar it is for the (Petitioner in claim petition NO. 65 of 2003/2004) and respondent No. 5 Harbans Lal (and petitioner in claim petition No. 66 of 2003/2004) and the New India Assurance Company Limited, Sirsa/respondent No. 6 in claim petition NO. 63 and 64 of 2003/2004 to prove that the accident in question took place due to rash and negligent driving of the offending bus by respondent No. 1 Sukhchain Singh. The petitioner: Deepak Kumar etc. to discharge their onus examined Deepa Kumar one of the petitioners as PW3 who tendered in evidence his affidavit Ex. PW3/A swearing that th respondent No. 4 Rajender Kumar was driving the ill-fated jeep rashly and negligently at a very high speed and was overtaking the on going vehicle in the same direction by speeding up the ill-fated jeep, which occasions was observed to be on unmanageable uncontrollable. The respondent Rajender Kumar cautioned by him as well as by his father Ramesh Kumar and mother Kanta Rani. It is further sworn by him that the respondent No. 1 Sukhchain singh was also driving the offending bus in a rash and negligent manner without caring*

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*for the traffic rules and the other vehicles on the road. It is further sworn by him that the accident took place on 13.8.2002 near Mal Mandi just ahead of Tarantaran-Amritsar main road within the jurisdiction of Police Station, Tarantaran when the respondent No. 1 and 4 while driving offending bus respectively struck their in rash, negligent and ill-fated jeep and careless manner vehicles with each other coming from opposite directions, so, the accident in question took place due to contributory negligence of both respondent No. 1 Sukhchain Singh and respondent No. 4 Rajender Kumar.*

*16. The petitioners Deepak Kumar etc also relied upon the death certificate of Kanta Rani Ex. P1, discharge card of Kanta Rani Ex. P2, cop of post mortem report of Ramesh Kumar Ex. P9, copy of FIR Ex. P10, copy of report under Section 173 Cr. P.C. Ex. P11 and copy of list of witnesses in case FIR No. 196 6 dated 13.8.2002, under Sections 279/304A/337 IPC, Police Station, city Taran Taran Ex. P12 and copy of the charge sheet in that case Ex. P13 and Ex. P13/A. From the perusal of the documents relied upon by the petitioners Deepak Kumar etc. Ex. P1, Ex. P2 and Ex. P9 to Ex. P13/A it reveals that on the statement of the petitioner Deepak Kumar a case bearing FIR No. 196 dated 13.8.2002, under Sections 279/304A/337 IPC was registered in Police Station, city Taran Taran against respondent No. 1 Sukhchain Singh for causing the accident question wherein Ramesh Kumar, Kanta Rani and Rajender Kumar*

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*petitioner suffered injuries and later on Ramesh Kumar succumbed to the injuries*

*17. On the other hand, the respondent No. 4 Rajender Kumar and respondent No. 5 Harbans Lal to prove that the accident in question took place due to rash and negligent driving of the offending bus by respondent Rajender Kumar as PW6 who tendered in evidence his affidavit Ex. PW6/A swearing that on 13.8.2002 he alongwith Ramesh Kumar, Kanta Rani etc. started from Sirsa for Amritsar in the ill-fated jeep which was being driven by him at a moderate speed and when they reached near Police Lines, Tarantaran, in the meanwhile the offending bus driven by respondent No. 1 Sukhchain Singh, rashly, negligently at a very high speed came from the opposite side and struck into the ill-fated jeep. As a result of this impact, he and the occupants of the ill- fated jeep suffered multiple grievous injuries in the accident and later on Ramesh Kumar and Kant Rani died due to the injuries suffered by them in the accident. The ill-fated jeep was also badly damaged in the accident. It is further sworn by him that a case bearing FIR NO. 196 dated 13.8.2002, under Sections 279/337/338/304A of the Indian Penal Code was registered in Police Station, City Tarantaran against the respondent No. 1 Sukhchain Singh.*

*18. During the course of arguments, the learned counsel for the petitioners Deepak Kumar etc. and respondent No. 1 to 3 pointed out the cross-examination of PW6 Rajender Kumar wherein he could not deny that in was a head on collusion. Now,*

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*it is settled law that if any fact is not specifically denied, it amounts to admission. Hence from the statement of PW3 Deepak Kumar petitioner and the documents relied upon by them Ex. P1, Ex. P2 and Ex. P9 to Ex. P13/A and specific non-denial of Rajender Kumar in his cross-examination and admission of the accident by all the respondents in their respective Written Statements it is proved that the accident in question took place due to head on collusion between the offending bus and the ill-fated jeep. In case law reported as "Bisarti Bai and others Versus Madhya Pradesh State road Trans, Corpn, and others 1990 A.C.J. 103, it has been held and observed by the Hon'ble High Court of Madhya Pradesh that in case of head-on collision between two vehicles coming from opposite directions, the drivers of both the vehicles were equally rash and negligent in causing the accident. Similar are the facts of the present case.*

*19. In the light of my above discussion and observations and specific non-denial of head-on collusion, by Rajender Kumar (PW6) in his cross-examination it is proved that it was a case of head-on collusion. So, in view of the case law reported as "Bisarti Bai and others Versus Madhya Pradesh State road Trans. Corpn. and others 1990 A.C.J. 103", (supra) it is held that respondent No. 1 Sukhchain Singh, the driver of the offending bus and respondent No. 4 Rajender Cumbria, the driver of the ill- fated jeep, were rash and negligent in driving their respective vehicles and the accident in question took place*

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*due to their contributory negligence wherein Ramesh Kumar and Kanta Rani died and respondent No. 4 Rajender Kumar suffered injuries. So, this issue No. 1 is partly decided in favour of the petitioners Deepak Kumar etc. and partly in favour of the respondents No. 4 to 6.”*

6. In view of the above, no ground is made out to interfere in the impugned award, as the liability has rightly been fixed in the ratio of 50:50 on both the Insurance Companies (i.e Insurance Company of jeep and bus). Accordingly, the present appeal is dismissed.

7. Pending applications, if any, also stand disposed of.

**(SUDEEPTI SHARMA)**  
**JUDGE**

November 08, 2024  
G Arora

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes