

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****FAO-1520-2025 (O&M)****Date of decision: 23.07.2025****Oriental Insurance Company Limited****...Appellant(s)****Vs.****Jyoti Kanwar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashwani Talwar, Advocate for the appellant.

NIDHI GUPTA, J.

The present appeal has been filed by the Insurance Company laying challenge to the Award dated 12.12.2024 passed by the learned Motor Accident Claims Tribunal at Rewari (hereinafter referred to as "the Tribunal"), whereby the claim petition bearing No. MACP/468/2022 dated 22.10.2020 filed by the claimants/respondent No.1 to 5 herein, under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), has been partly allowed; and the claimants have been granted compensation of Rs.60,32,066/-.

2. Brief facts of the case are that the learned Tribunal on the basis of the pleadings and the evidence adduced before it, concluded that the deceased Satish had died due to injuries suffered by him in a Motor Vehicular Accident that took place on 04.09.2020 due to the rash and negligent driving of a Bolero Car bearing registration No. RJ-02-UA-7520 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.6; owned by respondent No.7; and insured by the



appellant herein. The 5 claimants are the 27-year-old widow, 4-year-old son, 2-month-old son, 50-year-old father and 49-year-old mother of the deceased Satish, who was 28 years old at the time of accident. However, out of the total compensation amount of Rs.60,32,066/-; Rs.40,47,044/- shall be payable along with interest @ 7.5% w.e.f. the date of filing the petition till actual realization, but the compensation amount of Rs.19,85,022/- awarded towards future prospects shall not carry any interest. Respondents No. 6, 7 and the appellant herein were held jointly and severally liable to pay the above said compensation.

3. At the very outset, learned counsel for the appellant submits on instructions that although in the Grounds of Appeal, grounds have been raised challenging the quantum of compensation awarded, however on instructions, it is very clearly stated by learned counsel appearing for the appellant-Insurance Company that no challenge is being laid to the quantum of compensation.

4. Ld. Counsel submits that the only argument being raised in challenge to the impugned Award, is regarding contributory negligence. Learned counsel submits that the eyewitness Vinod Kumar PW1 in his deposition had stated that the motorcycle on which the deceased was travelling had had a “head-on collision” with the offending vehicle. As such, the deceased also ought to have been held liable for contributory negligence. Learned counsel for the appellant further elaborates his argument to submit that the road where the accident had taken place was 25 ft. wide and there was no other vehicle on the road. It is



contended that accordingly the deceased ought to have been held liable for contributory negligence; and therefore, liability of the appellant-Insurance Company should be waived off to the extent of 50%.

5. No other argument is raised on behalf of the appellant.

6. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

7. It was the pleaded case of the claimants before the learned Tribunal that on 04.09.2020 the deceased Satish was going on motorcycle No.UK-08AF-0815 at a moderate speed by observing by all the traffic rules. When he reached near HP Khola Petrol Pump near Village Siha on Rewari-Mahendergarh road and was going from Rewari then the offending vehicle which was being driven by respondent no.1 in a rash, negligent and zig zag manner came from Dahina side i.e. Mahendergarh side and hit the motorcycle of deceased. Due to the impact, the deceased fell down on the road and sustained serious and fatal injuries on the vital parts of his body. The deceased was shifted to the GH, Rewari and during the transit he succumbed to the injuries. It is alleged that Satish (since deceased) was a government employee and was working in the Indian Army on the post of 'Naik' and he was having good health and charming personality and was earning Rs.69,209/- per month. The deceased was the sole bread winner of his family, and all the petitioners were dependent upon the income of deceased Satish. With these averments, the claim petition was filed.



8. The only ground on which the appellant is alleging, contributory negligence against the deceased is on the basis of the testimony of PW1 who was eyewitness to the accident and was also the complainant in the FIR. The appellant is relying upon the deposition of PW1 who has stated that there was a head on collision between the deceased and the offending vehicle. However, in alleging as above, the appellant is reading the testimony of PW1 in a piecemeal manner. This cannot be done. The deposition of PW1 has to be read in entirety. A stray statement cannot be picked up and read out of context to the advantage of the appellant. Admittedly, PW1 in his deposition has also stated as follows:

“.....The motorcycle was driven by satish S/o Mainpal R/o Urika ki Dhani Distt. Jhunjhunu (Raj), He was alone on his motorcycle Satish was driving his motorcycle in the left side of the road at a speed of 30-40 kmph and observing all traffic rules. Satish Had weared the hamlet at the time of alleged accident. The driver of Bulero car was driving his car at a speed of about 90-100 kmph with a rash and negligent manner. I can not tell in which side of the road the driver of Bulero car was driving his car before the accident. The width of the road at the place of accident was about 18-20 ft, and two four wheeler vehicle can pass easily on the road at same time. There was no crowd of traffic on the road at the place of accident. I can not tell whether Satish was having valid DL to drive the motorcycle or not at the time of accident. I also can not tell the name and address of the owner of motorcycle and also can not tell whether the motorcycle was insured or not at the time of alleged accident.”



9. From a perusal of the above statement, it is clear that eyewitness PW1 Vinod Kumar has categorically stated that the deceased was wearing a helmet and was driving the vehicle at a moderate speed on his left side of the road and was observing all traffic rules. Merely because PW1 has stated that there was head-on collision between the motorcycle of the deceased and the offending vehicle, cannot be construed to mean that there was any negligence on the part of the deceased. In fact from a complete reading of the testimony of PW1, it is established that the entire negligence was on the part of the offending vehicle *in-as-much* as despite the fact that the deceased was observing all traffic regulations, yet the offending vehicle was moving at such a high speed that he came and hit directly, head-on, straight into the motorcycle of the deceased. In this regard, reference may be made to a judgment passed by Hon'ble Supreme Court in ***"Prabhavathi & Ors. Vs. The Managing Director, Bangalore Metropolitan, Transport Corporation, Law Finder Doc Id # 2699615***, wherein it is held that *"in head-on collision cases, the Supreme Court has clarified that contributory negligence cannot be presumed solely based on the collision itself. Direct or corroborative evidence is required to prove that the injured party's actions contributed to the accident. The mere fact of a head-on collision does not automatically mean the injured person was negligent."*



10. As such, I find no merit to the submissions made on behalf of the appellant-Insurance Company. It has also been recorded in the impugned Award that though PW1 had been cross-examined at length, yet no contradictions could be drawn from him. Admittedly also the FIR Ex.P1 was lodged promptly on the statement of Vinod Kumar PW1 eyewitness; wherein he had duly and specifically mentioned the registration No. of the offending vehicle.

11. Further, although the appellant has raised no challenge to the quantum of compensation, it may be pointed out that it is admitted fact that the deceased was working as a Naik/Soldier in the Indian Army and was earning Rs.69,209/- per month as proved from his salary certificate Ex.PW3/A and service certificate Ex.PW3/B; and salary slips for the month of June 2020 to September 2020 i.e. Ex.PW3/C to Ex.PW3/F. It was also found that Rs.13 lacs received by claimant No.1/widow as Family Welfare Fund against AFPP. However, as the same was being deducted by the Indian Army @ Rs.23,000/- p.m. from the salary of the deceased, therefore the said amount of Rs.13 lacs could not be deducted from the compensation amount. As claimant No.1 was getting family pension of Rs.20,622/- p.m., learned Tribunal had taken monthly salary of the deceased @ Rs. 46,670/-. As per the postmortem report, age of the deceased was found to be 28 years. Therefore, multiplier of 17 was correctly applied. As the claimants were 5 in number, deduction of 1/4th was also correctly made. The learned Tribunal has accordingly, calculated the compensation in the following manner: -



Sr. No.	Heads of Claim	Calculation
1.	Loss of dependency	Rs.39,70,044/-
2.	Funeral expenses	Rs.16,500/-
3.	Loss of estate	Rs.16,500/-
4.	Loss of filial consortium	Rs.44,000/-
	Total	Rs.40,47,044/-

12. Since the deceased was less than 40 years old and he was having a permanent job in the Indian Army, the learned Tribunal had made 50% addition in his monthly income. In view of that the total loss of future prospects was calculated as under: -

13. The 50% of monthly income of Rs.25,948/- comes to Rs.12,974/- per month and the annual loss comes to Rs.1,55,688/- (12974/-x 12). Out of this annual loss, the deceased would have expended on his personal expenses also, therefore, keeping in view the number of dependents 1/4th shall be deducted against the personal expenses which comes to Rs.38,922/- and after deducting the same the net annual loss of future prospects comes to Rs.1,16,766/- (Rs.1,55,688/- Rs.38,922/-) and after multiplying the same with the multiplier of '17', the total loss of future prospects becomes to Rs.19,85,022/-. Accordingly, the total loss of dependency including the future prospects is quantified as Rs.60,32,066/-, (i.e. Rs.40,47,044/- + Rs.19,85,022/-).

14. In view of the above facts, no ground is made out to interfere in the impugned Award.

15. Hence, the present appeal is **dismissed**.



16. Pending application(s) if any also stand(s) disposed of.

23.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No