

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****FAO-1087-2024 (O&M)****Date of decision: 23.01.2025****Shri Ram General Insurance Company Ltd.****...Appellant(s)****Vs.****Susheel Kumar and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Punit Jain, Advocate
for the appellant.

*********NIDHI GUPTA, J.****CM-4308-CII-2024**

This is an application under Section 5 of Limitation Act, for
condonation of delay of 40 days in filing the present appeal.

After going through the contents of the application, which is
supported by affidavit, the same is allowed subject to all just exceptions and
delay of 40 days in filing the present appeal is condoned.

FAO-1087-2024 (O&M)

The appellant-Insurance Company is in appeal against the
Award dated 05.10.2023 passed by the learned Motor Accident Claims
Tribunal, Panipat (hereinafter referred to as "the Tribunal") whereby the
claim petition No. 17 of 2022 filed by the injured-claimant/respondent
No.1 herein, was partly allowed with costs and compensation of
Rs.26,42,705/- along with interest @ 6% per annum from the date of
filing of the claim petition till actual date of realization, was directed to
be paid by the appellant.



2. Learned counsel for the appellant submits that the challenge to the impugned Award is on the ground that in actual fact it was a case of contributory negligence as the injured-claimant was driving the motorcycle bearing registration No.HR06JAJ-8913 on the flyover and had struck on the vehicle bearing registration No.HR-29A-2499 (hereinafter referred to as "offending vehicle") from behind. It is submitted that accordingly, burden of entire compensation could not have been foisted upon the insurance company as the injured-claimant was himself negligent in causing the accident as he could not control his motorcycle and had struck the same to the offending vehicle from behind. It is submitted that therefore, the learned Tribunal was in patent error in holding that the accident in question took place due to the sole negligence of respondent No.2 (driver and owner of the offending vehicle). In fact the respondent No.2 was driving the vehicle at a slow and moderate speed and was at no fault. It was the claimant who had struck his motorcycle from back side. It is submitted that the accident had taken place on a busy road and the claimant failed to maintain a safe distance and was driving the motorcycle at a high speed and resultantly lost control and struck the motorcycle into the offending vehicle from behind. Even as per the Rules of the Road Regulations, 1989 (Annexure A-2), the claimant was required to maintain safe distance from the vehicle in front, which in the present case is the offending vehicle. It is



accordingly prayed that the impugned award be set aside as this aspect of the matter has not been considered.

3. No other argument is raised on behalf of the appellant.
4. I have heard learned counsel for the appellant and perused the case file in great detail.
5. Brief facts of the case are that the present claim petition was filed by the injured-claimant/respondent No.1 herein with the assertion that the claimant was employed as a Supervisor in M/s. Gold Spin Private Limited Panipat; was also working in Bajaj Auto GT Road Panipat; and was also LIC Agent w.e.f. 08.10.2021. It was alleged that on 09.11.2021, when the claimant was going towards Panipat, at about 03:30 p.m. on the Babarpur bridge/flyover, the offending vehicle which was also going in the same direction, suddenly applied its brakes due to which the motorcycle of the claimant struck on the offending vehicle with the impact of which, the claimant fell on the road and received serious injuries. It was also alleged that the accident had taken place due to rash and negligent driving of the offending vehicle of respondent No.2. Even an FIR No. 181 dated 11.11.2021 was registered against respondent No.2 by the police in respect of the said incident.
6. On the basis of the pleadings, and the oral and documentary evidence led by the parties, the learned Tribunal concluded that the claimant had suffered injuries in a motor vehicular accident that took place on 09.11.2021 due to the rash and negligent driving of the offending vehicle, by respondent No.2 herein. Besides the above, the disability



certificate Ex.P-14 and unique disability ID Ex.P-15 of the claimant were proved on record by the testimony of Dr. Pardeep Orthopedic Surgeon PW6, as per which the claimant has suffered permanent disability to the extent of 100%. The injured-claimant is now unable to move and cannot walk or even execute his daily routine chores.

7. The single contention raised on behalf of the appellant is that the claimant was also negligent in causing the accident in question as his motorcycle struck into the offending vehicle '*from behind*'. It has been repeatedly reiterated by learned Counsel for the appellant-Insurance Company that the claimant was negligent as he had struck the offending vehicle from behind. However, the said argument of the appellant is fallacious and contrary to the record as besides the clear facts as pleaded in the plaint, the claimant even in his testimony as PW7 had categorically stated as under:-

"PW-7, Susheel Kumar, injured eyewitness, specifically stated that on 09.11.2021 he went to Karnal for company work. When he was coming to Panipat office on motorcycle no.HR06JAJ-8913 Marka HF-Deluxe of Blue colour. When at about 3.30 p.m. he reached on the Babarpur bridge/flyover a vehicle bearing no.HR-29A-2499 Mohindra loading was going towards Panipat. The driver of same at once applied its brakes, due to which his motorcycle struck on the Mohindra vehicle and due to this impact he fell on the road and received injuries on his arms and legs. His brother Sham Sunder reached there. After the accident he was shifted to PGI Rohtak for treatment. PW-1 categorically stated that the offending vehicle was driven by the respondent no.1 in a rash and negligent manner and the accident was caused due



to negligence of respondent no.1. Although PW-1 was cross-examined at length by the learned Advocate for respondents, nothing could be elicited out to impeach his testimony. It is an admitted fact that the an FIR has been registered against the respondent no.1 with the allegations of driving the offending vehicle in a rash and negligent manner. Therefore, from the oral as well as documentary evidence led by the petitioner it is well proved that the accident in question occurred due to rash and negligent driving of respondent no.1 of the offending vehicle.”

8. Thus, there is nothing whatsoever on record to indicate that the motorcycle of the claimant had struck into the offending vehicle from behind, or that he was not maintaining sufficient distance from the offending vehicle. From the above narration, it would appear that as the claimant was entering upon the flyover, the respondent no.2 suddenly applied the brakes of the offending vehicle leading to the accident.

9. Keeping in view the above facts, the learned Tribunal awarded the compensation in the following manner:-

1.	Medical bills	Rs.2705/-
2.	Compensation on account of permanent disability	Age 40, average income assessed at Rs.10,000/- per month. Yearly Rs.1,20,000 X 15= Rs.18,00,000/-
3.	Mental pain and agony	Rs.2,00,000/-
4.	Special Diet Expenses	Rs.1,00,000/-
5.	Attendant Charges	36000 per year X 15=Rs.5,40,000/-
	TOTAL	Rs.26,42,705/-

10. From the above facts, it is clear that a very just and fair compensation has been awarded to the injured-claimant/respondent

No.1. Accordingly, in view of the discussion above, I find no case is made



out that merits interference with the impugned Award. Hon’ble Supreme Court in ‘**State of Haryana Vs. Jasbir Kaur**’ **Law Finder Doc ID # 64043** and ‘**Divisional Controller K.S.R.T.C. Vs. Mahadev Shetty**’, **(2003) 7 SCC 197**, has held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance. Thus, all that has to be determined in the facts of a given case is, that the compensation accorded is ‘just’. In my considered view, in the present case, the learned Tribunal has awarded a very ‘just’ compensation, which is in accordance with the law laid down by the Hon’ble Supreme Court and therefore, does not warrant the interference of this Court.

11. In view of the above, present appeal is **dismissed**.
12. Pending application(s) if any also stand(s) disposed of.

23.01.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No