



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

104

FAO-1155-1994**Date of decision : 05.03.2025****Mst. Giano Devi and others****..... Appellants****versus****Puran Singh and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Dhiraj Chawla, Advocate
for the appellants.

Mr. Vinod Chaudhri, Advocate
for the respondent-Insurance Company.

PANKAJ JAIN, J. (Oral)

1. Claimants are in appeal aggrieved of award dated 01.02.1994 passed by MACT, Hisar whereby the claim petition filed by the claimants seeking compensation on account of death of Balbir Singh in a motor vehicular accident dated 01.01.1991 has been allowed, but for compensation under no fault liability holding deceased Balbir Singh to be responsible for causing accident.

2. While returning finding on issue No.1, Tribunal observed that as per the version of respondent No.1 Puran Singh, it was deceased Balbir Singh, who was rash and negligent in his driving. Balbir Singh while attempting to overtake truck bearing No.1952, struck against the back portion of truck being driven by him bearing No.9516. Even though, he had taken his truck on the berm of the road. Tribunal held that version of Puran Singh-respondent No.1 seem to be more plausible



in view of the mechanical reports Ex.P-4 and P5. Ex.P-4 pertaining to truck No.5075, reported that the truck was found badly damaged from front, whereas as per Ex.P-5, truck bearing No.9516 was found damaged from the back side, whereas the front side was intact apart from breakage in the wind screen which was on account of the fact that the truck over turned.

3. Counsel for the appellants-claimants has assailed the aforesaid findings recorded by the Tribunal. Mr. Chawla submits that even if version of respondent No.1 is taken on the face of it, the same does not absolve him of having contributed to the accident. He thus, submits that Tribunal ought to have held both the drivers negligent, as there is no evidence on record to show that it is only Balbir Singh who was solely negligent in causing accident. He further submits that merely because Balbir Singh was attempting to overtake vehicle, he cannot be said to be rash and negligent. Attention of the Court is being drawn to the reasoning adopted by the Tribunal in later part of para 12 to submit that whole of the finding is conjectural and cannot be sustained. He thus, submits that instead of awarding compensation under no fault liability, Tribunal ought to have applied the multiplier method and discounted the compensation vis-a-vis part of negligence attributed to the deceased Balbir Singh.

4. *Per contra*, Mr. Chaudhri submits that the pure finding of fact has been recorded by the Tribunal. It has come on record in terms of the mechanical reports that truck being driven by Balbir Singh-deceased was damaged from front, whereas the truck bearing registration No.9516 was damaged from back side. Tribunal has thus,



rightly held Balbir Singh to be rash and negligent and having caused accident while overtaking truck bearing No.1952.

5. I have heard counsel for the parties and have carefully gone through the records of the case.

6. So far as the fact regarding accident having been caused at the time of overtaking is concerned, the same stands proved on record. Thus, Balbir Singh cannot be absolved of being rash and negligent. However, the question is, can he be held to be solely responsible for having caused accident. Tribunal in order to hold Balbir Singh responsible for having caused accident has recorded the following reasoning:-

“Since the front portion of truck No.5075 was found to be badly damaged and as against this the front portion of truck No.9516 was mainly found to be intact and its back portion was found to be severally damaged, it raises the inference that the front portion of truck No.5075 struck against the back portion of truck No.HNH-9516 and this gives support the version of Puran Singh respondent No.1 to the effect that in an attempt to over take truck No.1952, the driver of truck No.5075 struck the front portion of his truck against the back portion of truck No.9516 though he had taken it on the berm of the road. This is very much possible when there is darkness and the headlights of the vehicles are on. The over-turning of truck No.9516 also suggests that the right back portion of this truck was struck by truck No.5075 which disturbed its balance causing its over turning. It has also come in evidence that truck No.5075 was empty. So there was more possibility of its being driven at a fast speed by Balbir Singh deceased. Had the front portion of truck No.9516 struck against truck No.5075, there were few chances of truck No.9516, turning turtle and that of truck No.5075 remaining on the road. All these circumstances bring out that the accident took place due to the rash and negligent driving of truck No.5075 by Balbir Singh deceased as he tried to over-take truck No.1952 without



calculating that he would cross the said truck before arrival of truck No.9516 from the opposite direction near truck No.1952.”

7. In the considered opinion of this Court, the reasoning adopted by the Tribunal with respect to there being possibility of the overtaking truck being driven at a fast speed and having lost balance is merely conjectural.

8. Mr. Chawla is right in contending that even respondent No.1 did not state so. Further, Tribunal has wrongly recorded that there were few chances of truck bearing No.9516 turning turtle and that of truck bearing No.5075 remaining on the road. This finding is again based on surmises and is not back by any cogent evidence.

9. In view thereof, this Court finds that finding recorded by the Tribunal holding Balbir Singh solely responsible for having caused accident, cannot be sustained being based on surmises and conjectures. This Court is further guided by observation made by Supreme Court in ‘**Prem Lal Anand & Ors. vs. Narendra Kumar & Ors.**’ reported as **AIR Supreme Court 3720**, wherein dealing with the issue of overtaking, Supreme Court observed as under:-

“13. In the attending facts and circumstances, merely because a person was attempting to overtake a vehicle, cannot be said to be an act of rashness or negligence with nothing to the contrary suggested from the record. Further, it is the claimant-appellant(s) who lost a member of their family. Not only was the claimant-appellant, **Prem Lal Anand** doing an act which is an everyday occurrence on the road that is overtaking a vehicle, but resultantly suffered extensive injuries himself. That apart, it has also been proved that the offending vehicle was driven rashly and negligently. These two factors taken together lead us to the conclusion that the finding of contributory negligence against the appellant No.1 was



erroneous and unjustified. Consequently, compensation awarded on this count has to be revised.”

10. Resultantly, finding on issue No.1 are hereby reversed. It is held that deceased Balbir Singh as well as respondent No.1 both are responsible for having contributed the accident owing to their rash and negligent driving to the extent of 50% each. Matter is remanded back to the Tribunal to decide the claim petition afresh, in accordance with law, preferably within 06 months from the date of receipt of copy of the order.

11. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

05.03.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No