



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105) Reserved on: 04.11.2025
Pronounced on: 10.11.2025

1. FAO No. 5103 of 2002 (O&M)

SALINDER KUMAR ... APPELLANT

VERSUS

SHYAM MADAN AND OTHERS ... RESPONDENTS

AND

2. FAO No. 5104 of 2002 (O&M)

USHA RANI. ... APPELLANT

VERSUS

SHYAM MADAN AND OTHERS ... RESPONDENTS

AND

3. FAO No. 5105 of 2002 (O&M)

USHA RANI. ... APPELLANT

VERSUS

SHYAM MADAN AND OTHERS ... RESPONDENTS

CORAM: HON’BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Vishal Jassal, Advocate
for the appellants in all the **FAOs**

Mr. Lalit Garg, advocate
for Respondent-Insurance Company in all the **FAOs**

**VIRINDER AGGARWAL,J.**

1. All the three appeals arise out of a common award dated 01.06.2002 passed by the learned Motor Accident Claims Tribunal, Karnal, whereby compensation was awarded to the claimants for injuries and death of minor child arising out of the same motor vehicular accident. As common questions of fact and law are involved, the present appeals are being disposed of by this common judgment, while reassessing the compensation separately in each case.

BACKGROUND FACTS

2. On January 3, 2002, Salinder Kumar, appellant in FAO No.5103 of 2002, a resident of village Sikri in Tehsil Nilokheri, Karnal district, was riding his motorcycle bearing registration No. HR-07-8619 on the left side of the road toward Karnal, carrying his wife Usha Rani, their three-year-old son Manik, and four-year-old daughter Sweta. As they approached near Jhanjhari village, a four-wheeler vehicle (DDL-586) ahead of them suddenly applied brakes without warning or signal. The driver of the four-wheeler applied the brakes rashly and negligently, failing to observe traffic rules or ensure safety for other road users. This caused Salinder to brake abruptly, leading his motorcycle to collide forcefully with the rear of the four-wheeler. The impact hurled the family members from the vehicle, resulting in the tragic death of minor son Manik at the scene and severe injuries to Salinder, Usha, and Sweta. Later on, they were shifted to the Civil Hospital, Karnal, and later referred to PGI, Chandigarh for further treatment. The claimants filed separate petitions under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for injuries suffered by Salinder Kumar and Usha Rani, and death of her minor son.

The respondents contested the petitions, alleging that the accident was the result



of negligence of the motorcyclist himself, who was driving at an excessive speed and did not maintain a proper lookout.

3. The learned Tribunal, after appreciating the evidence, came to the conclusion that both the drivers were negligent in causing the accident. The learned Tribunal found that while the four wheeler was being driven rashly by respondent No. 1, Shyam Madan, the motorcyclist too failed to maintain a safe distance and sufficient control, and hence contributed to the occurrence. The learned Tribunal recorded a finding of contributory negligence in equal proportion, holding both the drivers responsible to the extent of 50% each. The four wheeler driver's sudden, unindicated braking without maintaining a safe distance or adhering to traffic regulations was proximate cause of the collision, as corroborated by the site's mechanical inspection and police investigation. Further, the learned Tribunal then assessed compensation under various heads such as medical expenses, pain and suffering, transportation, and special diet, but awarded modest amounts without giving due weight to the permanent disabilities suffered by Salinder Kumar and Usha Rani or to the emotional trauma caused by the death of the minor child. Consequently, the learned Tribunal partly allowed the claim petitions and awarded compensation subject to 50% deduction on account of contributory negligence, which finding has been assailed in these appeals.

CONTENTIONS

4. Learned counsel for the appellants has contended that the learned Tribunal erred in holding the case as one of contributory negligence, as the evidence clearly established that the accident occurred solely due to rash and negligent driving of the four wheeler by respondent No.1. It was argued that the



learned Tribunal failed to appreciate that the motorcyclist was proceeding at a moderate speed and on the correct side of the road, while the four wheeler applied sudden brakes, leaving no chance to avoid the collision. The counsel further submitted that the compensation awarded by the learned Tribunal is wholly inadequate and is not commensurate with the nature of injuries and permanent disabilities suffered by the claimants. In the case of Salinder Kumar, it was contended that he suffered fracture of ribs, facial disfigurement, and 8% permanent disability, which impairs his speech and ability to chew properly. Being a lecturer, the injury to his face and speech affects his professional prospects and social interaction. In the case of Usha Rani, it was argued that she sustained serious injuries resulting in 16% permanent disability after removal of two cranial bones and an eye socket, which has impaired her eyesight and memory. The Tribunal failed to consider her prolonged medical treatment and recurring visits to PGI, Chandigarh, thereby awarding meagre amounts towards transportation and medical expenses. In FAO No.5105-2002, pertaining to the death of Usha Rani's minor son, it was submitted that the learned Tribunal granted a meagre sum without recognizing the emotional suffering and non-pecuniary loss of the parents. Thus, the Learned Counsel for the appellants have sought enhancement of compensation.

5. Learned counsel appearing for the respondent-Insurance Company supported the award and argued that the accident occurred solely due to the negligence of the motorcyclist. It was contended that the motorcycle was carrying four persons, which was in violation of traffic regulations and rendered its control unsafe. The rider, while following the four-wheeler, failed to maintain a safe distance and struck it from behind when it slowed down on the road. It was further argued that the driver of the four-wheeler cannot be blamed



merely for applying brakes, as every driver is entitled to regulate the speed of his vehicle as per road conditions. The duty of caution lay on the motorcyclist to anticipate such movements and maintain sufficient distance. No independent witness has been examined to establish rashness on the part of the four-wheeler driver. Hence, the motorcyclist was solely negligent, and the liability should be fastened upon him alone.

OBSERVATIONS AND FINDINGS

6. I have considered the rival submissions and carefully examined the award of the learned Tribunal.

(A) NEGLIGENCE AND CONTRIBUTORY LIABILITY

7. On a careful appraisal of the evidence and the findings recorded by the learned Tribunal, this Court finds no infirmity in the conclusion that the accident in question was a result of contributory negligence of both the drivers. The learned Tribunal has rightly observed that the driver of the four-wheeler has been challaned by the police as per FIR Ex.P2/2 and the report under Section 173 Cr.P.C. (Ex.P3) was filed. Further, the absence of his testimony and the pendency of the criminal prosecution are circumstances which support an inference of rashness on his part in applying sudden brakes on a public road without ensuring that the following traffic could stop safely. However, the material on record equally reveals that the motorcyclist, Salinder Kumar, did not exercise the due caution expected of a prudent driver. In his own testimony, he admitted that his minor son was sitting in front of him on the fuel tank of the motorcycle, while Usha Rani was sitting behind. Usha Rani also admitted in her deposition that the motorcycle was hardly two feet away from the four-wheeler moving ahead. Such a short distance between two moving vehicles on a public



road is inherently unsafe. When the four-wheeler applied sudden brakes, the motorcycle, being at such close proximity, hit the rear side of the four-wheeler, causing the accident. Further, the impact of accident shows that the motorcycle was at high speed and due to that Salinder Kumar could not stop the same and collided in rear of the four wheeler.

8. Under Rule 23 of the Rules of the Road Regulations, 1989, every driver is required to maintain a safe distance from the vehicle ahead so as to be able to stop without colliding in case of sudden deceleration or emergency braking. The motorcyclist, by not maintaining such reasonable distance, clearly failed to adhere to this rule of road safety. The driver following another vehicle must anticipate such contingencies and drive with due care and control, as all drivers owe a reciprocal duty of care to others on the road. Therefore, it cannot be said that the accident occurred solely due to the rashness of the four-wheeler driver. The proximate cause of the collision was the sudden braking by the four-wheeler coupled with the failure of the motorcyclist to maintain safe distance and reduce speed in time. The negligence of both drivers contributed to the accident in equal measure.

9. Further, as regards the plea of the respondents that there were four persons riding on the motorcycle. Even though carrying extra passengers is a technical violation of traffic rules, it does not by itself establish rash or negligent driving so as to attribute exclusive fault for the accident by the driver of Motorcyclist. The act of carrying more persons on two wheeler if would have cause of accident or would have aggravated the consequence, then only two wheeler driver could be held solely responsible for causing accident. The essential factor is the degree of care and caution exercised at the crucial moment, and it is



evident from the record that both drivers failed to discharge this duty. Accordingly, this Court upholds the finding of the learned Tribunal that the accident was the outcome of contributory negligence of both the four-wheeler driver and the motorcyclist, and the apportionment of liability to the extent of 50% each is just and proper.

10. However, the learned Tribunal failed to assess the compensation keeping in view the settled principles laid down by the Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343***, wherein it was held that compensation for personal injury should include pecuniary and non-pecuniary damages such as pain and suffering, medical expenses, loss of amenities, and effect of disability on future life. Further, it was held that the award of compensation should be just, reasonable, and reflective of the extent of human suffering and long-term hardship faced by the victim. Therefore, while maintaining the finding of contributory negligence, the **quantum of compensation requires reassessment** in accordance with these principles.

(B) REASSESSMENT OF COMPENSATION

(i) FAO No. 5103 of 2002 – Salinder Kumar (Injury Case)

11. A careful scrutiny of the award and the medical evidence on record reveals that the learned Tribunal has failed to properly assess the extent of pain, suffering and lasting hardship endured by the claimant, Salinder Kumar. The learned Tribunal accepted that he sustained fracture of ribs and serious facial injuries resulting in 8% permanent disability (Ex.P1) due to disfigurement and other injuries, yet the quantum of compensation awarded under various heads remains disproportionately low. The disability certificate and testimony of the



medical officer establish that the injury has caused difficulty in speech and mastication, besides leaving visible disfigurement of the face. Despite these findings, the learned Tribunal granted only nominal amounts without considering the *long-term functional disability* and *loss of professional efficiency* suffered by the claimant.

12. It is well settled that in cases of permanent disability, the Court must assess not only the physical impairment but also its impact on the earning capacity, efficiency, and day-to-day functioning of the victim. The claimant was employed as a *Lecturer*, a profession that requires constant verbal communication and public interaction. The impairment of speech and facial movement directly affects his teaching ability, confidence, and standing in the academic community. The learned Tribunal overlooked these professional repercussions and the continuous inconvenience caused by him due to recurrent medical treatment at PGI Chandigarh (01.03.2002–06.03.2002) and medical expenditure which he must have spent even after the treatment, and also he would have post-treatment travelled to PGI Chandigarh. Further, the injury being on the face, a most visible and expressive part of human identity, carries with it substantial psychological distress and social discomfort. Facial disfigurement in a man engaged in an intellectual and communicative profession can cause loss of self-esteem and can be cause of professional embarrassment.

13. The learned Tribunal, however, confined its assessment only to the medical disability percentage without appreciating its functional and psychological implications. Considering the prolonged medical treatment, speech impairment, facial disfigurement, professional hindrance, and the attendant emotional trauma, this Court is of the opinion that the compensation



requires substantial enhancement under the heads of pain and suffering, loss of amenities, and loss of earning capacity. The enhancement is necessitated not by way of benevolence but as a matter of entitlement, to ensure the award satisfies the test of “just, fair and reasonable compensation” envisaged under Section 168 of the Motor Vehicles Act, 1988. Therefore, applying the principles from **Raj Kumar (supra)** and Considering the serious nature of disability and its permanent impact, compensation is reassessed as under:

Head of Compensation	Tribunal (₹)	Re-assessed (₹)
Pain and suffering	x	40,000/-
Medical expenses (past and future)	2,000	10,000/-
Transportation	5,000/-	10,000/-
Special diet	5,000/-	10,000/-
Loss of amenities/disfigurement	x	50,000/-
Permanent disability affecting earning capacity	15,000/-	2,50,000/-
Total	27,000/-	3,70,000/-
Less 50% for contributory negligence	13,500/-	1,85,000/- (Payable)

(ii) FAO No. 5104 of 2002 – Usha Rani (Injury Case)

14. Upon a re-appraisal of the evidence and the findings recorded by the learned Tribunal, this Court finds that the compensation awarded to the claimant **Usha Rani** falls considerably short of meeting the requirement of *just compensation* envisaged under Section 168 of the Motor Vehicles Act. The



medical evidence, which the learned Tribunal has itself accepted, clearly establishes that she sustained multiple grievous injuries including the removal of two cranial bones and the bone of the eye socket, resulting in a permanent disfigurement of the face, partial loss of eyesight and weakness of memory. She has suffered **16 % permanent disability as per disability certificate (Ex.P2)**, yet awarded only 25,000 towards disability and nominal sums under the heads of pain, suffering and loss of amenities, without appreciating the grave social and psychological consequences such injuries entail, especially for a woman.

15. It cannot be overlooked that the injury in the present case is not confined merely to loss of physical health. The claimant, a woman in the prime of her life, has been left with visible facial deformity, which permanently alters her appearance. Courts have repeatedly recognized that facial disfigurement in the case of a woman affects not only her physical beauty but her dignity, confidence and emotional well-being, thereby reducing her social comfort and personal happiness. In ***Raj Kumar v. Ajay Kumar, (Supra)***, the Hon'ble Supreme Court held that compensation for personal injury must take into account not only pecuniary loss but also the *loss of charm, discomfort and disfigurement which diminish the enjoyment of life*. The anguish arising from the impairment of one's appearance, particularly for a woman who has to live her remaining life with a permanently scarred face, cannot be compensated in purely monetary terms but must nonetheless be reasonably reflected in the quantum of damages. The record further shows that Usha Rani underwent prolonged treatment, repeated hospital visits to PGI Chandigarh, and was prescribed a special diet for a long duration. The pain, medical hardship, emotional distress and loss of self-confidence resulting from the deformity are enduring. The learned Tribunal, however, has not addressed these facets while quantifying compensation, and its



award appears to be on the lower side and inconsistent with the principle of full restitution in law.

16. Accordingly, this Court holds that a substantial enhancement is justified under the heads of pain and suffering, disfigurement, loss of amenities and future inconvenience. The enhancement is not by way of sympathy but as a matter of *legal right*, to ensure that the award truly represents “just, fair and reasonable compensation” as contemplated by Section 168 of the Act, commensurate with the grievous injury suffered by the claimant and the permanent impairment of her appearance and confidence. Therefore, applying the principles from **Raj Kumar (supra)** and Considering the serious nature of disability and its permanent impact, compensation is reassessed as under:

Head of Compensation	Tribunal (₹)	Re-assessed (₹)
Pain and suffering	5,000	25,000/-
Medical expenses (past and future)	x	15,000/-
Transportation	5,000/-	20,000/-
Special diet	x	10,000/-
Loss of amenities and enjoyment of life	x	1,00,000/-
Permanent disability and future inconvenience	25,000/-	1,50,000/-
Total	35,000/-	3,10,000/-
Less 50% for contributory negligence	17,500/-	1,55,000 /- (Payable)

**(iii) FAO No. 5105 of 2002 – Usha Rani (Death of Minor Son- Manik)**

17. The learned Tribunal awarded a lump sum amount of ₹50,000/-, as “no fault liability” compensation which, in the considered view of this Court, is erroneous. As the accident has been proved to be occurred due to the rash and negligence of the both the vehicles then compensation should be awarded as per Section 166 of the Motor Vehicles Act. Thus, the deceased child, though not earning, he was a child aged about 3 years, representing the promise of a secure and meaningful contribution to his family in future. The emotional trauma and loss of affection cannot be compensated in monetary terms, yet the law recognizes such loss be attempted through the notional and conventional amounts to ensure fairness.

18. It is well settled that while determining compensation under Section 166 of the Motor Vehicles Act, 1988, the paramount consideration is that the amount awarded must be just and reasonable. The Hon’ble Supreme Court in ***Kishan Gopal and another v. Lala and others, 2014 (1) SCC 244***, held that in the case of death of a non-earning child, the notional income may be suitably enhanced keeping in view inflation and passage of time, and that compensation must reflect both pecuniary and non-pecuniary loss suffered by the parents. Similarly, in ***R.K. Malik and another v. Kiran Pal and others, 2009 (14) SCC 1***, it was observed that while assessing compensation for the death of children, the Courts must consider the prospects of a bright future and the emotional suffering of the parents, and that uniform token compensation cannot serve the ends of justice.



19. Therefore, considering the age of the child and the time of the accident (1999), it would be appropriate to enhance the amount towards loss of dependency to ₹2,00,000/-. Further, in *National Insurance Co. Ltd. v. Pranay Sethi and others, 2017 (16) SCC 680, and Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram, 2018 (18) SCC 130*, the Hon’ble Supreme Court prescribed standard amounts for conventional heads such as loss of estate, funeral expenses, and consortium, including parental consortium in cases of loss of a child. Accordingly, the following computation is made:

Head	Tribunal (₹)	Reassessed (₹)
Loss of Dependency (enhanced lump sum)	50,000/-	2,00,000
Loss of Estate	x	15,000
Funeral Expenses	3,000/-	15,000
Parental Consortium (₹40,000 each)	x	80,000
Total Compensation	53,000/-	₹3,00,000
Less 50% for contributory negligence	26,500/-	1,50,000 /-(Payable)

Final Order

20. The finding of the learned Tribunal on **contributory negligence (50% each)** is **affirmed**. Whereas the compensation in all three cases is **enhanced** as follows:



FAO No.	Claimant	Enhanced Total (₹)	After 50% Deduction (Payable)
5103-2002	Salinder Kumar	3,70,000	1,85,000
5104-2002	Usha Rani (injury)	3,10,000	1,55,000
5105-2002	Usha Rani (death of minor son)	3,00,000	1,50,000

21. The enhanced amount shall carry **interest at rate of 7% per annum** from the date of filing of the claim petitions till the date of realization. The Insurance Company is directed to deposit the enhanced compensation, along with interest, before the learned Tribunal within **six weeks**, which shall release the same to the claimants in accordance with law.

22. Accordingly, all three appeals are **partly allowed** in the above terms.

23. Since the main appeal stands decided, all miscellaneous application(s), if any, also stands disposed of.

(VIRINDER AGGARWAL)
JUDGE

10.11.2025
Saurav Pathania

(i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No