



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

236-2

FAO-4896-2007 (O&M)

Date of Decision: January 31, 2025

Shanker Lal

.....Appellant(s)

Vs.

Sharwan Kumar and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Gurdeep Kaur, Advocate for
Mr. P.K. Ganga, Advocate
for the appellant(s).

Mr. P.S. Jammu, Sr. Advocate with
Mr. Pardeep Kamboj, Advocate and
Mr. R.K. Poonia, Advocate
for respondents No.1 to 4

Mr. Aseem Aggarwal, Advocate
for respondent No.6 and 7 (Through VC).

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed by the appellant/Shanker Lal-Owner against the Award dated 16.10.2007 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal'), wherein the Ld. Tribunal has held the case of contributory negligence assigning equal liability-50% each-driver, owner, and insurer (respondent No.7) of the jeep No.UTS-1652 and the driver, owner, and insurer (respondent No.6) of the truck No.RJ-31G-1789. Further, the Ld. Tribunal has directed the insurance company of the jeep to pay the compensation at the first instance and recovery rights was granted to the Insurance Company



(respondent No.7) to recover the same from the appellant-owner of jeep in question.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as mentioned in the claim petition are that on 16.04.2004, Ram Devi wife of Hazari Lal, aged 55 years, had gone to Khatu in connection with Rasam Pagri of in-laws of one Lal Chand in Jeep No. UTS-1652 being driven by Modu Ram. When they were returning to their village Chautala and said jeep had covered one Furlong ahead of Hanuman Mandir towards T-point Chautala, then a truck bearing registration No.RJ-31-G-1789 being driven by respondent no. 1 rashly and negligently came from the opposite direction and caused the accident. As a result of which, the occupants of the jeep namely Ram Devi, Shimla alias Seema, Lichhma Devi wife of Sarwan Kumar and Modu Ram driver of the jeep, sustained injuries. They were brought to General Hospital Chautala, where they succumbed to the injuries and the driver of the jeep namely Modu Ram also died thereafter. A criminal case bearing FIR No.63 dated 16.4.2004 was got registered against respondent No. 1 under Sections 279/337/338/304-A at Police Station Sadar, Dabwali.

3. Upon notice of the claim petition, appellant appeared and contested the claim petition by filing written reply denying the factum of compensation/accident

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the accident in question took place as a result of rash and negligent driving of truck No.RJ-31G-1789 by respondent no.1 resulting in death of Smt. Ram Devi, mother of petitioners



Ram Kumar and Gulab Devi and also Modu Ram, husband of petitioner Santosh, father of petitioners Gori Shankar and Jyoti and son of petitioners Safia and Madan Lal ? OPP

2. If issue no.1 is proved, whether the claimants-petitioners are entitled for compensation, if so, how much and from whom ? OPP

3. Whether the petitions have no cause of action to file the claim petitions ? OPR

4. Whether respondent no.1 Swaranjit was not holding a valid and effective driving licence to 'drive the truck in question bearing registration no.RJ 31G/1789 at the time of-alleged accident, if so to what effect?OPR.

5. Whether the claim petitions are not maintainable in the present form?OPR

6. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. Further, the Ld. tribunal has held the case of contributory negligence appropriating liability equally 50% each between the driver, owner, and insurer (respondent No.7) of the jeep No.UTS-1652 and the driver, owner, and insurer (respondent No.6) of the truck No.RJ-31G-1789. Moreover, the LD. Tribunal has granted the recovery rights to Insurance Company-respondent No.7 to recover the compensation from the appellant-owner of the jeep. Hence, the present appeal.

**SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES**

6. Learned counsel for the appellants contends that the Ld. Tribunal has wrongly held the appellant liable regarding contributory negligence and has erred in fixing the liability-50% each of driver, owner, and insurer (respondent No.7) of the jeep No.UTS-1652 and the driver, owner, and insurer (respondent No.6) the truck No.RJ-31G-1789. He further contends that the Ld. Tribunal has wrongly granted recovery rights to the insurance company-respondent No.7 to recover the amount of compensation from the appellant.

7. *Per contra* learned counsel for the respondents No.1 to 5 contend that the award has rightly been passed. Therefore, he prays for dismissal of the present appeal.

8. Learned counsel for respondent No.7-Insurance Company contends that the Ld. Tribunal has rightly granted the recovery rights to the Insurance Company. Therefore, he prays for dismissal of the present appeal.

9. I have heard learned counsel for the parties and perused the whole record of the case.

10. The relevant portion of the award is reproduced as under:-

“ISSUES NO.1 AND 2

9. Both these issues are inter-connected and therefore have been taken up together for discussion. There is dispute regarding the accident, Since petitioners case is that it was the fault of truck driver who was rash and negligent in driving the truck whereas the version of the respondents no.1 and 2 i.e. Driver and owner of the said truck that the accident had been caused due to own fault of the jeep driver who was also rash and negligent and carrying 13 passengers in the jeep and that its front tyre burst and jeep driver lost control over it the jeep hit the truck.



9. *It has, however, been argued on behalf of respondents no.3 that it was a case of contributory negligence and the jeep was also on hire purchase basis being used as taxi and that the truck was not having a route permit even. Learned counsel for respondent-Insurance Company also relied upon Kanhaivalal and another versus Sitabai and others, 2004 Accident Claims Journal 1372.*

10. *So, in these circumstances it is to be seen that whether it was a case of contributory negligence or that the accident took place purely on account of rash and negligent driving of the truck by respondent no.1. Ram Kumar, one of the claimant, appeared as PW-1 and submitted his affidavit Ex.PA deposing that jeep was being driven by Modu Ram while coming back to Chautala and when it reached one furlong ahead of Hanuman Mandir T-point-Chautala, then a truck bearing registration No.RJ-31G/1789 driven by respondent no.1 at a very high speed and in a rash and negligent manner came from opposite direction and struck against the jeep as a result of which all the occupants of the jeep sustained serious injuries including Ram Devi who later-on expired and that the accident took place on 16.4.2004 and a case stood registered vide FIR No.63 dated 16.4.2004 under Sections 279/337/338/304-A/427 IPC against respondent no.1. However, in cross-examination he stated that 9/10 people were occupying the jeep and that he was not travelling in the jeep and that he was told by some one that 9/10 people had boarded the Jeep and that the police had recorded his statement but he did not know the name of the owner of the jeep as he had not witnessed the accident and that he filed his affidavit on hear-say information. Suman daughter of Pirthvi Raj PW-2 also submitted her affidavit Ex.PB deposing to the same effect. In cross-examination she stated that 13 people besides her were travelling in the jeep at the time of accident and that her father had arranged the jeep on hire basis and she received injuries but have not made any claim and that the jeep driver was not at fault as he was driving it on his correct side and*



denied the suggestion that the jeep driver could not keep control, over the jeep due to over-loading.

11. Rameshwar Dutt Head Constable No.626 of Police Station Sadar Dabwali as RW-2 stated that he had brought the police file pertaining to case FIR No.63 dated 16.4.2004 under Sections 279/304-A/337/338/427 IPC and in that accident Ram Devi wife of Hajari Ram, Jaswant @ Modiya son of Madan, Smt. Shimla Devi @ Seema wife of Ved Parkash, and Lichhma Devi wife of Sarwan Kumar had died and that as per police report there were total 11 persons travelling in the Jeep and Ex.PB was the copy of the rough site-plan and investigation of this case was conducted by Kamal Singh. In cross-examination he stated that in the investigation truck driver Swaranjit Singh was found responsible for causing the accident. Kamal Singh ASI also appeared as RW-3 and deposed about final report under Section 173 Cr.P.C. Ex.RD etc. In cross-examination he stated that truck driver was found at fault and that he had not challaned the jeep driver or jeep owner for using the jeep as taxi.

12. Thus, in these circumstances, it is made out that there were atleast 14 passengers travelling in the said jeep which was also on hire basis i.e. used as a taxi and so this was purely a case of contributory negligence as the jeep was also over-loaded with passengers i.e. More than permitted one. So, in these circumstances 50% liability is to be borne by the driver, owner and insurer of the truck No.RJ-31G/1789 and the remaining 50% is to be borne by the driver, owner and insurer of the jeep No.UTS-1652.”

11. A perusal of the award reveals that the Ld. Tribunal has rightly adjudicated the case as one of contributory negligence assigning equal liability-



50% each-driver, owner, and insurer of the jeep and the driver, owner, and insurer of the truck. The evidence on record substantiates this conclusion.

12. Ram Kumar, appearing as PW-1, provided a critical account of the incident. In his affidavit (Ex.PA), he stated that the jeep, driven by Modu Ram, was en route to Chautala when it collided with a truck bearing registration No. truck No.RJ-31G-1789. He emphasized that the truck was being driven at an excessive speed and in a rash and negligent manner. During cross-examination, Ram Kumar conceded that there were 9 to 10 passengers in the jeep at the time of the accident. This admission is significant as it indicates that the jeep was carrying more passengers than legally permitted under the Motor Vehicles Act, thereby contributing to the unsafe conditions leading to the accident.

13. Further, Suman, an eyewitness, testified as PW-2 in her affidavit (Ex.PB), corroborated the sequence of events leading to the collision, affirming that the truck was driven negligently. Importantly, during cross-examination, she revealed that there were 13 passengers in the jeep besides herself at the time of the accident. This testimony not only confirms the overloading of the jeep but also highlights the extent of the violation, as the vehicle was significantly over its passenger capacity.

14. Moreover, Rameshwar Dutt-RW-2, Head Constable, deposed that as per the Police records pertaining to FIR No. 63 dated 16.04.2004, a total of 11 persons were traveling in the jeep at the time of the accident. The police report serves as an independent piece of evidence corroborating the statements of PW-1 (Ram Kumar-husband of deceased-Ram Devi) and PW-2 (Suman) regarding the overloading of the jeep.



15. The overloading of the jeep constitutes a breach of statutory provisions under the Motor Vehicles Act, which prescribes specific passenger limits to ensure road safety. Operating a vehicle beyond its designated capacity compromises its stability and handling, increasing the risk of accidents. In this case, the substantial overloading of the jeep was a critical factor that contributed to the collision. Given that the evidence consistently points to the fact that the jeep was carrying more passengers than legally permitted. The Tribunal was correct in concluding that the accident was not solely attributable to the rash and negligent driving of the truck but also to the contributory negligence of the jeep driver.

16. Therefore, the Ld. Tribunal's finding that liability should be apportioned equally—50% on the driver, owner, and insurer of the truck and 50% on the driver, owner, and insurer of the jeep—is based on sound legal reasoning. The evidence on record, including the testimonies of PW-1 (Ram Kumar-husband of deceased-Ram Devi), PW-2 (Suman), and RW-2 (Rameshwar Dutt), alongwith the police report, sufficiently establishes that the jeep was overloaded, which significantly contributed to the accident.

17. Accordingly, the Tribunal's decision stands affirmed, being founded on well-reasoned legal reasoning and duly supported by the evidence on record.

18. Therefore, I do not find any infirmity in the award dated 16.10.2007 passed by the Ld. Tribunal, Sirsa.

19. In view of the above, the present appeal is ***dismissed***.



20. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Aseem Aggarwal, Advocate Advocate within a period of 20 days from the date of receipt of copy of this judgment.
21. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 31, 2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No