

FAO-3963 and 3964 of 2006 (O&M)

2025.PHHC.011916



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. FAO-3963 of 2006

Jasbir Singh Dhillon and anr.

.....Appellants

Vs.

Narinder Singh and ors

.....Respondents

2. FAO-3964 of 2006 (O&M)

Jasbir Singh Dhillon and anr.

.....Appellants

Vs.

Narinder Singh and ors

.....Respondents

Date of Decision: January 24, 2025

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant (s) in both the cases.

Mr. Lalit Garg, Advocate
for respondent-Insurance Co.

Mr. Tarun Singla, Advocate
for respondent Nos. 4 to 7 in FAO No. 3963-2006

Mr. Rajiv Mittal, Advocate
for respondent No. 4 in FAO No. 3964-2006

SUDEEPTI SHARMA J.

1. This judgment shall dispose of the above titled two appeals, whereby challenge is to the award dated 18.11.2005 passed in the claim petitions bearing claim petition No.44 dated 15.06.2001 titled as *Mrs. Vanita and others vs. Narinder Singh and others* and claim petition bearing No. 33 dated 20.12.2002 titled as *Sham Lal Sharma vs. Narinder Singh and others*, filed under Section

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Motor Accident Claims Tribunal, Bathinda (for short, 'the Tribunal'), wherein the appellants-driver and owner of vehicle Tata Sierra bearing registration No. CH-01-P-3008 were fastened with the liability to the extent of 75% to pay the compensation to the claimants along with interest @ 6% per annum.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on the intervening night between 20/21-12-2000, Som Nath (since deceased) along with claimant-Sham Lal were coming from Abohar to Bathinda in the vehicle Tata Sierra bearing registration No. CH-01-P-3008 driven by Jasbir Singh Dhillon. Som Nath was sitting on the driver seat in Tata Sierra while Sham Lal was sitting behind him on the back seat. Ravinder Tenny brother of Som Nath (since deceased) and one Zaffar Ahmad were following Tata Sierra in their own car. When Tata Sierra reached in revenue limits of village Daula, then truck bearing registration No. RJ-13-G-0213 loaded with sugarcane driven by Jasbir Singh Dhillon was found wrongly parked on the road without lightening of parking lights or putting any indicator of such parking. At relevant time, another vehicle came from opposite side direction with lights on, due to which driver of Tata Sierra could not see the above numbered truck which was wrongly parked in the middle of the road. Accordingly, the driver of Tata Siera struck against the above offending truck from behind resulting in to multiple grievous injuries on the person of Som Nath, due to which he died on the way to Civil Hospital, Gidderbaha. Sham Lal-claimant also sustained injuries in this accident. FIR No. 21 dated 20.02.2021 was registered against respondent No. 1-Narinder Singh under Sections 279/337/338/304-A of the Indian Penal Code, 1860 at Police Station, Gidderabaha.

3. Upon notice of the claim petition, appellant-Insurance Company, driver and owner appeared and denied the factum of compensation.

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4. From the pleading of the parties, the Tribunal framed the following issues in MACT Case No. 44:-

- “1. Whether Som Nath died in an accident on 20/21-12-2000 at about 11:30 PM in the area of village Daula on Abohar Bathinda road while he was travelling in Tata-Sierra No. CH-01-P-3008 being driven by respondent No. 4? OPA*
- 2. Whether the accident has been occurred due to the wrong parking and without indication of the truck bearing No. RJ-13-G-0213 by respondent No. 1? OPA*
- 3. If issue Nos. 1 and 2 are proved, whether the claimants are the legal heirs of deceased-Som Nath and are entitled to compensation. If so to what rate and from whome of the respondents? OPA*
- 4. Whether the claim petition is not maintainable? OPR*
- 5. Whether the driver of the offending truck was not holding a valid driving license at the time of alleged accident?OPR-3*
- 6. Relief.”*

5. The following issues were framed vide order dated 25.02.2004 in MACT Case No. 33:-

- “1. Whether the claimant has received injuries in a road accident while travelling in Tata Sierra CH-01-P-3008 due to rash and negligent driving of respondent No. 1 by driving truck No. RJ-13-G-0213? OPA*
- 2. Whether the application is not maintainable? OPR*



3. *Whether the claimant has no locus standi to file the petition?*

OPR

4. *Whether this Tribunal has no jurisdiction to try and entertain the present petition?* *OPR-3*

5. *Whether the driver of the offending truck was not holding a valid driving license ?* *OPR-3*

6. *Whether the respondent No. 1 was not acting under the orders and with the permission of the insured respondent No. 2 at the time of alleged accident?* *OPR-3*

7. *Whether respondent No. 2 was not holding a valid registration certificate, fitness certificate and route permit of the alleged truck, if so to what effect?* *OPR-3*

8. *Whether the respondent No. 1 and 2 have violated the provisions of Motor Vehicles Act?* *OPR*

9. *If the accident is proved, whether the same took place due to rash and negligent driving of respondent No. 4, driver of Tata Sierra?* *OPR*

10. *How much amount the claimant is entitled and from whom?*

OPA

11. *Relief.*”

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the liability to pay compensation was fastened upon the Insurance Company and driver and owner of Tata Sierra-respondent No. 4 and 5 (appellants herein) to the extent of 25% and 75% respectively.

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SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

7. Learned counsel for the appellants submits that the Tribunal erred in apportioning 75% of the liability for rash and negligent driving to the appellants in relation to the Tata Sierra. He further contends that the entire fault lies with respondent No. 1, the driver of the offending truck, who had negligently parked the vehicle in the middle of the road without activating the parking lights or placing any warning indicators. He prays that the appeal be allowed.

8. In support of his argument, he has relied upon judgments of Hon'ble the Supreme Court of India in cases of ***Sushma vs. Nitin Ganapati Rangole and others***, 2024 SCC Online SC 2584, ***Municipal Corporation of Greater Bombay vs. Laxman Iyer and another***, 2003 (8) SCC 731 and ***Parmod Kumar Rasikbhai Jhaveri vs. Karmasey Kunvargi Tak and others***, 2002 (6) SCC 455.

9. Learned counsel for respondent-Insurance Co. of offending truck driver, contends that appellant no. 1, the driver of the Tata Sierra, was driving in a rash and negligent manner. He further submits that due caution ought to have been exercised while approaching the stationary truck, which was parked in the middle of the road. The Tribunal, therefore, rightly apportioned 75% of the liability to the appellants.

10. In support of his argument, he has relied upon judgment of Hon'ble the Supreme Court of India in a case of ***Raj Rani and others vs. Oriental Insurance Co. Ltd and others***, 2009 ACJ 3. The relevant portion of the judgment reads as under:-

"16. So far as the issue of "contributory negligence" is concerned, we may notice that the tribunal has deducted 1/3rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This Court in Usha Rajkhowa

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(arising out of SLP (C) No.16647 of 2008)] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that :

“10. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors. reported in (2002) 6 SCC 455. That was also a case of collusion in between a Car and a truck. It was observed in Para 8:

“The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as ‘negligence’. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong.”

17. The principle of 50:50 in cases of contributory negligence has been discussed and applied in many cases before this court. In Sri Krishna Vishweshwar Hede v. The General Manager, K.S.R.T.C. (2008 ACJ 1617), this court upheld the judgment of the Tribunal assessing the ratio of liability at 50:50 in view of the fact that there was contributory negligence on the part of the appellant and fixed the responsibility for the accident in

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the ratio of 50:50 on the driver of the bus and the appellant. In this case, the truck was stationary. Some amount of negligence on the part of the deceased cannot be ruled out.

18. Hence in the insistent case, we find that there was contributory negligence on the part of the deceased and accordingly the claimant was entitled to only 50% of the total amount of loss of dependency.”

11. I have heard learned counsel for the parties and perused the whole records of the case.

12. Upon a comprehensive examination of the evidence available on record, it is conclusively established that the offending truck was unlawfully stationed in the middle of the road without any parking lights illuminated or appropriate warning markers or indicators placed to alert oncoming traffic. This omission constitutes a blatant breach of the duty of care and a clear contravention of legal provisions governing road safety.

13. The accident occurred on a highway where permissible speed limits are designed to accommodate high-speed vehicular movement. Under such conditions, it would be unreasonable to expect a driver traveling on the highway during the dead of night, under pitch-dark conditions, to discern the presence of a stationary vehicle obstructing the roadway within sufficient time and distance to take evasive action.

14. The difficulty is further compounded by the glare of headlights from vehicles traveling in the opposite direction, which significantly impairs visibility. In light of these factors, the Tribunal’s finding that the driver of Tata Sierra could have averted the collision by applying brakes and was, therefore, equally negligent is legally flawed. Such a conclusion disregards the factual matrix and the practical

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limitations faced by the driver, rendering it patently erroneous and unsustainable in law.

15. Further Hon'ble the Supreme Court has already adjudicated upon this issue in ***Sushma vs. Nitin Ganapati Rangole and others***, 2024 SCC Online SC 2584, where an accident occurred due to a truck being stationed in the middle of the highway at night without any parking lights or warning signs, the collusion ensued when a car struck the stationery truck from behind. Hon'ble the Supreme Court in its judgment held that the accident was solely attributable to the negligence of the truck driver and ruled out any contributory negligence on the part of the driver of the car. The relevant extract of the same is reproduced as under:-

“16. Having considered the submissions advanced by learned counsel for the parties and after going through the impugned judgements passed by the High Court and the Tribunal as well as upon appreciating the material placed on record, we feel that the contentious finding whereby, the driver of the car, namely, Saiprasad Karande (deceased) was held jointly responsible for causing the accident along with the driver/owner of the offending truck leading to the claims of the passenger-Sushma & dependants of the deceased-passengers being deducted by 50% on the principle of contributory negligence is perverse on the face of the record. 25. Common sense requires that no vehicle can be left parked and unattended in the middle of the road as it would definitely be a traffic hazard posing risk to the other road users.

26. We shall briefly refer to the statutory provisions applicable to the situation at hand.

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27. *A highway or a road is a public place as defined in [Section 2\(34\)](#) of the Act: -*

“2(34) “public place” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;”

28. *[Section 121](#) of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.*

29. *[Section 122](#) of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any “public place” in such a position or in such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.*

30. *[Section 126](#) of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.*

31. *[Section 127\(2\)](#) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.*



32. Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.

33. These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity. But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control



over the said truck in this regard. Thus, the entire responsibility for the negligence leading to the accident was of the truck owner/driver.

34. In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and surmises. Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical.

35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged.

*36. In the case of [Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak](#), this Court while referring to a decision of the High Court of Australia in *Astley v. Austrust Ltd.*⁷, went on to hold that: -*



“... where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty.”

37. In the very same judgment, this Court also referred to and approved the view taken in **Swadling v. Cooper**, as below: -

“Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence.”

(emphasis supplied)

40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the



opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is ex-facie perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court's powers under [Article 136](#) of the Constitution of India to interfere with the concurrent finding of facts.

16. In ***Municipal Corporation of Greater Bombay vs. Laxman Iyer and another***, 2003 (8) SCC 731, Hon'ble the Supreme Court observed as under:-

“6.A plea which was stressed strenuously related to alleged contributory negligence. Though there is no statutory definition, in common parlance 'negligence' is categorised as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the



circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have



avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn. P.361).



7. At this juncture, it is necessary to refer to the 'doctrine of last opportunity'. The said doctrine is said to have emanated from the principle enunciated in *Davies v. Mann* (1842 (10) M&W 546) which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but test of causation. (See *Davies v. Swan Motor Co. (Swansea) Ltd.* (1949 (2) KB 291). Though in some decisions, the doctrine has been applied by courts, after the decisions of the House of Lords in *The Volute* (1922 (1) AC 129) and *Swadling v. Cooper* (1931 AC 1), it is no longer to be applied. The sample test is what was the cause or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident renders it one to be the result of contributory negligence.

8. Though the driver may not have been in this case wholly responsible for the accident, as contended, from the mere fact that the victim acted in contravention of a traffic regulation alone complete immunity from liability of the driver or the appellant corporation for the accident so as to disown totally responsibility to compensate the injured or dependants of the victim cannot be accorded also. Merely because there may have been breach of any traffic regulation, in the absence of concrete, clinching, positive

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and legally acceptable material to fix sole responsibility for the accident only on such injured/victim, which are conspicuously absent on the facts and circumstances of this case, the liability of the appellant-corporation remains, though to what extent remains to be considered further. Even according to the stand of the Corporation, the victim was seen by the driver from a distance of about 30ft and the vehicle was moving at a snail's pace. If that be so, it is not understood as to how it became totally impossible for the driver to avoid the accident has not been substantiated by proper evidence. In fact the High Court has noticed that there was ample scope for avoiding the collision between the cycle and the bus. The evidence on record also establishes that the bicycle was thrown to a distance of 4-5 ft. Before taking the turn, horn was found not blown by the driver. The application of the brakes and the incident of collision between the cycle and the bus seem to have been almost simultaneous. The stand of the Corporation that the bus had come to a halt much prior to the incident of the collision is not acceptable and though has been rightly rejected by the Tribunal and the High Court, the infirmity in their orders also lay in rejecting the plea of contributory negligence completely. The Tribunal as well as the High Court ought to have appropriately apportioned the negligence keeping in view the materials placed on records and properly balancing rights of parties.”

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17. In light of the above, the Tribunal's finding attributing 75% contributory negligence to the appellants is hereby set aside. Accordingly, the present appeal is allowed.

18. Consequently, respondent No. 1-driver of the truck is held solely liable for the occurrence of the accident. As a result, respondent No. 3-Insurance company is held liable to pay the entire amount of compensation.

19. Respondent No. 3-Insurance Company is directed to disburse the current schedule fee to Mr. Lalit Garg, Advocate, in both cases, within a period of twenty days from the date of receipt of copy of this judgment.

20. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 24, 2025

G Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes