



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

**FAO-5353-2019 (O&M)**

**Date of Decision : 11.03.2025**

Cholamandlam MS General Insurance Company Ltd ... Appellant(s)

Versus

Gurpreet Kaur & Ors ... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

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

Mr. Yogesh Gupta, Advocate for respondents No.1 to 5.

Mr. Vijay Lath, Advocate for respondent No.6.

**ALKA SARIN, J. (Oral)**

1. The present appeal has been preferred by the appellant-Insurance Company challenging the impugned award dated 02.03.2019 as well as the order dated 01.03.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal')

2. Brief facts relevant to the present *lis* are that on 08.02.2018, Kulwant Singh (since deceased) was driving his car at a slow speed and was travelling with his father from Phagwara to Ludhiana and when they reached Jamalpur Bridge, GT Road Phagwara, at about 5.00 pm, their car struck behind a truck bearing registration No.JK-02-R-7487 which had earlier struck behind a Canter bearing registration No.PB-12-K4018 which was wrongly parked on the road by its driver in a negligent manner. As a result of the accident, Kulwant Singh suffered serious injuries and he was taken to Civil Hospital, Phagwara, however, he died on his way to the hospital. It was

averred in the claim petition that the accident took place due to the wrong parking of canter bearing registration No.PB-12K-4018 by its driver and in the middle of the road without any precaution or warning signs.

3. The driver-cum-owner of canter bearing registration No.PB-12K-4018 (respondent No.1 herein) did not appear and was proceeded against *ex parte*.

4. The appellant-Insurance Company contested the claim petition by filing its written statement raising various preliminary objections and denying the accident having taken place due to the negligence of the canter bearing registration No.PB-12K-4018. It was further the stand taken that the accident took place as a result of the negligence of the deceased himself as well as the negligence of the driver of the truck bearing registration No.JK-02R-7487. Further objections were raised that respondent No.1 (driver-cum-owner of canter bearing registration No.PB-12K-4018) was not holding a valid driving licence and the same was being driven without RC, permit, fitness certificate etc.

5. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether Kulwant Singh died on account of injuries sustained in road accident on 8.2.2018 due to rash and negligent driving of canter truck bearing registration No.PB12-K-4018 by respondent No.1 ? OPP
2. Whether the claimants are entitled to compensation, if so, at what amount and from whom ? OPP

3. Whether the respondent No.1 was not holding a valid and effecting driving licence, registration certificate, route permit and fitness certificate at the time of accident ? OPR2
4. Relief.
6. The Tribunal found that the canter bearing registration No.PB-12K-4217 was parked in the middle of the road and accordingly, decided issue No.1 in favour of the claimants-respondent Nos.1 to 5 herein and against the Insurance Company-appellant and respondent No.6 herein and awarded the following compensation :

| Sr. No. | Heads                       | Compensation Awarded                 |
|---------|-----------------------------|--------------------------------------|
| 1       | Monthly income              | ₹18,000/-                            |
| 2       | Future prospects 40%        | [₹18,000 + 7,200] = ₹25,200/-        |
| 3       | Annual income               | [₹25,200 x 12] = ₹3,02,400/-         |
| 4       | Deduction 1/3 <sup>rd</sup> | [₹3,02,400 – 1,00,800] = ₹2,01,600/- |
| 5       | Multiplier of 17            | [₹2,01,600/- x 17] = ₹34,27,200/-    |
| 6       | Funeral expenses            | ₹15,000/-                            |
| 7       | Loss of estate              | ₹15,000/-                            |
| 8       | Loss of consortium          | ₹40,000/-                            |
|         | <b>Total Compensation</b>   | <b>₹34,97,200/-</b>                  |
|         | <b>Interest</b>             | <b>7.5% per annum</b>                |

Aggrieved by the same, the present appeal has been preferred by the appellant-Insurance Company.

7. The only argument raised by the learned counsel for the appellant-Insurance Company in the present appeal is that it was at best a case of contributory negligence as the truck bearing registration No.JK-02R-7487 had hit a parked canter bearing registration No.PB-12K-4217 on the flyover and the car of the deceased had struck the said truck bearing

registration No.JK-02R-7487. It is further the contention of the learned counsel that an application was filed for impleading the owner and driver of the truck bearing registration No.JK-02R-7487 which has also wrongly been dismissed by the Tribunal. The learned counsel has further contended that the canter bearing No.PB-12K-4217 was parked on the side of the road (Highway).

8. *Per contra* the learned counsel for respondent Nos.1 to 5-claimants has contended that it is not a case of contributory negligence inasmuch as no issue was claimed qua contributory negligence by the appellant-Insurance Company nor any evidence has been led in this regard. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **M. Nithya & Ors. Vs. SBI General Insurance Company Limited [SLP(Civil) Nos.833-834 of 2023 decided on 03.01.2025]** to contend that without there being any specific issue regarding contributory negligence and without there being any evidence led by the appellant-Insurance Company, it could not be held to be a case of contributory negligence.

9. I have heard the learned counsel for the parties.

10. In the present case though the learned counsel for the appellant-Insurance Company has vehemently argued that it was a clear case of contributory negligence and that the owner and driver of the truck bearing registration No.JK-02R-7487 had not been impleaded as a party and that the application for impleading them as a party has wrongly been dismissed by the Tribunal, however, the learned counsel for the appellant-Insurance Company has admitted that there was no issue framed by the Tribunal qua contributory

negligence. The learned counsel for the appellant-Insurance Company has also not been able to point out to an iota of evidence led on the record to even remotely suggest that the canter bearing registration No.PB-12K-4217 was parked on the side of the road. During the course of arguments, the site plan which is not a part of the record but was a part of the challan, has been shown to the Court by the learned counsel for the appellant-Insurance Company. Even as per the said site plan, the canter bearing registration No.PB-12K-4217 was not parked on the side of the road but was parked next to the divider on the flyover, which cannot be considered as being properly parked on the side of the road.

11. Further still, Hon'ble Supreme Court in the case of **M. Nithya** (supra) has held as under :

*“7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings*

*of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained.”*

12. A perusal of the testimony of the eye-witness i.e. father of the deceased who stepped into the witness box as PW1 reveals that in his examination-in-chief he had clearly stated that the accident took place due to the wrong and negligent manner in which the canter bearing registration No.PB-12K-4018 was parked in the middle of the road without any warning or precaution. In the lengthy cross-examination of the said witness (PW1), nothing could be elicited to suggest that the canter was parked on the side of the road and not in the middle. Even as per the site plan referred to by the learned counsel for the appellant-Insurance Company the stand taken by the eyewitness stands fortified. In view of the above and in view of the fact that no relief was claimed against the truck, no fault can be found with the order dismissing the application for impleadment. No other argument has been raised.

13. In view of the above, I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.03.2025  
Yogesh Sharma

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO