

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

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**IOIN-1-FAO-770-2008 in/and
FAO-770-2008
Date of Decision: 27.08.2025****ORIENTAL INSURANCE CO. LTD.****.....Appellant****Vs.****SAVITRI DEVI AND ORS.****.....Respondents****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Munish Kumar Garg, Advocate
Mr. Tanuj Goyal, Advocate
for respondent No.1.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeals have been filed by the appellant-Insurance company against the Award dated 12.01.2008 passed in a claim petition filed under Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Fatehabad (for short, 'the Tribunal'), wherein the appellant-Insurance company as well as driver and owner of the offending vehicle were fastened with the liability to pay the compensation to the claimant.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 22.08.2004 Churia Ram along with Jatin son of Balwant Rai, resident of Narwana was going in a Maruti Zen No. HR-23B-7341 which was being driven by Shishpal son of Soran Singh, resident of Tohana and when they reached near Jai Wanti Bus Stand at about 1 pm 4/5



buffalos came on the road all of a sudden and in order to save the buffalos, the driver stopped the car and in the meantime. a Tata Sumo bearing registration No. HR-46-B-0173 came from the Jind side which was being driven rashly and negligently by respondent No.1 as a result of which driver of the Tata Sumo bearing registration No. HR-46-B-0173 dashed the vehicle against the Maruti Zen driven by Shishpal resulting into injuries upon the person of petitioner Churia Ram and Shishpal after which Shishpal was also got admitted at PGI, Rohtak who ultimately died due to the grievous nature of the injuries sustained by him. The petitioner Churia Ram lodged the FIR with the police under Sections 279/338/304-A of the IPC against the respondent No.1 who is now facing trial. It is stated that respondent No.1 being the driver, respondent No. 2 being the owner and respondent No.3 being the insurer of the Tata Sumo bearing registration No. HR-46-B-0173 and respondent No.4 being the insurer of Maruti Zen No. HR-23-B-7341 are liable to pay the compensation amount to the petitioner namely Churia on account of injuries sustained by him and to the petitioners Savitri and others on account of death of Shishpal in the accident.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition by filing their joint written statement denying the factum of accident/compensation.

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

“1. Whether the petitioner Churia Ram of Petition No.9-MACT of 2005 suffered injuries and Shishpal husband of the petitioner of petition No.10-MACT of 2005 died in an accident caused by the rash and negligent driving of the respondent No.1 while driving his Tata Sumo No.HR-46-B-0173? OPP



2. If issue No.1 is proved in affirmative, to what amount of compensation, the petitioner Churia Ram is entitled to an from whom? OPP

3. If issue No.1 is proved in affirmative, to what amount of compensation, the petitioner Savitri Devi is entitled and from whom? OPP

4. Whether at the time of accident, the respondent No.1 was not holding a valid and effective driving license, if so its effect? OPR

5. Relief.”

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

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 appellant-Insurance company as well as driver and owner of the offending vehicle.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE APPELLANT

7. Learned counsel for the appellant–insurance company submits that in connected claim petitions arising out of the very same accident, adjudicated by other Motor Accident Claims Tribunals, a categorical finding has been recorded attributing rashness and negligence to the driver of the Maruti car. However, in the present set of claim petitions, the Tribunal has, contrary to the said findings, fastened liability on the driver of the Tata Sumo. Accordingly, it is prayed that the impugned award be set aside, and liability be rightly fixed upon the driver and owner of the Maruti car. He further submits that, even otherwise, the quantum of compensation awarded by the Tribunal is on the higher side.



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

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

“8. The petitioners in order to prove the issues have examined Churia Ram PW/1 who has tendered his affidavit Ex. PW1/A in which he has reiterated his version as enumerated in the petition stating that on 22.08.2004 he along with Jatin son of Balwant Rai, resident of Narwana was traveling in Maruti Zen HR-23-B-7341 which was being driven by its driver Shishpal and when they reached near Jai Jai Wanti Bus Stand at about 1 pm 4/5 buffalos came on the road all of a sudden and in order to save the buffalos, the driver Shshpal stopped the car but in the meantime. a Tata Sumo bearing registration No. HR-46-B-0173 carne from Jind side which was being driven rashly and negligently by its driver Jai Bhagwar respondent No.1 as a result of which Tata Sumo bearing registration No HR-46-B-0173 struck against the Maruti Zen driven by Shishpal from its front side resulting into injuries upon his person and upon the person of Shishpal after which he along with Shishpal was got admitted in PGI Rohtak and ultimately Shishpal died on 13.09.2004 due to the grievous nature of the injuries sustained by him in the accident after which he lodged the FIR against Jai Bhagwan respondent No.1 under Sections 278/338/304-A of the IPC, and respondent No. 1 is facing trial. PW/4 Shankar Dass, Additional Ahlmad has produced the summoned case file titled State Vs. Jai Bhagwan, bearing FIR No. 100 dated 23.08.2004 under Sections 279/337/338/304-A of the IPC, Police Station Julana and deposed that charge has been framed against the accused Jai Bhagwan son of Hari Ram, resident of village Bahu Akbarpur district Rohtak under Sections 279/337/338/304-A of the IPC on 18.07.2005 vide charge sheet Ex. P/36 and now the case is lying fixed for



prosecution evidence for 22.02.2007. He has also proved the final report Ex. P/35 under Section 173 Cr. P.C. From the statements of PW/1 Churia Ram, PW/4 Shankar Dass, Additional Ahlmad, copy of charge sheet Ex. P/35 and final report under Section 173 Cr.P.C., it has been duly proved that respondent No. 1 was driving the Tata Sumo bearing registration No. HR-46-B-0173 rashly and negligently as a result of which Tata Sumo bearing registration No. HR-46-B-0173 struck against the Maruti Zen driven by Shishpal (since deceased) resulting into injuries upon the person of petitioner Churia Ram and Shishpal (since deceased) who siso succumbed to the injuries thereafter. I, therefore, decide this issue in favour of the petitioners.

9. The question which now arises for consideration is as to how much amount of compensation, the petitioner Churia Ram in claim petition titled Churia Ram Vs. Jai Bhagwan etc. (Case No. 87-MACT of 2005) is entitled to? Petitioner Churia Ram in his affidavit Ex. PW1/A has stated that he had spent a sum of Rs. 2,00,000/- upon his treatment due to the nature of injuries sustained by him in the accident. He has tendered the original bills Ex. P/1 to P/7 of the value of Rs. 35,177/- which have not been duly proved in accordance with law. Apart from the above bills, the petitioner has also tendered the original bill Ex. P/8 of the value of Rs. 8,900/- issued by the Cashier Special Ward, Medical College Hospital Rohtak. However, the petitioner must have spent some amount upon his treatment due to the grievous nature of injuries sustained by him and therefore, a sum of Rs. 17,500/- is granted to the petitioner on account of the actual medical expenses plus the amount of Rs. 8,900/- as shown in the original bill Ex. P/8 issued by the Cashier Special Ward, Medical College Hospital, Rohtak and thus total amount comes to Rs. 16,400/-on account of medical expenses. PW/5 Dr. A.L. Bajaj who was a member of the Medical Board has proved the



disability certificate Ex. P/41 which shows that the petitioner sustained 48% disability due to the grievous nature of the fracture and grievous injury sustained by him in the accident and, therefore, a sum of Rs. 96,000/- is granted to the petitioner on account of said disability. A sum of Rs. 25,000/- is also granted to the petitioner on account of pain and suffering due to the fractures sustained by him. PW/5 Dr. A.L.. Bajaj who medically examined the petitioner has stated that the petitioner was having fracture right femur operated with fracture both bones right forearm, with fracture both bones left leg with fracture dislocation left shoulder with power Grade IV on all the joints. The petitioner may not have been able to do any work for a period of at least three months because such type of fractures normally take minimum period of about three months for healing. The petitioner has not led any evidence regarding his monthly income. He would have earned at least Rs. 2500/- per month because that much amount is earned even by an unskilled person and therefore, a sum of Rs. 7500/- is granted to the petitioner on account of loss of income. A sum of Rs. 5000/- is also granted to the petitioner on account of transportation charges. Thus, the petitioner is entitled to get total compensation amount of Rs. 1,49,900/- (Rs. One lac forty nine thousands nine hundred only). This issue is decided accordingly.”

10. A perusal of the impugned award reveals that the learned Tribunal has meticulously appreciated the entire evidence placed on record and has rightly returned the finding that the accident in question occurred solely on account of the rash and negligent driving of the driver of the Tata Sumo (offending vehicle).
11. The contention raised by the appellant–insurance company that the accident occurred due to the rash and negligent driving of the Maruti Zen car, and



not of the Tata Sumo, is wholly devoid of merit. The reliance placed upon certain observations in connected claim petitions adjudicated by the Motor Accident Claims Tribunal, Rohtak, attributing negligence to the driver of the Maruti Zen, cannot dislodge the well-reasoned findings of the Tribunal in the present case. The Tribunal, while adjudicating the instant petition, was required to return its findings independently on the basis of the evidence before it, in accordance with the settled principle that the Motor Accident Claims Tribunal is to assess negligence on the touchstone of preponderance of probabilities, and not by adopting the rigour of a criminal trial.

12. The unimpeached testimony of PW-1 Churia Ram, an injured eye-witness, coupled with the testimony of PW-4 Shankar Dass, Additional Ahlmad, who proved the charge sheet Ex. P-35 and final report under Section 173 Cr.P.C., clearly establishes that charges have been framed against respondent No.1, the driver of the Tata Sumo. This documentary and oral evidence, when considered conjointly, leaves no manner of doubt that the accident occurred due to the rash and negligent driving of respondent No.1, Jai Bhagwan, driver of the Tata Sumo bearing registration No.HR-46-B-0173. The Tribunal has, therefore, rightly rejected the plea of contributory negligence sought to be raised by the appellant–insurance company.

13. Turning now to the second limb of the appellant’s argument, namely, that the compensation awarded is excessive, the same is also devoid of merit. The Tribunal has assessed the compensation in accordance with settled principles laid down by the Hon’ble Supreme Court and High Courts, after due consideration of the evidence on record and the relevant factors such as age, income and



dependency of the deceased. No perversity or arbitrariness is demonstrated in the computation of compensation.

14. In view of the foregoing discussion and in light of the settled legal position, the findings recorded by the learned Tribunal are based on proper appreciation of evidence and correct application of law. The impugned award does not suffer from any infirmity warranting interference by this Court.

15. Consequently, the appeal, being devoid of merit, is hereby dismissed.

16. The statutory amount of Rs.25,000/- deposited by the appellant at the time of admission of the appeal, is ordered to be refunded to them.

17. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

27.08.2025

Ayub

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No