

2025:PHHC:088587



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

FAO-3581-2025 (O&M)
Reserved on : 01.07.2025
Pronounced on : 21.07.2025

GURSEWAK SINGH

.... Appellant

VERSUS

KRISHAN KUMAR AND OTHERS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aarush Kashyap, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the owner of the offending vehicle, aggrieved by the award dated 24.02.2025 passed by the Motor Accidents Claim Tribunal, Fazilka (hereinafter referred to as the 'Tribunal').

2. Brief facts relevant to the present *lis* are that on 20.08.2021, at about 5:30 pm, Pawan Kumar son of Krishan Kumar resident of Village Gaddan Dob, Tehsil Abohar was riding his motorcycle bearing registration No.PB-04-AB-2923 belonging to his cousin. On the motorcycle, his sister, namely, Renu and mother, namely, Bimla Devi were pillion riders. They were going from Malout Abohar G.T. Road towards the link road leading to Village Kattianwala. When they reached a little ahead of seepage drain, a tractor of make Arjun 555 D1, red in colour, with a trolly attached of yellow colour, which was being driven in a rash and negligent manner was going. Pawan Kumar repeatedly blew the horn to cross the tractor-trolly and when

he was crossing the tractor-trolla, the driver hurriedly turned his vehicle and struck the same in his motorcycle. Pawan Kumar's sister fell on the Katcha road and received minor injuries. However, his mother fell on the metaled road while Pawan Kumar received injury on his left foot and minor bruise on his left knee. Bimla Devi received a head injury and died at the spot. The driver of the tractor-trolla ran away from the spot after leaving the offending vehicle there. After some time, Pawan Kumar's father, namely, Krishan Kumar came to the spot and, after arranging a conveyance, took him and Bimla Devi to Civil Hospital, Malout. Later on they came to know that the tractor-trolla was being driven by Jagdeep Singh @ Deepu son of Angrej Singh. FIR No.151 dated 21.08.2021 was registered under Sections 304-A, 279, 337 IPC on the statement of Pawan Kumar. It was averred in the claim petition that the deceased was 42 years of age and that she was helping her husband, namely, Krishan Kumar in his boutique work and used to do the work of stitching. She was also taking care of her family consisting of the claimants.

3. Notice was issued. The driver of the offending vehicle did not appear despite service. The owner i.e. the appellant herein, contested the claim petition by filing his written statement raising various preliminary objections regarding maintainability etc. and that the claimants having wrongly claimed the amount of compensation as they were not entitled to the same. Their *locus standi* to file the claim petition was also challenged. It was averred that no accident had taken place due to the negligence of the answering respondent, due to the negligence of the owner and that they had been dragged into the litigation only for extracting money. The Insurance

Company filed its written statement claiming that the insurance was not effective from 20.08.2021, but was effective from 24.08.2021.

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

1. Whether the accident in question took place due to the rash and driving of respondent No.1, driver of Tractor-Trolley No.PB-53C-4836, resulting into the death of deceased Bimla Devi ? OPC
2. If issue No.1 is proved, then what amount of compensation the claimants are entitled and from whom ? OPC
3. Whether claimants have no cause of action or locus standi to file the present petition ? OPR
4. Whether claim petition is not maintainable in the present form ? OPR
5. Whether claimants are estopped by their own act and conduct from filing the present petition ? OPR
6. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties ? OPR
7. Whether claimants have not come to this Court with clean hands and concealed material and patent facts from the Court ? OPR
8. Relief.

5. The Tribunal allowed the claim petition and awarded a compensation of ₹17,44,100 holding the appellant herein liable to pay the

amount and dismissing the claim petition qua the Insurance Company. Aggrieved by the same the present appeal has been preferred.

6. The learned counsel for the appellant has argued that the tractor-trolla number was not mentioned in the FIR and hence it was clear that tractor had falsely been involved in the present case and infact the accident never took place because of the tractor-trolla owned by the appellant. It is further the contention that Pawan Kumar, who was the rider of the motorcycle, did not have a valid licence and also that it was a case of contributory negligence inasmuch as the deceased was a pillion rider.

7. Heard.

8. In the present case the driver of the offending vehicle chose not to contest the claim petition. Krishan Kumar stepped into the witness box as CW1 and tendered his affidavit (Ex.CW-1/A) in examination-in-chief. The documents tendered by him were copies of the Aadhaar Card, the detailed mark sheet of Pawan Kumar and copy of the RC of motorcycle as Ex.P-1 to Ex.P-18. Death certificate of Bimla Devi was tendered as Ex.P-19 and copy of the postmortem report as Ex.P-20. Certificate of Renu issued by the Government Senior Secondary School, Balluana as Ex.P-21, certificate of Varinder Kumar as Ex.P-22, certified copy of report under Section 173 CrPC as Ex.P-23 and copy of FIR as Ex.P-24. Pawan Kumar also stepped into the witness box as PW-2. No evidence was led by the present appellant.

9. The Tribunal found that though the registration number of the offending tractor-trolla was not mentioned in the FIR, but the make i.e. Arjun 555 D1 red colour with a trolla attached and the name of its driver Jagdeep Singh @ Deepu has duly been mentioned. It was further observed

that as per the report under Section 173 CrPC (Ex.P-23), the driver was facing trial before the Illaqa Magistrate. Ex.P-23 reveals that both the accidental vehicles i.e. the motorcycle and the tractor were taken into Police possession from the spot of the accident. Hence, the argument of the learned counsel that non-mentioning of the tractor number was fatal to the case and hence the claim petition ought to have been dismissed cannot be accepted. The make of the tractor was clearly mentioned in the FIR as was the description and though the vehicle was taken into possession by the Police from the spot of the accident, however, the number was not mentioned. Nothing was brought on the record by the appellant herein to show that there was any mischief which had been played by the claimants in not mentioning the registration number in the FIR. The argument of the learned counsel that it was a case of triple riding and therefore it is a case of contributory negligence also deserves to be rejected. The appellant herein himself failed to lead any evidence whatsoever. In the absence of any evidence having been led and in the absence of any issue having been framed qua contributory negligence, the argument of the learned counsel that it was a case of contributory negligence cannot be accepted. In any case, Bimla Devi was only a pillion rider.

10. In the case of **Mohammed Siddique & Anr. Vs. National Insurance Company Ltd. & Ors. [2020 (1) RCR (Civil) 689]** the Hon'ble Supreme Court has held as under :

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without

anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been

averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.

14. *Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”*

Further, the Hon'ble Supreme Court in the case of **Anjana Narayan Kamble & Ors. Vs. Branch Manager, Reliance General Insurance Company Limited & Anr. [2023 ACJ 346]** has held as under :

“7. In the present case, there is no such evidence of contributory negligence except fact of three riders on the motorcycle and of not wearing helmet by the deceased. Therefore, in view of the enunciation of law, we find that the High Court was not justified in deducting 30% of the amount of compensation assessed by the Tribunal for the reason that the deceased was triple riding the Motorcycle or was not wearing a helmet. The violation of rules for driving a motor vehicle is not a ground to deduct the amount of compensation awarded unless there is proof of either the accident could have been averted or the impact could have been minimized.”

11. In view of the above, the arguments of the learned counsel for the appellant cannot be accepted. On the basis of the evidence, which was led by the claimants and which remain unrebutted, the Tribunal has rightly awarded the compensation, which cannot be faulted with. No other argument was raised.

12. In view of the above, the present appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.07.2025
Aman Jain

(ALKA SARIN)
JUDGE

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