



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

FAO-3872-2022

Reserved on: 15.09.2025

Pronounced on: 19.09.2025

THE NEW INDIA ASSURANCE CO. LTD.

....Appellant

Versus

KAMLESH

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Lalit Garg, Advocate
for the appellant.

Parmod Goyal, J.

The present First Appeal against order has been preferred by the appellant/respondent No.3-Insurance Company, against impugned order dated 12.05.2022 passed by learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred as 'Tribunal'). Vide impugned order dated 12.05.2022, learned Tribunal had awarded compensation of Rs.12,00,000/- to the claimants on account of death of Bharat Singh in the accident dated 01.10.2018, on account of rash and negligent driving of respondent No.1 while driving Canter bearing No.HR-57A-3112 (hereinafter referred to as 'offending vehicle').

2. Appellant/insurance company is aggrieved by the finding of learned Tribunal on issue No.1, whereby respondent No.1 has been held liable for causing the accident dated 01.10.2018, by his rash and negligent driving. Insurance company is also aggrieved by the amount of compensation awarded by learned Tribunal to the claimants.



3. Learned counsel for the appellant has argued that learned Tribunal has erred in concluding rash and negligent driving on the part of respondent No.1 and has not appreciated the evidence of claimants witness which clearly shows that it was driver of motorcycle upon which deceased was travelling, who was rash and negligent. The learned counsel for the appellant has mainly relied upon evidence of PW2 Sonu, who was eye witness and author of the FIR of accident as well as was pillion rider on ill-fated motorcycle and argued that deceased had failed to maintain distance from Canter which had resulted in the accident. Learned counsel for appellant has argued that it was deceased who was negligent in causing the accident and not respondent No.1 and in alternative argued that present is a case of contributory negligence, if entire blame is not shifted to deceased.

4. Reliance has also been placed on Regulation 23 of the Rules of Road Regulations, 1989. Learned Tribunal in Para No.17 and 18 has considered the evidence of PW2, who happens to be sole eye witness to the occurrence and concluded that as far as deceased was concerned, he was not negligent in driving the vehicle and further that it was respondent No.1 who was at fault as he had applied sudden breaks at fast speed.

5. On consideration, the conclusion drawn by learned Tribunal cannot be faulted with. Learned Tribunal has at length appreciated the cross-examination of PW2. In cross-examination PW2 has clearly stated that he and the deceased were together on motor cycle and were following the truck for at least 10 kms between Kalanaur and Bhiwani. The speed of motorcycle was stated to be 30-35 km/hr whereas offending truck was being driven at the speed of 50 km/hr. Visibility was stated to be clear and deceased driver of motorcycle was wearing helmet. Learned Tribunal has concluded that



from the facts stated by PW2 it is clearly made out that no attempt was made by motorcycle driver to overtake the offending truck. There was proper visibility and accident had taken place due to sudden application of breaks by the offending vehicle. The reasoning given by learned Tribunal cannot be faulted with, merely because vehicle is struck from behind. Hit `from behind in itself will not lead to the conclusion that it is the vehicle which had hit the offending vehicle from back would be negligent or liable for contributory negligence. Contributory negligence is a fact which is dependent upon facts and circumstances of each case.

6. In the present case, respondent No.1 has not stepped into the witness box to disclose manner of occurrence. In absence of any evidence on behalf of respondents as regards with manner of occurrence of the accident, the only statement available is that of PW2, who had clearly stated that truck had applied sudden breaks and on account of sudden application of breaks motorcycle of deceased had hit the offending vehicle from behind. No doubt it is the duty of vehicle following the vehicle in front to maintain distance, however, in the present case, it has nowhere come that distance was not being maintained properly by the deceased motorcyclist. Even after maintaining distance, accident can occur on account of sudden application of breaks as it all depends upon nature of breaks of each vehicle. It must be kept in mind that Canfers are equipped with pressure breaks whereas breaks of motorcycle are disk breaks. The response time between the truck and motorcycle is different.

7. Therefore, in absence of any evidence that motorcyclist was not maintaining proper distance, it cannot be presumed that motorcycle had struck against the offending vehicle as no distance was being maintained by



the motorcyclist. The fact that sudden breaks were applied by offending vehicle which was being driven at fast speed has not been rebutted by respondents, therefore, in these circumstances in absence of any evidence that motorcyclist was not maintaining distance, the conclusion drawn by learned Tribunal cannot be faulted with. No assumption of rash and negligent driving on the part of deceased motorcyclist can be raised.

8. Reliance has been placed upon judgments i.e **Manjit Kaur and others v. Alla Dutta and others**, 2017 (1) PLR 152, **Smt. Shrimati v. Sri Krishna Deva Madiwal**, 2005 (1) RCR (Civil) 124, **United India Insurance Co. Ltd. v. Amarjit Kaur and others**, FAO No.10045 of 2014 and **Gurmail Kaur v. Nirmal Singh and others**, FAO No.3041 of 2016. However, none of these are of no help to the case of appellant as factum of contributory negligence is dependent upon facts and circumstances of each case. No doubt it is the duty of vehicle which is behind to maintain distance, however, there has to be some evidence that distance was not maintained by driver of vehicle following another vehicle. In the present case, since there is no evidence, therefore, none of the judgments cited can be of help to the case of appellant.

9. Ld. Counsel for appellant has also challenged presence of PW-2 at the time of accident on the ground that he was not named in *ruqqa* sent by doctor to police. Mere non-mentioning of Sonu @ Kalu to be person accompanying the deceased to the hospital by the hospital authorities cannot be taken to doubt presence of PW2 Sonu, who was also author of FIR. It is a matter of common knowledge that hospital authorities note down name of one person out of many persons accompanying the injured/deceased, therefore, mere non-mentioning of name by doctor in *ruqqa* will not make



presence of PW2 doubtful.

10. Following compensation was ordered to be paid to claimants by the learned Tribunal :-

Sr. No.	Heads	Calculation
(i)	Salary/income of the deceased	Rs.8,000/- per month
(ii)	After adding 25% of (i) above (to be added as future prospects).	Rs.8,000+2,000=10,000/-
(iii)	After deducting 1/3 of (ii) (deducted as personal expenses of the deceased)=	Rs.10,000 x 2/3 x 12= Rs.80,000/- annually
(iv)	Compensation after multiplier of 14 is applied	Rs.80,000x14=Rs.11,20,000/-
(v)	Loss of consortium, loss of love and affection etc. =	Rs.40,000/-
(vi)	Loss of estate	Rs.20,000/-
(vii)	Funeral and transportation expenses=	Rs.20,000/-
		Rs.12,00,000/-

11. Insurance Company is also aggrieved by quantum of compensation. Learned counsel for the appellant is challenging the award of Rs.20,000/- each on account of loss of estate and funeral expenses and transportation expenses and argued that it ought to have been Rs.15,000/- each under these heads. It is further argued that learned Tribunal ought to have taken 10% towards future prospects as deceased was 50 years old.

12. Claimants have claimed age of deceased to be 45 years. Learned Tribunal has also taken the age of deceased to be 45 years, however, in medical documents including PMR, age of deceased was recorded as 50 years and therefore, learned counsel for the appellant has argued that learned Tribunal ought to have taken the age of deceased to be 50 years. However,



age recorded in PMR can not be taken as a conclusive proof regarding the age as it is generally recorded on the assertions of person present on behalf of deceased side. Such person can disclose the age rightly or wrongly subject to information available with the person stating the age to the doctor, it is hearsay.

13. In the present case the age of deceased has to be taken between 45 to 50 years, as there is no other material available on record. In view of beneficial nature of Motor Vehicles Act, 1988 application of 25% towards future expenses when there is no conclusive evidence that deceased had completed 50 years cannot be faulted with. It is a border line case and deceased could be less than 50 years of age as being claimed by claimants and in view of the assertions of his family members that he was 45 years old, award of 25% towards future expences is upheld. No doubt learned Tribunal has awarded loss of estate to be Rs.20,000/- and funeral & transportation again to be Rs.20,000/- each which ought to have been Rs.15,000/- each, however, keeping in view the fact that the amount of Rs.10,000/- alone has been granted in excess and no loss of consortium has been paid to daughter of deceased, this Court is not intending to interfere in the award passed by learned Tribunal.

14. Appeal is without any merit. Hence is dismissed.

19.09.2025
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No