

FAO-5100-2010
FAO-5822-2010

-1-

2025.P1111C.150722



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

111

FAO-5100-2010
Date of decision :03.11.2025

MUKESH & ORS.

... APPELLANTS

VERSUS

PARMOD KUMAR & ORS.

...RESPONDENTS

FAO-5822-2010

MAHENDER SINGH DESWAL

... APPELLANTS

V/S

NEW INDIA ASSURANCE COMPANY LIMITED AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Shilak Ram Hooda, Advocate
for the appellants (in FAO-5100-2010).

Mr. Vikas Chaudhary, Advocate
for the appellant (in FAO-5822-2010)

Mr. Vinod Gupta, Advocate and
Mr. R.K. Bashamboo, Advocate
for New India Assurance Company Limited.

PARMOD GOYAL, J. (ORAL)

1. The present appeals have been preferred by the appellants-claimants as well as by the owner of the vehicle (respondent no. 2 before the learned Tribunal), being aggrieved by the award dated 01.05.2010 passed by the Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as 'Tribunal').



FAO-5100-2010
FAO-5822-2010

-2-

2. The appellants-claimants have sought enhancement of compensation, whereas respondent no. 2, the owner of the offending vehicle, has challenged the finding of the learned Tribunal on Issue No. 1 on the ground that the Tribunal has erred in deciding the said issue in favour of the appellants-claimants. The owner has also assailed the grant of recovery rights to the Insurance Company.

3. The appellants-claimants have sought compensation of ₹15,00,000/- on account of the death of Ram Niwas, aged 35 years, who died in motor vehicular accident which occurred on 05.12.2008. It was alleged that on the said date, Ram Niwas was proceeding from Gohana to his village Mundlana on his motorcycle bearing registration No. HR-05L-2162. At about 6:00 p.m., he met Mukesh and Azad, who took a ride and became pillion riders on the said motorcycle. The vehicle was being driven by Ram Niwas at normal speed while observing all traffic rules and regulations. At about 6:30 p.m., when they reached near the Gas Agency situated on Panipat Road, Gohana, a truck bearing registration No. HR-69-1047 was parked/standing in the middle of the road with its back door open. There was no light, indicator, or signal to warn other vehicles about its parking. Due to the darkness, the motorcycle collided with the back door of the truck, resulting serious injuries to its riders and leading to the death of Ram Niwas. The post-mortem examination was conducted on 06.12.2008. FIR No. 431 dated 05.12.2008 was registered on the statement of Mukesh, one of the pillion riders.

4. It was the case of the appellants-claimants that the deceased



was earning ₹15,000/- per month as a mason, and they accordingly claimed compensation of ₹15,00,000/- along with interest.

5. Following issues are framed by learned Tribunal:

1. *Whether the accident took place due to rash and negligent driving of the respondent no. 1 while driving the vehicle bearing registration no. HR-69-1047? OPP*
2. *If issue no. 1 is proved to what amount of compensation and from whom the claimants are entitled to? OPP*
3. *Whether the respondent no. 1 was not holding valid and effective driving licence at the time of alleged accident? OPR 3*
4. *Relief.”*

6. The learned Tribunal, after considering the respective pleadings and evidence adduced by the parties, decided Issues No. 1 and 2 in favour of the appellants-claimants, whereas Issue No. 3 was decided in favour of the Insurance Company. The Tribunal had held that the driver of the offending vehicle, i.e. respondent no. 1, was not possessing a valid permit and fitness certificate at the time of the accident. Accordingly, the liability to pay compensation was fixed upon the owner and driver of the vehicle, with a direction to the Insurance Company to pay the awarded amount to the appellants-claimants and thereafter recover the same from the owner and driver. The Tribunal awarded total compensation of ₹4,85,400/- along with interest at the rate of 7.5% per annum from date of filing of petition till realisation.

7. Learned counsel for the appellant-owner (respondent No.2) as well as learned counsel for the Insurance Company have challenged the

finding of the learned Tribunal with regard to the issue of negligence on the



part of respondent No.1 while driving the offending vehicle on the following grounds:

- (i) That as per the mechanical inspection report, no damage was found on the truck in question.
- (ii) That the motorcycle was being driven in violation of traffic rules, as it was occupied by three persons.
- (iii) That it was the primary duty of the motorcyclist to remain vigilant and to notice any stationary vehicle on the road, which he failed to perform, resulting in the accident dated 05.12.2008.

8. However, I do not find any merit in the contentions raised on behalf of the Insurance Company as well as the appellant-owner of the offending vehicle. There is no nexus between the occurrence of the accident and the fact that the motorcycle was occupied by three persons. Merely committing a traffic violation would not, by itself, constitute negligence or contributory negligence on the part of the motorcyclist, unless some act of commission or omission amounting to negligence on the part of the deceased is established on record.

9. In the present case, the driver of the offending vehicle has not stepped into the witness box to depose regarding the manner in which the accident had taken place. There is no evidence suggesting any negligence on the part of the deceased in causing the accident. The mere fact that the motorcycle was carrying three persons cannot, by itself, lead to a finding of negligence or contributory negligence against the deceased.

10. Similarly, the mere circumstance that the truck did not suffer visible damage cannot be taken as a ground to disbelieve the testimony of



FAO-5100-2010
FAO-5822-2010

-5-

the eye-witness, Mukesh, who lodged the FIR immediately after the accident on 05.12.2008 itself, thereby bringing the manner of the occurrence into the public domain within a few hours of accident. His (PW-2) evidence has gone un-rebutted. Mechanical report of truck therefore is of no help to the case of appellant-owner. There is no material on record to discredit his testimony, which remains consistent and trustworthy. Mukesh (PW-2) has specifically deposed that the offending truck was parked in the middle of the road without any lights or indicators, and due to darkness and foggy weather, the same could not be seen. The accident occurred at about 6:30 p.m. in the month of December, when natural light is ordinarily insufficient and weather in northern part of country is foggy. It cannot, therefore, be presumed that there was adequate visibility enabling the deceased to notice and avoid the stationary vehicle which was parked without indicators / lights in middle of road. No evidence was led by appellant-owner to show that truck was not parked on road. Unless it is shown that the motorcyclist had a reasonable opportunity to observe the parked truck and still failed to avoid collision, negligence cannot be attributed to him. Similarly, even site plan is of no help to the case of appellant-owner as neither its author was examined by appellant-owner nor it was put to PW-2 eye-witness. Moreover, site plan only depicts position of vehicles only after accident which may have changed due to impact or re-parking of vehicles by one of the parties. Further, even site plan shows that offending vehicle was parked on the road, therefore, site plan cannot be held sufficient to discard consistent ocular account given by PW-2 in



absence of examination of driver of offending vehicle.

11. In view of the above, none of the grounds raised by the learned counsels for the appellant-owner or the Insurance Company are sufficient to dislodge the evidence of PW-2, the eye-witness to the accident, whose testimony remains unshaken and consistent. There is no counter-evidence produced to rebut his version. In these circumstances, it cannot be held that the deceased was negligent or had contributed to the occurrence of the accident.

12. Accordingly, the finding of the learned Tribunal on Issue No. 1 does not suffer from any infirmity and is hereby upheld.

13. Appellant-owner of vehicle has also challenged finding of Ld. Tribunal that since offending vehicle was not having permit and fitness certificate therefore insurance company is not liable to indemnify owner and is entitled to pay and recover amount of compensation from driver and owner of offending vehicle. It is argued that vehicle was being plied in State of Haryana and no permit was required. Reliance has been placed on judgment titled as **National Insurance Company Ltd. Vs. Kamlesh Kaur & Ors.**, FAO No. 1379 of 2006 decided on 23.03.2006 by Division bench of this court to argue that no permit is required within State. It is also argued that case of appellant is covered by provision of section 66 (3) (p) of Motor Vehicles Act and no permit was required as vehicle was empty and under repair.

14. Reliance upon case titled as *National Insurance Company Ltd. vs. Kamlesh Kaur & ors.* (Supra) by the learned counsel for the



appellant is wholly misconceived. A perusal of the said judgment demonstrates that the Hon'ble Division Bench did not hold that no permit is required for transport vehicles in the State of Haryana.

15. On the contrary, the statutory provisions contained in Section 66 of the Motor Vehicles Act make it mandatory for the owner of a transport vehicle to ply the vehicle in accordance with the conditions of the permit granted by the Competent Authority.

16. Section 66 of the Motor Vehicles Act clearly stipulates that a permit is a mandatory document for a transport vehicle and also specifies the conditions under which a permit may be exempted. For reference, Section 66 is reproduced as under:

Section 66 of Motor Vehicles Act is reproduced as below :-

66. Necessity for permits.—(1) *No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:*

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject



to any conditions that may be specified in the permit, authorise the use of the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any public or semitrailer not owned by him, subject to such conditions as may be prescribed. 1

Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor:

(3) The provisions of sub-section (1) shall not apply—

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this



behalf;

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

17. It is worth noting that in ***Pratap Singh vs. National Insurance Company and others (Supra)***, 2014(39) RCR (Civil) 521, the Single Bench



of this Court has duly considered the Division Bench judgment referred to above, i.e., ***National Insurance Company Ltd. vs. Kamlesh Kaur*** (Supra), and concluded that the Division Bench has nowhere held that a permit is not necessary for vehicles plying within the State of Haryana. This Court in **Pratap Singh** (Supra), had concluded as under:-

“6. The decision mentioned in *Kamlesh Kaur's case* (supra) sets out the decision in *National Insurance Co. Ltd. v. Chela Bharathamma* (2004 (4) RCR (Civil) 399, where the Supreme Court was actually considering a case of involvement of a vehicle without a permit. It was a case where the court denied the right of indemnity to the owner. The Division Bench was rejecting a case placed by the insurance company on a reasoning that the insurance company had not pleaded want of permit as a ground of challenge. The court found, as a matter of fact, that no witness or document had been produced to show that no permit was obtained by the owner. The court held, after referring to *National Insurance Company v. Swaran Singh* 2004 (2) RCR (Civil) 114, that mere absence of fake or invalid licences were not themselves defences available to insurer of a third party to deny liability. The insurer has to prove that the insured was actually of negligence and that further there had been a breach on the part of the owner of the vehicle which shall be the burden on the insurer.

7. Learned counsel for the appellant is completely wrong in making reliance on this judgment to make it appear as though the court was holding that no permit is necessary for goods vehicle. The Division Bench does not hold so in any part of the judgment. If, at all, the head notes by the publisher, is erroneous and misleading. The judgment, on the other hand, records a point of law that it is the duty of the insurer to plead



FAO-5100-2010
FAO-5822-2010

-11-

breach of violation of the terms and in that case the insurer had not proved the breach. The Division Bench was not making any exception to the judgment of Chella Bharathamma. On the other hand, in this case the decision in the Chella Bharathamma's case squarely apply.”

18. Therefore, merely by placing reliance upon an incorrect headnote, it is being argued that a permit is not required, whereas, under the statutory provisions, a permit is a pre-requisite for plying a transport vehicle, except in cases specifically exempted under Section 66 Motor Vehicles Act. Consequently, **Kamlesh Kaur case** (supra) is of no help to the case of appellants.

19. It is case of appellant that no permit and fitness certificate were required in view of Section 66 of Motor Vehicles Act as vehicle was empty and under repair. However, case of appellant cannot be held to be covered by provisions of Section 66(3)(p) of Motor Vehicles Act as there is no pleading or evidence in this regard. Neither driver nor owner had stepped into witness box to assert these facts. No other evidence was adduced. Moreover, there is no evidence on record to conclude that vehicle was empty. In absence of any evidence provisions of Section 66(3)(p) of the Motor Vehicles Act, 1988 are not attracted. Section 66(3)(p) is attracted only when vehicle is proceeding empty for repair from starting destination and has no applicability in case where vehicle broke on its way.

20. It is the case of the appellants-claimants that the deceased was working as a mason and earning ₹15,000/- per month. Accordingly, they have sought enhancement in compensation awarded by the learned



FAO-5100-2010
FAO-5822-2010

-12-

Tribunal. The enhancement has been claimed on the grounds that the income of the deceased was not correctly assessed and that no addition towards future prospects was made. It is further contended that the learned Tribunal applied an incorrect multiplier and made an excessive deduction towards personal expenses, despite the fact that the deceased was admittedly 39 years of age at the time of the accident. Learned counsel for the appellants-claimants has also challenged the award of lesser amounts under the conventional heads, namely, funeral expenses, loss of consortium, and loss of estate.

21. As far as the age of the deceased and the number of dependents i.e. four in total are concerned, the learned counsels for the respondents have not disputed these facts.

22. Except for oral assertions no material has been placed to prove that deceased was working as mason and was earning Rs. 15,000/-per month. No educational and vocational qualification justifying claim that deceased was working as mason was placed on record. Oral claim of PW-3 that he had got his house constructed / repaired from deceased in absence of documentary evidence at the most can be considered to conclude that deceased was self employed and may be working as mason. No documentary evidence either by claimants or by PW-3 showing vocation and income has been placed. The oral claims are uncorroborated and cannot be accepted without due corroboration to conclude income of deceased to be 15,000/-. In facts and circumstances of present case approach of Ld. Tribunal to take minimum wages prevalent at the time of death, therefore,



cannot be faulted. It is accordingly upheld.

23. Since the deceased was about 39 years of age at the time of accident as he was born on 04.12.1969 as per Ex. P-3 middle examination certificate, therefore, multiplier of ‘15’ would be applicable instead of ‘14’ as per the law laid down by Hon’ble Supreme Court in ‘*Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(6) SCC 121*. The Tribunal has not made any addition towards loss of future prospects. Since the deceased in the present case was 39 years of age, an addition of 40% would be applicable as per the law laid down by Hon’ble Supreme Court in case of *National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009*. The deduction of 1/3rd towards personal expenses of deceased is also wrongly made, keeping in view the number of dependents which are four the deduction ought to have been 1/4th. In the present case the Claimants/appellants shall also be entitled to compensation of Rs.10,000/- towards funeral expenses, Rs.10,000/- loss of estate and Rs.25,000/- to each of the claimants/appellants towards spousal and parental consortium.

24. Accordingly, the reworked compensation to which the claimants – appellants are entitled to is as under:

Income of deceased	Rs. 4,200/- per month (as per minimum wages)	Rs. 4,200/- per month
Future expenses	40% (Rs. 4,200/- + 1,680/-)	Rs. 5,880/-
Deduction	1/4 th (Rs. 5,880 – 1,470/-)	Rs. 4,410/-
Multiplier	15	
Loss of dependency	Rs. 4,410 x 15 x 12	Rs. 7,93,800/-
Funeral expenses	Rs. 10,000/-	Rs. 10,000/-



	(by Tribunal)	
Loss of Estate	Rs. 10,000/- (by Tribunal)	Rs. 10,000/-
Spousal consortium to claimant No. 1	Rs. 5,000/- (by Tribunal)	Rs. 25,000/-
Parental consortium to claimant No. 2 to 4	Rs. 25,000/- x 3	Rs. 75,000/-
Compensation awarded by Tribunal	Rs. 4,85,400/-	
Compensation awarded in appeal		Rs. 9,13,800/-
Enhancement of compensation	Rs.9,13,800(awarded in appeal) - Rs. 4,85,400/- (awarded by Tribunal)	Rs. 4,28,400/-

19. Appellants-claimants shall also be entitled to interest at the rate of 7.5% per annum on enhanced amount from the date of filing of claim petition till realization. Apportionment of compensation and liability to pay compensation by respondents shall be as per award.20.

21. Appellant-owner of vehicle has tried to challenge finding of learned Tribunal regarding liability of insurance company and that of appellant in view of failure of appellant to produce fitness certificate and permit on record. Learned Tribunal has found insurance company entitled to recover amount paid to claimants from driver and owner.

22. Accordingly, the appeal filed by the appellants-claimants is allowed in above terms, while the appeal preferred by the owner of the vehicle is dismissed.

03.11.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No