



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

(i) FAO-1601-2015 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Darshan Singh and others
...Respondents

(ii) FAO-1602-2015 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Gurmeet Kaur and others
...Respondents

(iii) FAO-1603-2015 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Jarnail Singh and others
...Respondents

(iv) FAO-1608-2015 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Rajinder Kaur @ Jinder Kaur and others
...Respondents

(v) FAO-1609-2015 (O&M)

New India Assurance Company Limited
...Appellant

VERSUS

Bhinder Singh and others
...Respondents

(vi) FAO-1816-2015 (O&M)

New India Assurance Company Limited

...Appellant

VERSUS

Kuldeep Kaur and others

...Respondents

Date of Decision: September 24, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rahul Pathania, Advocate for
Mr.R.C.Kapoor, Advocate for the appellant.

Mr.Lekhraj Sharma, Ms.Shagun and
Mr.Abhishek Sharma, Advocates
for respondents No.4 and 5 (in FAOs-1602 and 1608-2015)
for respondents No.2 and 3 (in FAO-1609-2015) and
for respondents No.3 and 4 (in FAOs-1601, 1603 and
1816- 2015)

Mr.Saurabh Savara, Advocate for
Mr.Punit Jain, Advocate
for respondent No.7 (in FAOs-1601, 1603, 1816-2015),
for respondent No.8 (in FAOs-1602 and 1608-2015) and
for respondent No.6 (in FAO-1609-2015).

ARCHANA PURI, J.

The New India Assurance Company Limited has filed the aforesaid six appeals, being aggrieved by the common Award dated 25.08.2014 passed by learned Motor Accident Claims Tribunal, thereby, awarding compensation to two injured and also awarding compensation to the legal heirs of various deceased.

For the convenience of discussion, the parties are referred to as

making appearance before learned Tribunal.

The brief facts, relevant and essential for the disposal of the appeals, are being taken from FAO-1601-2015 and the same are as follows:-

That, on 20.02.2011, injured-persons aforesaid, together with various persons (since deceased), were travelling in a four wheeler, which was being driven by respondent No.5-Balwant Singh, its driver, while coming to Khanna, after attending Guru Ravidass Jayanti at Banaras. When the said four wheeler reached near village Kakodha on G.T. Road, at about 3.00 a.m., it became out of control, being on high speed and struck against the truck bearing registration No.UP-78T-5481, standing in the middle of the road. The truck was out of order and it was left parked, negligently by respondent No.1-Pankaj Kumar, without giving any indication of glowing indicators.

Balwant Singh, driver of the four wheeler could not anticipate the truck standing in the middle of the road, due to darkness and resultantly, the four wheeler struck with the truck with great force, which resulted into number of casualties. It is the specific claim of the claimants that the accident took place, due to the negligence of driver of both the vehicles aforesaid.

Injured Bant Singh and Bhinder Singh as well as legal heirs of deceased occupants of the four wheeler, filed separate claim petitions under Section 166 of the Motor Vehicle Act, thereby, claiming compensation from the respondents, who are the drivers, owners and insurers of the truck bearing registration No.UP-78T-5481 and four wheeler bearing registration No.PB-13U-9002.

In pursuance of the notice issued, respondents had filed their respective written statements.

On completion of the pleadings, issues were framed and evidence was adduced.

Be it noted that the driver and owner of the truck, did not dispute the taking place of the accident, but however, they asserted about the same to have taken place, on account of rashness and negligence, on the part of driver of the four wheeler.

Learned Tribunal, while deciding the claim petitions held that the accident had taken place, due to rash and negligent act, on the part of the driver of the truck bearing registration No.UP-78T-5481 i.e. Pankaj Kumar, (who was impleaded as respondent No.1 before learned Tribunal), as he had parked the truck in the middle of the road, without their being any indicators and thus, issue relating to fact and manner of taking place of the accident, was decided against Pankaj Kumar, in the capacity of being driver of the offending truck. Thereupon, compensation was worked upon, in each claim petition and the liability was fastened upon the driver, owner and insurer of the truck bearing registration No.UP-78T-5481.

Aggrieved by the exoneration of the driver, owner and insurer of the four wheeler and the entire blameworthiness, having fastened upon the owner, driver and insurer of the offending truck as well as assailing the quantum of compensation in each case, The New India Assurance Company Limited i.e. insurer of the truck bearing registration No.UP-78T-5481, had filed the aforesaid six appeals in hand, which relates to injuries sustained by Bhinder Singh as well as death of other occupants, namely, Surjit Singh, Rulda Singh, Bachan Singh, Gurpreet Singh and Bharat Ram.

Learned counsel for the parties heard.

During the course of arguments, learned counsel for the

appellant has confined his prayer to the contention of there being contributory negligence, on the part of the driver of the four wheeler, involved in the accident. He submits that though quantum was also initially assailed, but he does not press on this aspect, except qua the compensation awarded, on account of death of ASI Surjit Singh, relating to which FAO-1861-2015 has been filed to assail the quantum.

Learned counsel contends that at the relevant time, the truck was parked on the left side of the road and sufficient precautions, with regard to its parking, being out of order, were taken. Therefore, it is the case, at the maximum, of contributory negligence, which aspect has been overlooked by the Tribunal. Thus, blameworthiness has been erroneously fastened solely upon the driver, owner and insurer of the truck. On this aspect, it is submitted that there should be apportionment of the liability upon the driver, owner and insurer of the four wheeler also, to pay the assessed compensation.

On the other hand, learned counsel for the respondents/claimants assiduously submitted that there is neither any evidence, nor any finding recorded by learned Tribunal that the offending truck was parked on the road, after taking due care and caution i.e. either by switching on the parking lights or by putting any prominent markers, around the vehicle, so as to warn the passing vehicles. Apparently thus, the offending truck was left abandoned in the middle of the highway, without taking due care and caution to switch on the parking lights or to put in place, any other precautionary measures, to warn the vehicles, traversing the highway in the dead of the night.

Before adverting to the evidence, it is essential to note certain

relevant statutory provisions to adjudicate on the question of contributory negligence being there or not.

A ‘highway’ or a ‘road’, is a public place, as defined in Section 2(34) of the Act;-

“2(34) “public place” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.”

Section 121 of the Act, provides that the driver of a motor vehicle, shall make such signals and on such occasions, as may be prescribed by the Central Government.

Section 122 of the Act, provides that no person, in charge of a motor vehicle, shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest, on any ‘public place’, in such a position or in such a condition or in such circumstances, so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

Section 126 of the Act provides that no person, driving or in charge of a motor vehicle, shall cause or allow the vehicle to remain stationary, in any public place.

Furthermore, it is also required, on the part of driver of a motor vehicle to park the vehicle, in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience, to other road users. It casts a duty on the drivers of a motor vehicle, stating that the vehicle shall not be parked, at or near a road crossing or on the main road.

Taking into consideration the aforesaid provisions of law, be it

noted that the driver and owner of the offending truck, do not dispute about the parking of the truck, on the road, but however, in the reply, they had taken specific plea that truck was parked on the left side of the road, due to mechanical fault, with glowing proper indicator lights and precautions. However, no evidence, as such, to substantiate this plea of the necessary precautions, having been taken to caution other passers by on the road, with regard to the parking of the truck, has been led. In fact, neither the driver nor the owner of the offending truck, have stepped into witness box.

Rather, on the other hand, it is clear and specific claim of the claimants about the accident to have taken place, due to the truck having gone out of order and parked negligently by its driver i.e. Pankaj Kumar, without giving any indication or glowing of its indicators. It is also specific claim that respondent No.5 i.e. Balwant Singh, driver of the four wheeler, could not anticipate the truck, standing in the middle of the road, due to the darkness and resultantly, the four wheeler struck with the truck, with great force, resulting into number of casualties.

Bant Singh, one of the claimants, who had sustained injuries in the accident in question, stepped into witness box as PW-2 and in his affidavit, he has also categorically deposed about having witnessed the accident and further also, about the manner of parking of the truck in question negligently, without giving any indication or glowing its indicators. In the affidavit, it is also stated that the driver of the four wheeler, as such, could not anticipate the truck standing in the middle of the road, due to the darkness and resultantly, the four wheeler struck with the truck, with great force, resulting into number of casualties.

Learned counsel for the appellant has referred to the cross-

examination of Bant Singh and submitted that he had stated that driver of the four wheeler was driving the vehicle, little bit fast. Therefore, it is asserted that the four wheeler was driven at an excessively high speed and thus, the vehicle became uncontrollable and it was on account of the fault of driver of the four wheeler that it struck against the parked truck.

Even though, Bant Singh had stated about the driver to be driving the four wheeler bit fast, but however, this *ipso facto*, does not establish rashness and negligence, on the part of the driver of the four wheeler. The speed is a relative factor, which has to be taken into consideration, while looking at other circumstances, spelt out. Relating to the same, no evidence, has been led. In fact, the driver of the truck, was a material witness, who could also explain about the manner of the accident, but he has not stepped into witness box. Even, the owner of the truck, never came forward.

Considering the same, learned Tribunal, in such circumstances had also concluded about the offending truck to have been parked in the middle of the road, in the midnight, without there being any indicator and thus causing, clearly safety hazard for the other vehicles, due to darkness, while making it very difficult to anticipate of there being any stationary vehicle on the road, without any indicator or signal. Precisely, on this account, it was held that the accident had taken place, due to rash and negligent act of the driver of offending truck aforesaid.

It is not to be lose sight of the fact that at the relevant time of accident, the four wheeler was being driven on a highway, where permissible limits of speed is fairly high. Therefore, in such a situation, speed alone is not a weighing factor, more particularly, when nothing is there on record, about the vehicle, as such, to be out of control of its driver.

Also, the time of taking place of the accident is material. The accident in question had taken place at 3.00 a.m. and that too on highway and also there is nothing on record, about the area, where the accident had taken place, to be well lit and volume of passing traffic, at the relevant time, is also not evident.

In the given circumstances, the omission by the person in control of the truck, which was parked in the middle of the road, without any indicators or precautionary other signs being there, is clear violation of law. The accident took place on a highway, where the permissible speed limits are fairly high and in such a situation, the driver of the vehicle, passing through the highway in the dead of night, when there is no evidence, coming forth, with regard to the area well lit, would not be able to make out, about the stationary vehicle, lying parked on the middle of the road, within a reasonable distance, where he could eventuate, the application of the brake and avert the collision.

To establish the contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person, against whom, it is alleged. Where, by his negligence, one party placed another in a situation of danger, which compels the other to act quickly, in order to extricate himself, it does not amount to contributory negligence, if that other acts, in a way, with which the benefit of hindsight is shown, not to have been the best way out of the difficulty. In fact, the mere failure to avoid the collision, by taking some extraordinary precaution, does not in itself constitute negligence.

In *Prabhavathi and others vs. The Managing Director, Bangalore Metropolitan, Transport Corporation, 2025 INSC 293*, the

Hon'ble Supreme Court, while making assessment of the contributory negligence, in a motor accident claim, had held that the contributory negligence, cannot be presumed on mere allegations of high speed driving without direct or corroborative evidence and it was observed, as herein given:-

“10. We are unable to agree with the view taken by the High Court on the 25% contributory negligence of the deceased and 75% upon the driver of the bus. We find ourselves to agree with the view taken by the Tribunal on this issue. The Tribunal rightly, after considering the evidence on record and on perusal of the Ex. P3 Spot Mahazar, came to the conclusion that there wasn't any sufficient evidence on record, indicating that the accident occurred due to negligent driving on the part of the deceased, and after considering the oral evidence of P.W.1, held the cause of the accident to be rash and negligent on the part only of the offending vehicle.

*11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in **Jiju Kuruvila v. Kunjamma Mohan**, where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in **Kumari Kiran v. Sajjan Singh and Ors.** In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed.”*

In **Sushma vs. Nitin Ganapati Rangole & Ors., 2024 INSC 706**, the Hon'ble Supreme Court, while considering the case, where car collided with the 14-wheeler trailer truck, which was left abandoned in the

middle of the highway, without any warning signs, in the form of indicators or parking lights, had concluded about the finding of contributory negligence, as recorded by the Courts below, to be not appropriate and further also concluded that there is nothing on record to indicate that the car was driven at an excessively high speed or that the driver failed to follow the traffic rules. Therein it was observed, as herein given:-

“40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is ex-facie perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court’s powers under Article 136 of the Constitution of India to interfere with the concurrent finding of facts.

41. We, therefore, hold that the person in control of the offending truck insured by respondent No. 2-Insurer, was fully

responsible for the negligence leading to the accident.

42. As a consequence, the deduction of 50% of compensation awarded to the appellant-claimants on account of contributory negligence, as directed by the Tribunal and affirmed by the High Court, cannot be sustained. The finding recorded by the Courts below on this issue is reversed as being perverse and unsustainable in the facts as well as in law. Resultantly, it is directed that there shall be no deduction from the compensation payable to the appellant-claimants who shall be entitled to the full compensation as assessed by the Tribunal and modified by the High Court by the impugned judgment.”

Considering the aforesaid case law and also about the manner of parking of the truck on the highway, which was out of order and also about no evidence, coming on record, about sufficient statutory precautions having been taken, vis-a-vis parking of the truck, learned Tribunal has correctly observed that apparently and patently, what is clear is that the accident took place as the truck in question was parked in the middle of the road, in the midnight, without there being any indicator and thus, causing a clear safety hazard for other vehicles, due to darkness, while making it difficult to anticipate of there being any stationary vehicle on the road, without any indicator or signal.

Thus, considering the same and the testimony of Bant Singh, one of the occupant of the ill-fated four wheeler as well as other circumstances spelt out, at the spot of accident, as observed aforesaid, it cannot, in any manner, be said that the driver of the four wheeler was at fault. Rather, it stands established about the accident, to have taken place, due to rash and negligent act of driver of the offending truck in question. In the light of the same, the finding recorded by learned Tribunal, with regard

to factum and manner of taking place of the accident and blameworthiness fastened upon the driver, owner and insurer of the truck bearing registration No.UP-78T-5481, stands affirmed.

Besides raising plea of contributory negligence, as discussed aforesaid, The New India Assurance Company has also assailed the quantum of compensation, awarded on account of death of ASI Surjit Singh, in the accident in question. FAO-1816-2015 has been filed by the insurance company to assail the quantum of compensation.

On the basis of the evidence, brought on record, the fact of death of Surjit Singh, stands amply established. Also, it is evident that deceased was serving as Assistant Sub Inspector in Punjab Police and was getting salary of Rs.34,740/- per month and his salary certificate has been proved Ex.PW8/A, which depicts his salary to be Rs.34,740/- per month, the annual whereof, works upon as Rs.4,16,880/-. Considering the same, on the aspect of 'future prospects', addition of 30% has been made by learned Tribunal and thereupon, the annual income was worked upon as Rs.5,41,944/-. Considering the number of dependents to be two, deduction to the extent of 1/3rd was made and the loss of contribution towards the claimants was worked upon as Rs.3,61,296/-. Considering the age of the deceased to be 49 years, multiplier of '13' was applied and the compensation was worked upon as Rs.46,96,848/-. Besides the same, on the count of 'loss of consortium', another amount of Rs.1 lakh was awarded and a sum of Rs.25,000/- was awarded towards 'funeral expenses'. Thus, in total, the compensation awarded was Rs.48,21,848/-.

Learned counsel for the appellant, though, do not dispute the extent of salary, addition on the count of 'future prospects', 'multiplier' as well as the

deduction, on the count of ‘personal expenses’, but however, counsel submits that learned Tribunal, overlooked the deduction ought to be made, on the count of ‘income tax’ payable. In this regard, suffice to consider that as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, for the purpose of ‘work on’ of the compensation, actual income ought to be taken minus tax component. As per the tax slab, prevalent in the assessment year 2010-2011, the income upto Rs.1,60,000/- was exempted from tax. However, from the income bracket of Rs.1,50,000-5,00,000/-, income tax payable was 10%. After deduction of Rs.1,60,000/-, the residue taxable amount works out to be Rs.4,16,880-1,60,000=Rs.2,56,880/- and therefore, working upon the tax on this amount @ 10%, it comes to be Rs.25,688/-. After making deduction of the aforesaid extent of income tax amount, the residue annual income, is Rs.4,16,880-25,688=Rs.3,91,192/-.

Besides the aforesaid, compensation under the conventional heads, ought to be paid to the appellants-claimants qua death of ASI Surjit Singh. On the count of ‘loss of consortium’, each of the appellants-claimants is entitled to Rs.48,400/- and they are also entitled to compensation on the counts of ‘loss of estate’ and ‘funeral expenses’ to the extent of Rs.18,150/- on each count.

Thus, considering the aforesaid, the compensation to be granted to the appellants-claimants qua death of Surjit Singh, is re-computed as herein given:-

Annual earnings	Rs.3,91,192/-
Deduction of 1/3rd	Rs.3,91,192-1,30,397=Rs.2,60,795/-
Addition of 30%	Rs.2,60,795+Rs.78,238=Rs.3,39,033/-
Multiplier of ‘13’	Rs.3,39,033x13=Rs.44,07,429/-
Loss of consortium	Rs.48,400x2=Rs.96,800/-

Loss of estate	Rs.18,150/-
Funeral expenses	Rs.18,150/-
Total	Rs.45,40,529/-

As such, the amount so awarded by learned Tribunal stands reduced from Rs.48,21,848/- to Rs.45,40,529/-. The impugned Award dated 25.08.2014 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same. However, if the amount, as awarded by learned Tribunal had already been paid to any of the appellants-claimants of deceased Surjit Singh, the same shall be recovered, proportionate to their reduced share.

In view of the aforesaid observations, **FAOs-1601, 1602, 1603, 1608 and 1609-2015** stand dismissed, whereas, **FAO-1816-2015** stands partly allowed.

September 24, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No