

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****130****FAO-351-2024 (O&M)****Date of Decision : 27.01.2025**

United India Insurance Co. Ltd.

....Appellant

VERSUS

Sarbjeeet Kaur @ Sarabjeet Kaur and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.K. Bashamboo, Advocate for the appellant.

Mr. Yogesh Gupta, Advocate
for respondent Nos.1 to 4/caveator.**ALKA SARIN, J. (Oral)**

1. Present appeal has been preferred by the Insurance Company challenging award dated 14.08.2023 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') on the ground that it was a case of contributory negligence.

2. The brief facts relevant to the present *lis* are that on 08.06.2021, Kuldeep Singh (hereinafter referred to as the 'deceased') was coming to Kharar from Kurali while riding motorcycle bearing registration No.PB-65-R-6406 at a slow speed. The deceased was followed by Harnek Singh and his cousin Gulzar Singh on their separate motorcycle. At about 09.30 pm, when they reached little ahead of Doaba College, a Canter bearing registration No.PB-65-AT-8883 (hereinafter referred to as the 'offending vehicle') was going ahead of the deceased. The driver of the offending vehicle all of a sudden turned the offending vehicle towards the right side and struck against the motorcycle of the deceased, who was trying to

overtake the offending vehicle from the right side. As a result of the accident the deceased fell on the road and his head struck against the railing of the divider and sustained severe head injuries. FIR was registered against the driver (respondent No.5 herein). The deceased remained admitted in hospital and ultimately succumbed to his injuries.

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

1. Whether Kuldeep Singh has died in the accident on 18.06.2021 caused by respondent No.1 by driving Canter bearing registration No.PB-65-AT-8883, in a rash and negligent manner ? OPP

2. Whether the claimants are entitled to compensation, if so, to what amount and from whom ?
OPP

3. Whether respondent No.1 was not having a valid and effective driving licence at the time of accident ?
OPR3.

4. Relief.

4. Learned counsel for the appellant would contend that the deceased was riding the motorcycle bearing registration No.PB-65-R-6406. He tried to overtake the offending vehicle without waiting for the driver of the offending vehicle to give any signal for overtaking. It is further the contention that it was incumbent upon the deceased to have ensured that the driver of the offending vehicle had indicated that he could overtake before

he actually started overtaking and hence it was a case of contributory negligence.

5. *Per contra* learned counsel for respondent Nos.1 to 4/caveator has contended that there is not an iota of evidence to even remotely suggest that there was any contributory negligence on the part of the rider of the motorcycle. It is further the contention that no suggestion was put to the eye-witness that the deceased was overtaking the offending vehicle without the driver of the offending vehicle having given him any signal to overtake. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Prem Lal Anand & Ors. vs. Narendra Kumar & Ors. [224(4) RCR (Civil) 81]** to contend that merely because a person was attempting to overtake a vehicle cannot be held to be an act of rash and negligent driving on the part of the vehicle trying to overtake in the absence of any evidence to the contrary.

6. I have heard learned counsel for the parties.

7. In the present case the argument of learned counsel for the appellant that it was a case of contributory negligence deserves to be rejected on the ground that there is not an iota of evidence led by the parties that it was a case of contributory negligence. The driver of the offending vehicle, who stepped into the witness-box as RW-1, completely denied the factum of the accident. The eye-witness, namely, Harnek Singh who had stepped into the witness-box as PW-2, clearly stated the manner in which the accident took place. There was not even a suggestion put to the said witness that the deceased tried to overtake the offending vehicle without the driver of the

offending vehicle having indicated to the deceased that the way was clear for overtaking. Hon'ble Supreme Court in the case of **Prem Lal Anand** (supra) has held as under :

“ 13. In the attending facts and circumstances, merely because a person was attempting to overtake a vehicle, cannot be said to be an act of rashness or negligence with nothing to the contrary suggested from the record. Further, it is the claimant-appellant(s) who lost a member of their family. Not only was the claimant-appellant, Prem Lal Anand doing an act which is an everyday occurrence on the road that is overtaking a vehicle, but resultantly suffered extensive injuries himself. That apart, it has also been proved that the offending vehicle was driven rashly and negligently. These two factors taken together lead us to the conclusion that the finding of contributory negligence against the appellant No.1 was erroneous and unjustified. Consequently, compensation awarded on this count has to be revised.”

8. In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

27.01.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO