



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

(134)

FAO-517-2025 (O&M)
Date of Decision: 11.02.2025

Reliance General Insurance Company Limited

....Appellant

Versus

Mini and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Raj Kumar Bashamboo, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-1695-CII-2025

Prayer in the present application filed under Section 151 of the Code of Civil Procedure is for condonation of delay of 13 days in re-filing the present appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, delay of 13 days in re-filing the present appeal is condoned.

The application is accordingly disposed of.

CM-1696-CII-2025

Prayer in the present application filed under Section 5 of the Limitation Act is for condonation of delay of 08 days in filing the present appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, delay of 08 days in filing the present appeal is condoned.

The application is accordingly disposed of.

CM-1697-CII-2025

The application is allowed as prayed for subject to all just exceptions. Documents i.e. uncertified copy of the statement of PW-3/A as annexed as Annexure A-1 is taken on record.

CM-1698-CII-2025

Allowed as prayed for, subject to all just exceptions.

FAO-517-2025 (O&M)

The Insurance Company is in appeal against the award dated 23.08.2024 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short 'Tribunal) vide which the claim petition preferred by respondents No.1 to 5/claimants (hereinafter referred to as the respondents-claimants) under Section 166 of the Motor Vehicles Act, 1988 (for short the 'MV Act') for grant of compensation on account of the death of Anil Kumar in a motor vehicular accident which took place on 16.11.2019 was allowed and a sum of Rs.25,21,000/- along with interest @ 7.5% per annum was awarded as compensation.

2. The facts, in brief, are that on 16.11.2019, a Canter bearing registration No.HR-61D-3080 was going from Pipli to Shahabad. At about 04:45 AM, when the vehicle was about 06 Kms from Pipli, a truck bearing Registration No.HP-64B-5204 (hereinafter referred to as the 'offending vehicle') had been parked by respondent No.6-Driver on the metalled portion of the road without any indicator or parking lights. The Canter struck

on the rear side of the offending vehicle. As a result of the accident, Anil Kumar, who was driving the Canter expired and one Vijay Verma, who was working as a cleaner on the offending vehicle and was checking its air pressure, fell in front of the offending vehicle and came under its front wheels and suffered permanent disability, on account of his right leg being amputated. A sum of Rs.50 lakhs was claimed as compensation by the respondents-claimants. It would be relevant to mention here that an appeal had been filed by the Insurance Company against the grant of compensation to Vijay Verma, cleaner of the offending vehicle also which has been dismissed vide judgment dated 05.02.2025.

3. The claim petition was resisted by the respondents. The basic stand taken was that a false case had been got registered by the respondents-claimants in collusion with the police and in fact, the factum of the accident was, in fact, also denied.

4. From the pleadings of the parties, the following issues were framed:

“1. Whether the accident resulting in death of Anil Kumar of MACP No.154 of 2020 and the injuries of claimant Vijay Verma of MACP Case No.155 of 2020, took place on 16.11.2019 at 4.45 AM, in the area of Police Station, Sadar, Thanesar, Kurukshetra, took place due to the sole fault and negligent act of respondent No.1 while parking the offending truck bearing registration No.HP-64B-5204 on the metalled portion of the road in a dangerous manner without any indicator or parking lights etc. which was moved by respondent No.2? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to compensation and from whom? OPP

3. Whether respondent No.1 was not having a valid and effective driving license at the time of accident and there was violation of the terms and conditions of the insurance policy by respondents No.1 and 2? OPR-3

4. Relief.”

5. Parties led their respective evidence.
6. After considering the evidence, the Tribunal allowed the claim petition and awarded a sum of Rs.25,21,000/- as compensation. Aggrieved by the same, the present appeal has been preferred.
7. The sole argument that has been raised by learned counsel for the appellant is that since the offending vehicle was parked, though on the right-side of the road near the divider, the driver of the Canter was also expected to be careful and, under the circumstances, it was a case of contributory negligence but the Tribunal wrongly rejected this claim and held that the accident had taken place on account of the rash and negligent act of the driver of the offending vehicle. In support of his contention learned counsel has placed reliance upon a judgment of the Supreme Court of India in ***Raj Rani Vs. Oriental Insurance Company Limited 2009(13) SCC 654.***
8. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.
9. The concept of contributory and composite negligence was dealt by the Supreme Court of India in the case of ***Prem Lal Anand Vs. Narender Kumar 2024(9) SCC 441:-***
- “9. At this stage, it would be appropriate to consider pronouncements of this Court on contributory negligence.***
- 10. In Municipal Corporation of Greater Bombay v. Laxman Iyer and another, this Court discussed the concept of negligence and its types, i.e., composite and contributory, in the following terms:-***
- "6. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who ordinarily by***

reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act.

Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory

negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. Contributory negligence is applicable solely to the conduct of a plaintiff.

It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable."

(Emphasis supplied)

11. This Court in *Pramodkumar Rasikbhai Jhaveri v. Karamasey Kunvargi Tak*

*"9. Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question of the defendant's negligence is decided. The standard of a reasonable man is as relevant in the case of a plaintiff's contributory negligence as in the case of a defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in *Astley v. Austrust Ltd.* [(1999) 73 ALJR 403] is worthy of quoting:*

"A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the

defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

(Emphasis supplied)

10. Keeping the aforesaid principles in mind, it is to be seen as to whether, the accident in question was result of contributory negligence. Admittedly, the accident took place at about 4.45 A.M. on 16.11.2019. It has to be borne in mind that in the middle of November, it would be pitch dark at 4.45 A.M. At this time, the offending vehicle was parked on the metalled portion of the road towards the divider without any indicator, parking lights, reflector etc. Since there was glare of oncoming vehicles also on the other side, the Canter struck into the offending vehicle from behind. In such a case, it cannot even be suggested that it was a case of contributory negligence. It could have been said to be a case of contributory negligence had the accident taken place during day time, on a empty road etc. However, as noticed earlier, the accident took place at 4.45 A.M. in the middle of November. The driver of the Canter could not have anticipated that a truck

would be parked on the metalled portion without any parking lights, indicator etc. It has to be borne in mind that each case has to be decided on its own facts. The judgment of the Supreme Court of India in the case of ***Raj Rani Vs. Oriental Insurance Company Limited*** (supra) would not be of any assistance to the appellant, for, in that case, the Tribunal itself had returned a finding of contributory negligence which was upheld up to the Supreme Court. It was in this context, that the Supreme Court of India gave its observations which, in any case, would not apply to the facts of the present case.

11. The Tribunal also dealt with the aforesaid issue and found that even the driver of the offending vehicle did not bother to step into the witness-box to even *prima facie* prove that it was a case of contributory negligence. He in fact, denied the accident itself. The Tribunal, therefore, rightly held that it was not a case of contributory negligence. I do not find any illegality in the said finding warranting interference.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

11.02.2025
Rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No