103 (2)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 24.02.2026

1. FAO-1041-1999

HARPAL KAUR AND ORS .... **Appellants**

Versus

ABHEY KUMAR AND ORS ..... **Respondents**

2. FAO-900-1999

ABHEY KUMAR AND ANOTHER ....….**Appellants**

Versus

HARPAL KAUR AND ORS …..**Respondents**

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Kanav Goyal, Advocate with
Mr. K.S. Chahal, Advocate
for the appellants in FAO-1041-1999.

Mr. G.S. Sidhu, Advocate
for respondent No.1 in FAO-1041-1999.

Mr. Rajesh Verma, Advocate
for respondent No.3 in FAO-1041-1999 and
for respondent No.6 in FAO-900-1999.

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<u>YASHVIR SINGH RATHOR, J. (Oral)</u>

1. The aforesaid two appeals have been instituted against the Award dated 03.12.1998 passed by the Motor Accident Claims Tribunal, Sangrur (for

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short **"Tribunal"**) in petitions under Section 166 of the Motor Vehicles Act, 1988, filed by the claimants seeking compensation on account of the death of Paramjit Singh.

2. **FAO-1041-1999** has been instituted by the wife, minor children, and parents of the deceased, Paramjit Singh, seeking enhancement of the compensation amount and challenging the finding of contributory negligence attributed to the deceased.

3. The second appeal bearing **FAO-900-1999**, has been instituted by the owner and driver of the offending truck namely Abhay Kumar and Sikander Singh, challenging the award and exoneration of the Insurance Company from its liability to indemnify the insured.

4. Case of the claimants is that on 19.05.1997, Paramjit Singh, since deceased was driving car No. JKR-3445 of his employer from Malerkotla towards Ludhiana at 9:30 A.M. One Suresh Kumar Jain and Harsh Chaudhary were also travelling in the car along with him. At 10:00 AM, when the car reached near the turn of village Phalewal, the deceased attempted to overtake a tractor-trolley going ahead of his car. While the car was on the correct side of the road, the offending tanker No. PUF-5378 being driven by Sikander Singh (respondent No. 2) in a rash and negligent manner, came from the opposite direction without blowing any horn and struck against the car headon. Paramjit Singh sustained multiple injuries in his head and other parts of body and succumbed to same while being shifted to Civil Hospital, Malerkotla. Following the accident, FIR No. 49 dated 19.05.1997 under sections 279/337/338/427 and 304-A was registered at Police Station Ahmedgarh against the respondent-driver. It is further submitted that the accident had taken

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place on account of rash and negligent driving on the part of respondent No.2. The claimants were dependent upon the deceased and now they have no source of livelihood and compensation was claimed accordingly.

5. Respondent Nos. 1 and 2 filed a joint written statement and stated that the accident in question had taken place on account of the negligence of the deceased himself. The respondent-driver was driving the truck at a very slow speed and the deceased had first hit the tractor-trolley before colliding with the truck and dismissal of the petition has been sought.

6. Respondent No. 3-National Insurance Company Limited, filed a separate written statement and submitted that the respondent-driver was not holding a valid and effective driving licence at the time of the accident. Furthermore, the Insurance Company maintained that the accident was a result of contributory negligence on the part of the deceased.

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

> *"1. Whether the claimants are legal heirs of Paramjit Singh deceased? OPA.*
> *2. Whether Paramjit Singh died as a result of an accident which occurred due to rash and negligent driving of truck No. PUF-5378 by respondent No. 2, Sikander Singh? OPA.*
> *3. Whether the claimants are entitled to compensation? If so, to what extent and from whom? OPA.*
> *3A. Whether Sikander Singh, respondent-driver, was not holding a valid driving licence? If so, its effect? OPR3.*
> *3B. Whether the petition is bad for non-joinder of necessary parties? OPR3.*
> *4. Relief."*

8. Thereafter, the parties led evidence in support of their respective

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cases.

9. After hearing the parties and going through the material on file, the learned Tribunal awarded a sum of Rs. 2,45,400/- as compensation to the claimants on account of the death of Paramjit Singh, after deducting 25% for contributory negligence of the deceased himself, along with interest @ 12% per annum from the date of the institution of claim petition. The Tribunal held respondents no. 1 and 2 i.e. the owner and driver of the offending vehicle jointly and severally liable and exonerated the Insurance Company of its liability as the driver was not having a valid and effective driving licence.

10. Feeling aggrieved, the appeals in hand have been preferred. The material on file has been perused and the parties have been heard.

11. Learned counsel for the appellants/claimants contended that the Tribunal has gravely erred in coming to the conclusion that the deceased had also contributed to the accident, whereas, the accident in question had taken place solely on account of rash and negligent driving on the part of respondent No.2. Learned counsel further contended that the claimants have examined the author of the FIR, who was travelling in the car being driven by deceased, as PW2-Suresh Kumar, who has categorically deposed that when their car reached near the turn of village Phalewal on Malerkotla Ludhiana Road, offending vehicle bearing No.PUF-5378 came from the opposite side in a rash and negligent manner on the wrong side of the road and hit their car and this circumstance was sufficient to come to the conclusion that accident in question had taken place on account of rash and negligent driving on the part of respondent No.2 and deceased had not contributed to the accident and deduction of 25% of the total compensation is thus

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liable to be set aside.

12. On the other hand, learned counsel for respondents No.1 and 2, who are appellants in FAO-900-1999 argued that PW2 is the author of the FIR and in the FIR itself, he has specifically mentioned that one tractor-trolley was going ahead of the ill-fated car and the car driver suddenly overtook the tractor-trolley and the offending tanker was coming from the opposite side on its due left side when the accident took place. As such, the deceased brought the car in front of the tanker suddenly, in an attempt to overtake the tractor-trolley, whereas he should have been cautious and should have tried to overtake the tractor-trolley only if no other vehicle was coming from the opposite direction and as such, deceased himself was responsible for the accident and accident had not taken place on account of rash and negligent driving on the part of respondent No.2.

13. After hearing the parties and on going through the material on file, I do not find any force in the contention raised by learned counsel for the appellants/claimants.

14. Claimants in support of their case have examined PW2-Suresh Kumar Jain, who was owner of the car with whom deceased was employed as a driver. He deposed that on 19.05.1997, they were going from Malerkotla to Ludhiana in his car being driven by deceased. At about 10:00 am, when the car reached near the turn of village Phalewal on Malerkotla Ludhiana road, tanker No.PUF-5378 came from the opposite side in a rash and negligent manner and it hit the car after coming to the wrong side of the road. He stated that one tractor-trolley was going ahead of their car but the speed of car was about 25-30 km per hour. During cross-examination, he stated that he had seen the tanker coming from

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the opposite side, when it was about 200-300 yards away from their car. He admitted that the tanker was on its correct side and the car was about 20-25 yards behind the tractor-trolley. He admitted that he had mentioned in the FIR Ex.P2 that their car was somewhat short of Phalewal turn, when a tractor-trolley was going ahead of their car and driver of his car had tried to overtake the tractor-trolley and in the meanwhile, tanker came from the opposite and dashed in their car. In addition to this, respondent No.2 has also stepped into the witness-box as RW3 and deposed that one tractor-trolley was going ahead of the car and the car driver tried to overtake the tractor-trolley, which first hit against the tractor-trolley and the left side of the car was damaged and thereafter, front portion of the car struck against the side of his tanker which was coming from opposite side. He deposed that he was driving the tanker at a slow speed, while the car driver was driving the car at a fast speed.

15. As such, from the testimonies of PW2 and RW3 and the contents of the FIR, it is established that one tractor-trolley was going on its due left side, while car being driven by the deceased was coming behind it. The car driver suddenly overtook the tractor-trolley without caring for the tanker coming from the opposite direction, as a result of which, accident had taken place when the car was trying to overtake the tractor-trolley. In such a situation, the deceased should have been cautious and should have overtaken the tractor-trolley only after carefully watching that no other vehicle was coming from the opposite direction, so as to avoid the accident. As such, deceased also contributed to the accident while driving the car rashly and negligently. Likewise, the tanker driver too should have been cautious and he should have applied the brakes on seeing the car trying

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to overtake the tractor-trolley and both of them thus **drove** their respective vehicles in a rash and negligent manner and Tribunal has thus rightly held the liability of car driver to the extent of 25%. There is thus no reason to take a contrary view and to arrive at a different conclusion and finding on issue No.1 is accordingly affirmed.

16. Coming on the question of assessment of compensation, the case of claimants is that deceased was employed as a driver with PW2-Suresh Kumar Jain and he was getting Rs.1800/- per month as salary. Whenever the deceased used to spend night outside, he used to be paid Rs.50/- as allowance for overtime and in all, he used to earn Rs.2500/- per month from his salary. In addition to the salary, deceased used to sell milk as he was having five buffalos and in all, he used to earn Rs.5,000/- per month. However, no cogent and convincing evidence has been led that deceased was owner of five buffalos but it is probable that he may have been maintaining some cattle and selling milk to earn his livelihood and statement of PW1-Harpal Kaur in this regard cannot be totally brushed aside. As per testimony of PW2, he was paying Rs.1800/- per month as a salary to the deceased and Rs.50/- as overtime as and when he had to go out of station and stay during the night. Learned Tribunal came to the conclusion that from all sources, deceased must be earning Rs.2500/- per month and there is thus no reason to take a different view. Accordingly, income of deceased is assessed as Rs.2500/- per month.

17. Deceased was 31 years of age as has been held by the Tribunal and as such, 40% amount has to be added to the monthly income of the deceased towards future prospects in view of law laid down by Hon'ble Supreme Court in 2009(6)

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SCC 121, ***"Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*** and 2017 ACJ 2700, **'National Insurance Co. Ltd Vs. Pranay Sethi and Others'** which takes his monthly income to Rs.3500/- per month.

18. Tribunal has deducted 1/3rd of the income towards personal expenses but deceased has left behind four dependants i.e. wife, two minor children and mother. Father cannot be termed as a dependant upon the deceased in view of guidelines laid in ***Sarla Verma's case (supra)*** and since deceased has left behind four dependants, 1/4th of the income has to be deducted towards his personal and living expenses and after deducting the same, the monthly loss of dependency comes out to Rs.2,625/- and the annual loss of dependency comes out to Rs.31,500/-.

19. Deceased was 31 years of age and multiplier of 16 has to be applied as per ***Sarla Verma's case (supra),*** and after applying the same, the total loss of dependency comes out to Rs.5,04,000/-.

20. In addition to this, claimant No.1 is held entitled to a sum of Rs.70,000/- under conventional heads i.e. Rs.40,000/- towards spousal consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- on account of funeral expenses, as per law laid down in **Pranay Sethi's case (supra).** Likewise, **r**emaining claimants i.e. both the children and parents are also held entitled to a sum of Rs.40,000/- each on account of loss of parental and filial consortium, in view of law laid down in 2018 (4) R.C.R. (Civil) 333, ***'Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others*** and (2021) 11 SCC 780***, United India Insurance Co. Ltd. Vs. Satinder Kaur***, which takes the compensation to Rs.7,34,000/-, out of which 25% has to be deducted on account

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of contributory negligence, which brings down the compensation to Rs.5,50,500/-.

21. Accordingly, the compensation to be awarded to the appellant is assessed as under:-

S. No.	Under Head	
1.	Monthly income of deceased	Rs.2,500/-
2.	Age of deceased	31 years
3.	Future prospects @ 40%	Rs.1,000/-
4.	Total monthly income	Rs.3,500/-
5.	Number of dependents	4
6.	Deduction towards personal expenses (1/4th)	Rs.875/-
7.	Monthly loss of dependency	Rs.2,625/-
8.	Annual loss of dependency	Rs.31,500/-
9.	Multiplier	16
10.	Loss of dependency (Rs.31,500 × 16)	Rs.5,04,000/-
11.	Compensation under conventional heads (spousal consortium Rs.40,000/-, loss of estate Rs.15,000/-, funeral expenses Rs.15,000/-)	**Rs.70,000/-**
12.	Parental consortium (two minor children @ Rs.40,000/- each)	Rs.80,000/-
13.	Filial consortium (parents @ Rs.40,000/- each)	Rs.80,000/-
14.	**Total**	**Rs.7,34,000/-**
15.	25% deduction on account of contributory negligence	**Rs.1,83,500/-**
16.	**Total compensation payable**	**Rs.5,50,500/-**
17.	Interest	9% per annum

22. The next point to be determined is as to whether Insurance Company has rightly been exonerated of its liability to indemnify the insured or not. As per version of respondent No.3, respondent No.2 was not possessing a valid and effective driving licence on the date of accident and Insurance Company is, thus, not liable to indemnify the insured. The owner of the offending vehicle i.e. respondent No.1 has stepped into the witness-box as RW1 and deposed that his

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father had engaged respondent No.2 as driver of the tanker 8-9 years ago, who had assured that respondent No.2 was having a valid and effective driving licence. He stated that respondent No.2 was carrying driving licence with him. However, during cross-examination, he admitted that he was not present at the time of accident but he admitted that respondent is facing trial in the Court at Malkerkotla, on account of rash and negligent driving on his part and for causing death of Paramjit Singh. Respondent No.2 has also stepped into the witness-box as RW3. He also stated that he was having a valid and effective driving licence but he has not produced any such licence or its copy on the record. He also failed to tell the number of the driving licence. He alleged that he got prepared the driving licence from Muzaffarpur in Bihar 10-12 years ago, when he used to go to Patna while plying the vehicle but in case he has such a licence, he should have produced the same or summoned some official from the concerned transport office at Muzaffarpur to prove this fact. RW2-Ajit Pal, Ahlmad in the Court of Judicial Magistrate First Class Malkerkotla, in whose Court respondent No.2 is facing the prosecution for the offences under Section 279 and 304-A IPC, produced the trial Court file and deposed that no driving licence of respondent No.2 is available in the criminal case file. As such, respondent No.2 has failed to produce his driving licence to show that he was possessing a valid and effective driving licence on the date of accident. In these circumstances, learned Tribunal rightly came to the conclusion that respondent No.2 was not possessing a valid and effective driving licence and exonerated the Insurance Company of its liability to indemnify the insured. However, Insurance Company was liable towards the third party i.e. claimants and was required to pay the compensation to the claimants with a right

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to recover the same from the owner and driver without filing a separate suit. Accordingly, finding on issue No.3 is modified and appellants/claimants are held entitled to a sum of Rs. 5,50,500/- as enhanced compensation, while finding on issue No.3A is affirmed.

23. As a result of the aforesaid discussion, the appeal filed by the appellants/claimants in **FAO-1041-1999** is partly accepted, whereas the appeal filed by the owner and driver in **FAO No. 900 of 1999** is ordered to be dismissed. Appellants/claimants are held entitled to a sum of Rs. 3,05,100/- (Rs.5,50,500/- - Rs.2,45,400/-) as enhanced compensation over and above the compensation awarded by the Tribunal alongwith interest at the rate of 9% per annum from the date of filing of claim petition i.e. 21.07.1997 till realization, payable by respondents No.1 and 2 jointly and severally. However, respondent No.3-Insurance Company shall satisfy the award but shall have a right to recover the same from the owner and driver alongwith interest @ 6% per annum from the date of deposit till realization without filing a separate suit. Out of the awarded amount, a sum of Rs.40,000/- alongwith proportionate interest be paid to father (claimant No.4), Rs.50,000/- each alongwith proportionate interest be paid to mother (claimant No.5) and children (claimants No.2 and 3) and remaining amount be paid to wife (claimant No.1) alongwith proportionate interest.

24. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of direction issued by the Hon'ble Supreme Court in Writ Petition (Civil) No.534 of 2020 titled **Bajaj Allianz General Insurance Company Versus Union of India and others,** decided on 16.03.2021 and Insurance Company shall comply with the directions as issued

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under Clause (F) of the said judgment.

25. A photocopy of this order be placed on the file of the connected case.

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

(YASHVIR SINGH RATHOR)
JUDGE

24.02.2026
Amandeep

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

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