

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****241****FAO-75-2008(O&M)****Date of decision: 20.05.2026****Dharambir & Others****...Appellant(s)****Vs.****Rakesh Brij & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Tejinder Pal Singh, Advocate for
Mr. Kulbhushan Sharma, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.6.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants laying challenge to the Award dated 10.04.2007 passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter 'the learned Tribunal') in MVA Petition No.RBT-125 dated 22.04.2005 filed by the appellants/claimants under Section 166 of Motor Vehicles Act (hereinafter "the Act"), whereby compensation of Rs.50,000/- has been awarded to the appellants on account of 'No Fault Liability'. The 4 claimants are the parents and 14 and 16-year-old minor brothers of deceased Vinod Kumar who was 24 years old at the time of accident.

2. The pleaded case of the appellants before the learned Tribunal as recorded in Para 1 and 2 of the impugned Award is that: -



"This is a claim petition filed by the Legal Heirs of deceased Vinod Kumar, who died in a motor vehicular accident on 20.2.2005. As per the case of the petitioners, on 20.2.2005 when Tata Truck No. UP-16B-9007 belonging to respondent No.5 Beer Singh was standing at Manesar Ghati, NH-8, Opp. Vaishali Hotel, District Gurgaon, its indicator lights were kept open and all the precautions were taken to avoid any accident. The conductor of the aforesaid truck, namely, Vinod Kumar, was sleeping under the said truck. The truck was parked on the extreme left side of the road. At about 2 a.m. the driver of the offending truck no.HR-38A-4006 driving the truck rashly and negligently and at a reckless speed and without adopting traffic rules, without blowing any horn and it was coming from Delhi side while over taking some other truck, had hit the standing truck No.UP-16B-9007. As a result of this accident, the conductor Vinod Kumar received fatal and grievous injuries on his head and other organs of his body and died at the spot. Post-mortem of the dead body of Vinod Kumar was got conducted on 20.2.2005 at Civil Hospital, Gurgaon. On the statement of Vasant Kumar son of Dharambir, FIR Ex.P1 was recorded.

2. It is further the case of the petitioners that the deceased was of the age of 24 years on the date of his death. He was earning Rs. 5000/- per month. Rs.20,000/- was spent on performance of his last rites. With the death of deceased, petitioners have suffered great mental pain and suffering. They were fully dependent upon him. They have also lost his love and affection. It was also alleged that respondent No.5 Beer Singh is the owner of the truck No. UP-16B-9007 whereas respondent No.4



is its driver and respondent No. 6 is the insurance company. Respondent No.1 Rakesh is the driver of truck No. HR-38A-4006 which caused the accident in question. The respondents are jointly and severally liable to pay the compensation to the tune of Rs.12 lacs to the petitioners with interest @ 18% per annum from the date of petition till realization for the act of rash and negligent driving of respondents No.1 and respondent No. 4.”

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Tribunal has held that: -

“10. With the proof of post-mortem report, death of Vinod Kumar is proved but since there is no evidence on the file to show as to on account of whose negligence accident in question has taken place, therefore, this Tribunal cannot hold as to if respondent No.1 was rash and negligent in driving truck No. HR-38-A-4006 and further that the accident was resulted on account of contributory negligence and further that the driver of Tata Truck No.UP-16B-9007 was negligent in parking the truck in question on the road.”

4. Consequentially, Claimants were awarded ₹50,000/- only under the “No Fault Liability”.

5. Learned counsel for the appellants inter alia submits that the learned Tribunal was in error in awarding only Rs.50,000/- under “No Fault Liability”; whereas the appellants are entitled to compensation of Rs.12 lakh on merits as claimed in the Claim Petition. It is submitted that once the learned Tribunal has given the finding that the truck No.HR-UP-16B-9007



was parked on the road then the learned Tribunal has erred in not holding the negligence of the truck No.UP-16B-9007 and thereby fastening the liability of respondents No.4, 5 and 6 jointly and severally. Even the bare perusal of Ex.P1 FIR also proves the negligence of the truck No.UP-16B-9007. Therefore, the learned Tribunal has erred in law in not fastening the liability of the respondents No.4 to 6. In such type of accidents which takes place during midnight or wee hours, no eyewitness is expected on the National highways witnessing the accident, it becomes the duty of the learned Tribunal to infer the negligence from the attending circumstantial evidence and the contents of the FIR as well. The learned Tribunal is duty bound to impart justice to the dependents of the deceased in such type of accidents where no eyewitness is available. Whereas, in the present case FIR has been lodged by the cleaner of the Truck No.HR-38A-4006 who was present at the spot and Ex.P1 may be taken to be the evidence of an eyewitness. Hence, findings of the learned Tribunal to the effect that the claimants have failed as to which of the two drivers were rash and negligent in driving their vehicles, is wholly perverse and illegal one.

6. Learned counsel further submits that the proceedings under the Act are summary proceedings. From the FIR coupled with the Challan produced by the Police, negligence of respondent No.4 is established. Therefore, non-fixing and non-adjudicating the liability of rash and negligence on part of either truck is tantamount to non-exercise of



jurisdiction by the learned Tribunal vested in it depriving the dependents from their lawful award of compensation.

7. It is further submitted that only on account of the fact that the respondents No.1 to 5 did not opt to appear despite notice, the collusion cannot be concluded and the grant of permission to the respondent No.6 for taking all the defence available to drivers and owners, is wholly in violation of the provisions of the law.

8. It is accordingly prayed that *“the appeal may kindly be accepted and impugned award to the extent of not fastening the liability of rash and negligent driving of the respondent No.4, driving the Truck No. UP-16B-2007 in not fastening the contributory negligence of both the drivers of both the Trucks i.e. UP-16B-9007, and HR-38-A-4006 and declining the compensation under Section 166, of the M.V.Act, may kindly be set aside and the impugned award of compensation of Rs.50,000/- may kindly be modified by granting compensation of Rs.12 lacs to the appellants, alongwith interest at the rate of 18% per annum from the date of institution of petition till the date of its realization under Section 166 of the M.V.Act, as prayed for in the claim petition, in the interest of justice.”*

9. *Per contra* Id. Counsel for respondent no.6 opposes submissions made on behalf of the appellants and submits that in fact, it was the deceased himself who was guilty of negligence as he was sleeping



under the truck. It is further submitted that the impugned Award suffers from no error, and the present appeal deserves to be dismissed.

10. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

11. Admittedly, at the time of accident, the deceased was sleeping under the truck. Furthermore, appellants have made contradictory submissions. On the one hand, appellants have submitted that in the wee hours of the night no eyewitness can be found. Simultaneously, appellants have submitted that FIR was registered on the basis of statement made by Vasant Kumar/ cleaner of the truck who had witnessed the accident. On a Court query, learned counsel for the appellants has admitted that said Vasant Kumar was not examined by the appellants. No reason has been given as to why best witness was not examined by the appellants. The claimants have only examined Constable Mohan Singh as PW1 who had only brought the summoned record in respect of FIR No.163 dated 20.02.2005. Thus, claimants were unable to prove any rash and negligent act on part of respondent No.4.

12. Consequentially, the claimants were unable to prove any rash and negligent act on part of either driver. Moreover, it was found that the truck bearing registration No.UP-16B-9007 was parked on the road and not on the kacha portion as mentioned in the petition, as also in the FIR.



Admittedly, deceased was sleeping under the truck at the time of accident. It was proved from the Post-Mortem Report (Ex.P2) that death of Vinod Kumar had taken place but there was no evidence on file to show that the deceased had died due to the alleged accident in question as no eyewitness was produced by the claimants. Moreover, the claimants were unable to establish on account of whose negligence accident had been caused or whether the accident was caused due to contributory negligence. In these circumstances, Tribunal had correctly awarded sum of Rs.50,000/- under "No Fault Liability".

13. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. In the aforementioned facts and circumstances of the case, I find no ground is made out for enhancement of compensation.

14. In view of the above, present appeal stands **dismissed**.

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

20.05.2026

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No