

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.02.2026

FAO-2775-2015(O&M)

Mahi Pal

...Appellant(s)

Vs.

Ravinder @ Kala & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. G.C. Shahpuri, Advocate
for the appellant.

Mr. Punit Jain, Advocate
for respondent No.3.

NIDHI GUPTA, J.CM-8552-CII-2015

This is an application under Section 5 of Limitation Act for
condonation of delay of 15 days in filing the appeal.

After going through the contents of the application, which is
supported by affidavit of the appellant, the same is allowed subject to all just
exceptions and delay of 15 days in filing the present appeal is condoned.

MAIN CASE

Present appeal has been filed by injured-claimant seeking
enhancement of compensation of Rs.1,99,640/- awarded by the Motor
Accident Claims Tribunal, Palwal (hereinafter 'the learned Tribunal') vide
Award dated 10.12.2014 passed in MACT Case No.65 dated 15.06.2012

filed under Sections 166 and 140 of the Motor Vehicles Act (hereinafter “the Act”).

2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the appellant had suffered injuries in a motor vehicular accident that took place on 22.03.2012 due to the rash and negligent driving of motorcycle bearing registration No.HR-52-B-5107 (hereinafter “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. The said compensation has been awarded along with interest @ 6% per annum. Respondents were held jointly and severally liable for payment of compensation amount. However, the learned Tribunal had also found the appellant to be guilty of contributory negligence to the extent of 50%.

3. It is inter alia submitted by learned counsel for the appellant that the Tribunal was in patent error in holding the appellant liable for contributory negligence as the learned Tribunal has given a clear finding that the respondent No.1 was negligent in driving the offending vehicle. It is submitted that therefore, the appellant could not have been simultaneously held to be negligent. It is contended that moreover, no plea of contributory negligence was taken by the respondents. As such, in the absence of plea to this effect, no such finding could have been given by the Tribunal. Even no issue was framed regarding contributory negligence.

4. Ld. Counsel further submits that the findings on issue no. 1 regarding contributory negligence are totally wrong, illegal and deserve to be set aside. It is argued that FIR was recorded immediately after the accident against respondent no. 1/driver of the offending vehicle. The factum of pendency of criminal trial against the respondent no.1 also proves that the accident was caused by rash and negligent driving of the offending vehicle by respondent no. 1. It is settled proposition of law that registration of criminal case against driver of offending vehicle for causing the accident by rash and negligent driving is the prima facie proof that the accident was result of rashness and negligence on the part of the driver of the offending vehicle. Moreover, in the present case neither the driver nor the owner has entered the witness box to put forth his version as to how the accident occurred. Even the respondents no. 1 & 2 did not care to rebut the stand taken by the appellant. Thus, evidence of the appellant remained unshaken. As such, it is clear and an adverse inference can be drawn against the respondents no 1 & 2; and the version of the appellant ought to have been accepted by the Id. Tribunal.

5. Ld. Counsel further submits that the learned Tribunal has grossly erred in law while coming to the conclusion that accident was a head on collision and appellant was equally responsible for the accident. Learned counsel submits that no evidence has been led of contributory negligence of the injured-appellant. Thus, the unrebutted evidence has to be accepted. The Id. Tribunal has totally erred in not accepting the version

of the appellant and wrongly held that since the accident was head on collusion, therefore the appellant was equally liable. The said findings are totally wrong and against the facts and evidence on the record, thus the findings of contributory negligence on issue no. 1 against the appellant are liable to be set aside.

6. In support of his contention, learned counsel relies upon judgment of Hon'ble Supreme Court in **Kumari Kiran v. Sajjan Singh (SC)** :

Law finder Doc ID # 612606, wherein it is held that:-

“D. Motor Vehicles Act, 1988, Section 166 - Motor accident - Contributory negligence - Appellant was riding motor cycle - His two minor children were pillion riders - A tractor collided with motor cycle - Appellant and children each suffered permanent disability - Cannot be held that Appellant was negligent just on the assumption that the collision occurred in the middle of the road since the two vehicles were approaching from opposite directions of the road - No evidence on record showing negligence on the part of the appellant - Held :-

(i) Contributory negligence apportioned by the High Court at 25% on the appellant and 75% on the driver of the offending tractor is erroneous.

(i) Negligence is wholly on the part of the driver of the offending tractor since he was driving the heavier vehicle. 2013(3) RCR (Civil) 817: 2013(4) Recent Apex Judgment (RAID 364, relied.

E. Motor Vehicles Act, 1988, Section 166 - Contributory negligence - Tractor and motor cycle coming on opposite directions collided in middle of road - Held, negligence is wholly on the part of the driver of the offending tractor since he was driving the heavier vehicle. 2013(3) RCR (Civil) 817: 2013(4) Recent Apex Judgment (RAJ 364, relied.”

7. Learned counsel also relies upon judgment of this Court in

Anita & Others Vs. Nindar Singh & Others FAO-1779-2015 decided on

06.05.2019; judgment of High Court of Kerala in **T.A. Anсад Vs. Sanjay**

Kumar Thunjhunwala & Others MCA No.2599 of 2010 decided on 01.11.2022; and judgment of Delhi High Court in Mohd. Israj Vs. Dharambir & Others MAC Appeal No.191 of 2011 decided on 01.03.2012.

8. As regards quantum of compensation, learned counsel submits that in the accident in question, the appellant had suffered multiple grievous and serious injuries. The appellant had remained hospitalised for three months. Yet the Tribunal has awarded nothing on account of Attendant Charges. Further, the learned Tribunal has awarded meagre amount of Rs.10,000/- on account of pain and suffering. It is submitted that while granting meagre compensation, the Tribunal has lost sight of the fact that the appellant was a student of B.Tech. and was therefore, entitled to loss of income during hospitalisation and treatment. Even nothing has been awarded towards transportation. It is accordingly prayed that compensation of Rs.50 lakh be awarded to the appellant.

9. Per contra, learned counsel for the respondent No.3 opposes the submissions advanced on behalf of the appellant and submits that the impugned Award suffers from no error and the present appeal accordingly 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 appellant.

11. Perusal of record shows that the pleaded case of the appellant before the Tribunal as recorded in Para 2 of the impugned Award is that: -

“2. In brief, the case of the petitioner is that on 22.3.2012 the petitioner was traveling on his motor cycle No.HR-30G/6596 from village Mandnaka to village Firozpur Rajput via Hathin, when he reached near Uttawar distributory bridge, Hathin-Mandkola road, the respondent no.1 caused the accident by driving the offending motor cycle No.HR-52B/5107 in a rash and negligent manner. The petitioner firstly admitted in C. H. H. Hathin from where he was referred to G. H. Palwal and then petitioner admitted in Asian Institute of Medical Science, Faridabad and remained as indoor patient from 22.3.2012 to 8.4.2012 and 9.4.2012 to 27.4.2012 and spent a sum of Rs. 15,00,000/- on his treatment. FIR No.96 dated 23.3.2012 under section 279, 337 IPC was registered against respondent no.1 in police station Hathin. The respondent no. 1 is the driver, respondent no.2 is the owner and respondent no.3 is the insurer of the offending vehicle and thus all are jointly and severally liable to pay the compensation amount to the petitioner.”

12. The argument on behalf of the appellant that the appellant could not have been held liable for contributory negligence, is grossly misplaced as a perusal of the record of the case shows that as per the MLR of the appellant, he was found to be driving the motorcycle after drinks as, it is recorded in the MLR that there was smell emanating from his mouth. Furthermore, it is not disputed that the accident in question was a head-on collision between the motorcycle No.HR-30-G-6596 being driven by the appellant and the offending motorcycle No.HR-52-B-5107 being driven by the respondent No.1. This fact is further proven from the Mechanical Report (Ex.R1 and Ex.R2) as per which, the accident was a head-on collision, as both the motorcycles were damaged from front side. Thus, it is undisputedly proven on record that the accident was a head-on collision.

13. In view of the above facts, this Court is actually inclined to observe that the appellant ought to have been held responsible for the accident as he was inebriated at the time of accident. In any event, given the admitted fact that the accident and question was a head on collision, the appellant cannot be exonerated. I find support from judgment of the Hon'ble Supreme Court in **Bijoy Kumar Dugar v. Bidyadhar Dutta, (SC)** :

Law Finder Doc ID # 119539, wherein it is held that:-

“A. Motor Vehicles Act, 1988, Section 168 - Fatal motor accident - Contributory negligence - Head on collision between car and bus - Death of driver of car - Drivers of both the vehicles should be held responsible to have contributed equally to accident when there is head on collision - Insurance company of bus to pay half of the compensation awarded by Tribunal - Car was not insured.”

14. As such, I find no error in the finding of the learned Tribunal that the appellant was responsible for the accident to the extent of 50% towards contributory negligence. The aforesaid judgments relied upon by learned counsel for the appellant are distinguishable on facts and law.

15. As regards quantum of compensation, it was pleaded case of the appellant that prior to the accident, he was a student of B.Tech. and earning Rs.5,000/- per month. Accordingly, the learned Tribunal had taken notional income as Rs.5,000/- per month. As per the medical record, the appellant had remained hospitalised for three months. Accordingly, the learned Tribunal had assessed loss of income to the tune of Rs.15,000/-. Learned Tribunal had further awarded Rs.10,000/- towards special diet; and Rs.10,000/- for pain and suffering.

16. The appellant had also produced medical bills for an amount of Rs.1,64,640/-. Accordingly, the learned Tribunal had awarded total compensation of Rs.1,99,640/-.

17. It is the contention of the appellant that the said amount deserves to be enhanced. However, there is nothing on record to prove that in the accident in question, appellant had suffered any permanent disability. In fact, the appellant has even failed to specify the specific injuries suffered by him in the accident. PW4 Dr. Brijesh examined by the appellant had only deposed that the appellant had been admitted on 22.03.2012 till 06.04.2012 and from 09.04.2012 till 27.04.2012 and he again admitted on 04.07.2012 and discharged on the same day. In the absence of any evidence of permanent disability, I find no ground is made out to award Attendant Charges. Even no expenses towards transportation have been proved.

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

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

09.02.2026
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No