



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

**FAO-2790-2000 (O&M)  
Date of Decision: March 06, 2025**

Beer Wati and others

...Appellants

VERSUS

Man Singh and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Hemen Aggarwal and Mr.Dashim Garg, Advocates  
for the appellants.

Respondents No.1 to 4 proceeded against ex-parte.

Mr.Ravinder Arora, Advocate  
for respondent No.5.

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**ARCHANA PURI, J.**

The present appeal has been filed by the appellants-claimants, thereby, assailing the findings recorded by learned Tribunal, qua contributory negligence, attributed to deceased Sulekh Chand to the extent of 60% and also questioned the adequacy of the compensation, consequently granted by learned Motor Accident Claims Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 04.05.1996, Sulekh Chand, along with Harpal Singh had proceeded from village Jubal to village Rampur Majra Teshil Jagadhri towards Yamuna Nagar, on motorcycle bearing registration No.HR-02-7850, which was driven by Sulekh Chand. As it was night time, when they

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reached near village Aurangabad, a tractor-trolley bearing registration No.HRQ-8825, loaded with sugarcane, was parked on the road. There was no signal or parking light, either on the trolley or on the tractor and suddenly, a truck came from the opposite side. Because of light of the said truck, Sulekh Chand could not see the trolley and struck his motorcycle against the backside of the parked tractor and in that process, Sulekh Chand had sustained multiple injuries, which proved fatal.

In reply, respondent No.1, besides taking various preliminary objections, on merits had taken the categorical stand that no accident had taken place with the tractor-trolley bearing registration No.HRQ-8825. Even, respondents No.2 to 4, had filed separate reply, wherein also, they stated that no accident had ever taken place with the aforesaid tractor-trolley. Respondent No.5-insurance company also in its reply, had though admitted the vehicle in question bearing registration No.HRQ-8825 was insured with it in the name of Jai Ram s/o Amar Singh, for the period 27.03.1996 to 26.03.1997, but however, it also denied all the allegations as asserted in the claim petition.

Thus, it is evident that the accident was denied in toto by the respondents. No plea of contributory negligence, as such, was specifically taken by the respondents.

To substantiate the factum and manner of taking place of the accident, Harpal Singh, who was also occupant of the ill-fated motorcycle, had stepped into witness box as PW-2 and he had categorically narrated the manner of taking place of the accident, as pleaded in the claim petition. He categorically deposed that tractor-trolley was parked on the road. Due to the



lights of the vehicle, coming from the opposite side, with its headlights on, they could not see the tractor-trolley parked on the road and their motorcycle, struck against the trolley. He also further specified that there was no indicator or any blinking lights, showing that the trolley was stationed on the road. Furthermore, he stated in examination-in-chief that the number of the tractor-trolley was HRQ-8825, which was seen and read by him.

It is also significant to note that while conducting cross-examination of this material witness, a suggestion was given that they (this witness as well as Sulekh Chand, his companion, who was driving the motorcycle) had started from their village, after taking liquor. Further, a suggestion was given that their motorcycle actually struck against the tree alongside the road and then they fell into the bushes by the side of the road and the aforesaid suggestions were denied. Further, this witness in cross-examination stated that the tractor-trolley was still parked on the road, when he had left the place of occurrence at about 3.00 a.m. He also further deposed that the trolley was loaded with sugarcane. Another suggestion was given to this witness that the tractor-trolley bearing registration No.HRQ-8825 was not involved in the accident in question and the same was categorically denied.

Another material witness examined is PW-4 Suresh Kumar, who was working in Jamuna Auto, Yamunanagar and he had stated about himself going towards village Jubbal, on cycle on that day and he saw an accident near Poultry Farm, village Aurangabad. A tractor-trolley bearing registration No.HRQ-8825 was standing on the road and the motorcycle was



lying behind the trolley, in damaged condition. Sugarcane was loaded on the tractor-trolley. The tractor-trolley was standing on the road. There was no blinking lights on the tractor-trolley and there was no indication of the tractor-trolley, standing on the road. Harpal Singh met him there in a state of shock and he took Harpal Singh to village Jubbal, as Harpal Singh belong to this village.

In the cross-examination, this witness had specifically stated that the accident did not take place in his presence.

Another material witness is PW-5 Ram Sarup, who was serving in Rashmi Timber, Aurangabad. He also deposed that on 03.05.1996, at about 11.00 p.m., he proceeded towards his village on cycle, after his duty. This witness also deposed that he had seen the accident near poultry farm, village Aurangabad. A tractor-trolley bearing registration No.8825 loaded with sugarcane was standing idle on the road. A truck was going from Yamunanagar side to Radaur side. The motorcycle which was driven by brother-in-law of Harpal Singh, met with an accident with the trolley. At that time, there was no light or indication, showing that the tractor-trolley was standing idle. At that time, a police vehicle came and he along with the police, lifted the injured in that vehicle, who was taken to hospital.

However, in cross-examination, this witness stated that there was darkness at that time. The number of the tractor was read in the light of the jeep, which was standing behind the tractor. Even, a suggestion was given to the said witness that no accident had taken place with the aforesaid trolley, in his presence or that he is deposing falsely. This suggestion was categorically denied.



PW-6 Zile Singh had proved the copy of the report/proceedings under Section 174 Cr.P.C. Ex.P3 and Ex.P4 is the copy of the rapat roznamcha dated 05.05.1996 D.D.No.10.

To counter the aforesaid evidence and to assert about denial of the accident, Man Singh-respondent No.1, had stepped into witness box as RW-1 and he stated about tractor-trolley bearing registration No.HRQ-8825, to be their ownership. He deposed that the tractor was registered in the name of his father Jai Ram, who had died and after his death, they being sons are the owners of the tractor. Besides proving the copy of registration certificate as well as driving licence, the said witness categorically deposed that no accident took place with their tractor-trolley and he was not challaned and his tractor was never impounded.

Such being the version, pleaded by the respondents, vis-a-vis, the accident having not taken place and the evidence brought on record, at the very outset, learned counsel for appellants, assiduously resisted the findings of contributory negligence, on the part of deceased, that too, to the extent of 60%. It is submitted that the accident had taken place at midnight. The tractor-trolley was parked on the road and without taking any precautions, with regard to the parking of the vehicle and therefore, considering the same, it is submitted that in any case, the accident, cannot be concluded to be case of contributory negligence, on the part of the deceased also. Thus, it is submitted that blameworthiness has been erroneously fastened upon the deceased, to the extent of 60%.

On the contrary, learned counsel for the insurance company has submitted that in the DDR, there is mention of the vehicle having parked on



the side of the road and motorcycle having come there, which was driven by Sulekh Chand and struck the tractor-trolley from behind. Considering this fact, it is submitted that the accident, evidently was caused by the negligence, on the part of deceased Sulekh Chand. In this regard, also learned counsel for the insurance company, has categorically referred to the police report Ex.P3 and submitted that the plan prepared, at the time of preparation report under Section 174 Cr.P.C., reveals about the vehicle to be parked on the katcha berm and therefore, the negligence, in fact was on the part of the deceased and thus, conclusion of contributory negligence, to be there, has been appropriately considered by learned Tribunal.

Considering the plea of total denial, on the part of respondents, about taking place of the accident, with the tractor-trolley bearing registration No.HRQ-8825 and also about the categoric claim, with regard tractor-trolley to have been parked, without any safety precautions having taken, as there was no blinking of lights, the plea of contributory negligence, has to be appraised. Anyhow, to establish the contributory negligence, some act or omission, which materially contributed to the accident or damage, should be attributed to the person, against whom, it is alleged. Where, by his negligence, one party placed another in the situation of danger, which compels the other to act quickly, in order to extricate himself, it does not amount to contributory negligence; if that other act, in a way, with which the benefit of hindsight is shown, not to have been the best way out of the difficulty. In fact, the mere failure to avoid the collision, by taking some extraordinary precaution, does not in itself constitute negligence.

In the case in hand, it is pertinent to mention that accident had

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taken place in the midnight. It is the specific version about the tractor-trolley to have been parked on the road and there was no red-light or parking signal on the said tractor or trolley and at that time, a truck came from the Yamunanagar side and due to flash light of the truck, Sulekh Chand, could not see the tractor-trolley parked there by the respondent-driver and struck the same from behind and the accident took place.

However, this version has been simply denied by the respondents. There is plea of total denial of taking place of the accident. However, the respondents in their respective replies, remained totally silent, with regard to the manner of parking of the tractor-trolley, as well as the safety precautions taken or not. The accident had taken place, in the midnight. There is not an iota of evidence, coming on record, to establish about that area, where the accident had taken place, to be well lit.

It is pertinent to mention that in the DDR, while narrating the manner of taking place of the accident, Harpal Singh had categorically stated that when they reached near village Aurangabad, then, on account of the light of the vehicle on the opposite side and there being darkness, the motorcycle struck the vehicle, standing on the side. It nowhere states that the it was standing on the katcha berm. Therefore, while adjudicating about the manner of taking place of the accident, no such presumption can be raised that the tractor-trolley was parked on the katcha berm. Much emphasis has been laid upon Ex.P3, wherein, the vehicle is reflected to be on the katcha berm.

However, no such reliance, can be solely placed upon said site plan, which was prepared at the time of preparation of report under Section 174



Cr.P.C., more particularly, when the author of this site plan, as such, has not been examined and an opportunity of conducting of cross-examination, has not been given to the claimants. This is all the more important to consider as throughout, it had been a case of total denial of the accident. Even, while conducting the cross-examination of the material witnesses examined by the appellants, as observed aforesaid, suggestions had been given that no accident had taken place, with the tractor-trolley in question. Likewise, even, while himself stepping into the witness box, RW-1 Man Singh had stated so that no accident had taken place.

Considering this manner of total denial of the accident, which was emphatically again reiterated, while conducting the cross-examination of the witnesses of the appellants and by respondent No.1 himself, no sustenance, as such, can be drawn from this site plan. The recitals of the site plan, without examination of its author, as such, is not enough to conclude about there to be contributory negligence, on the part of deceased Sulekh Chand, while driving the ill-fated motorcycle.

In the given circumstances, the deceased Sulekh Chand having contributed negligence, in causing of the accident to the extent of 60%, is not justified, more particularly, when there was no explanation, on the part of the driver of the tractor-trolley, with regard to the manner of taking place of the accident. Consequently, considering the evidence in totality, the plea of negligence, on the part of Sulekh Chand, does not established. Thus, the said finding of the contributory negligence to the extent of 60%, on the part of Sulekh Chand stands reversed.

In this backdrop, now let us consider the extent of



compensation awarded by learned Tribunal.

While considering the deceased to be running a karyana shop and also considering the earnings from the agricultural land alleged to the extent of Rs.15000/- per month, learned Tribunal, while taking into consideration the minimum wages of the unskilled worker, as existing at the relevant time to be Rs.1420/- per month, had taken the earnings of the deceased as Rs.3000/- per month. Considering his age to be 40 years, multiplier of '16' was applied and the loss of dependency was worked upon as Rs.5,76,000/-. 1/3rd was deducted, on the count of 'personal expenses' and the residue amount, came to be Rs.3,84,000/-.

However, while considering 60% fault on the part of the deceased himself, the claimants were held entitled to 40% of Rs.3,84,000/- i.e. Rs.1,53,600/-. Besides the same, an amount of Rs.6400/- was granted, on account of 'funeral expenses' and 'loss of consortium'. In total, the compensation awarded was Rs.1,60,000/- and the same was ordered to be disbursed equally to all the claimants and the liability of the respondents, to pay the compensation, was held to be joint and several.

However, in view of the settled position of law as existing, the 'work on' of the compensation aforesaid, do call for re-determination.

Anyhow, considering the prevalent wages of the unskilled worker at the relevant time and also taking into consideration the extent of land owned by the deceased and there being managerial loss to the extent of 20-30% only, the earnings of the deceased has been appropriately assessed by learned Tribunal as Rs.3000/- per month. However, to the said amount, considering age of deceased to be 40 years, addition of 25%, ought to be



made, on the count of 'future prospects', which comes to be Rs.750/-. After making such addition, the earnings of the deceased, comes to be Rs.3750/- per month.

Considering the number of dependents, the deduction of 1/4th is to be made, on the count of 'personal expenses', which comes to be Rs.937/- and the residue earnings comes to be Rs.2813/-, annual whereof is **Rs.33,756/-**. As per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, considering the age of the deceased, the suitable multiplier to be applied is '15' instead of '16', as applied by learned Tribunal. Thus, by applying the same, the loss of dependency comes to be **Rs.33,756x15=Rs.5,06,340/-**.

Besides the aforesaid, on the count of '**loss of consortium**', all the appellants-claimants, are entitled to prevalent rate of Rs.48,400/- each and they are also entitled to compensation, on the counts of '**loss of estate**' as well as '**funeral expenses**', which is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Sulekh Chand, is re-computed, as herein given:-

<b>Loss of dependency</b>	:	<b>Rs.5,06,340/-</b>
<b>Loss of consortium</b>	:	<b>Rs.1,93,600/-</b>
<b>Loss of estate</b>	:	<b>Rs.18,150/-</b>
<b>Funeral expenses</b>	:	<b>Rs.18,150/-</b>
<b>Total</b>	:	<b>Rs.7,36,240/-</b>

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.7,36,240-**

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**1,60,000=Rs.5,76,240/-**. On the enhanced amount of the compensation i.e. **Rs.5,76,240/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

The impugned Award dated 06.01.2000 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

**March 06, 2025**  
Vgulati

**(ARCHANA PURI)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**Yes/No**