

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****135****FAO-4937-2024 (O&M)****Date of decision: 07.08.2025****Brij Gopal Gupta****...Appellant(s)****Vs.****Pappu son of Mishri Lal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vaibhav Parashar, Advocate for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the claimant seeking modification of the Award dated 24.05.2024 passed by the learned Motor Accident Claims Tribunal, Faridabad (for short "the learned Tribunal") in MACP Case No. 50 dated 04.02.2022 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988, whereby the Claim Petition has been allowed and the appellant has been granted compensation of Rs.95,22,760/- on account of death of his wife namely, Rashmi Gupta.

2. The case as pleaded by the appellant in the claim petition is that on 19.12.2020 at about 4.00 p.m., the deceased Rashmi Gupta alongwith her minor son namely Kushagra Gupta, her friends Smt. Nandini, Pooja and driver Giri Prasad Sharma were going to Baitalpur, District Deoria (UP) in vehicle Mahindra TUV 300 bearing registration no.HR-51-BT-3824. Said car was being driven by driver Giri Prasad Sharma with full care and caution. When the said car reached near Sai



dhaba/Hotel, Village Rasauli Chauhara, Lucknow-Ayodhya Highway, District Barabanki within the jurisdiction of P.S. Safdarganj, District Barabanki (UP), it struck with the Truck bearing registration no. UP-41-T-4401 (hereinafter to be referred as 'offending vehicle') parked by respondent no.1 on road in stationary condition without blowing any parking indicator or putting any signals around the offending vehicle. Due to impact of said struck, deceased Rashmi Gupta, her minor son Kushagra Gupta and her friend Smt. Nandini died at the spot whereas other friend of deceased namely Pooja and driver of said car sustained multiple injuries. The car was also got badly damaged. Someone from the crowd called the ambulance at the spot which brought all the dead bodies and injured to Government Hospital, District Barabanki (UP) and information was sent to the police station. On receiving information, appellant also reached there. Postmortem on dead body of Rashmi Gupta was conducted vide PMR No.1081/2020 dated 20.12.2020. It is further submitted that as appellant was under great mental shock and depression due to accident and remained busy in performing cremation and last rites of his deceased wife and minor son, he got registered FIR no.5 dated 4.1.2021 under sections 279, 337, 338, 304-A IPC at P.S. Safdarganj with regard to rash and negligent act of respondent no.1.

3. The appellant had filed 2 claim petitions, the one being present MACP No. 50 of 2022; as also MACP No. 57 of 2022 which is the second petition on account of death of son of the appellant. In both the petitions, total sum of Rs.1,00,49,760/- was awarded. Since the appellant



is challenging in the present Appeal the awarded compensation passed in MACP No. 50 of 2022, in which the compensation amount is Rs.95,22,760/-. Learned Tribunal had awarded the above said compensation alongwith interest @ 9% per annum. Respondent No.3- Insurance Company is held liable to pay the amount of compensation.

4. The learned Tribunal on the basis of evidence adduced by the parties concluded that the deceased had died due to the injuries suffered by her in the motor vehicular accident that took place on 19.12.2020 at about 4:00 p.m. due to the contributory negligence of the offending Truck which was parked by respondent No.1; owned by respondent No.2; and insured by respondent No.3; as also of the driver of the Mahindra vehicle in which the deceased was travelling. The appellant is aggrieved of deduction of 50% compensation on account of contributory negligence on the part of the vehicle of the deceased.

5. It is *inter alia* submitted by learned counsel for the appellant that the learned Tribunal was in patent error in making the deduction of 50% towards contributory negligence as it failed to appreciate that there was nothing on record to indicate any negligence on the part of the Driver of the vehicle in which the deceased was travelling. Learned counsel contends that no contributory negligence is attributable to the vehicle in which deceased was travelling as it was the offending vehicle that was parked in the middle of the road without any lights or indicators on, to reveal its presence. It is submitted that as it was wintertime in December and due to fog, the driver of the vehicle of the deceased was unable to



see the offending vehicle and therefore, had inadvertently struck into the offending vehicle as it was standing without any indicators on. It is submitted that in similar circumstances, the Hon'ble Supreme Court in ***Jumani Begam vs. Ram Narayan and others, Docid # IndiaLawLib/1462126***; and a Coordinate Bench of this Court in ***Manjit Kaur and others vs. Jagtar Singh and others, 2016:PHHC:129029***, have held that no deduction could have been made towards contributory negligence. It is submitted that even in both the above said cases, offending vehicles therein were parked on the road without observing traffic rules without any light or indicators on and without taking proper precaution, as a result of which, the vehicles of the deceased therein had struck into the offending vehicles. However, in the said cases, driver of the vehicle of the deceased was not held liable for contributory negligence. It is reiterated that in the said cases, no deduction was made towards contributory negligence; and therefore, deduction of 50% made by the Tribunal in the present case is uncalled for.

6. It is further submitted by learned counsel for the appellant that the Ld. Tribunal has deducted 50% of award as contributory negligence in the absence of any specific or vital evidence which can show or prove the negligence of the driver of the car. The accident happened in the month of December, 2020 when there is a lot of Fog and it is admitted fact that the offending vehicle was parked on the left side of the road and due to the negligence of the offending vehicle the said accident happened and there is no negligence on part of the driver of the car. In these



circumstances the deduction of 50% of the amount is required to be modified and the applicant is entitled for the full and complete amount of the Award without any deduction. It is accordingly prayed that the present Appeal be allowed; and the impugned Award be modified by setting off 50% contributory negligence.

7. No other argument is raised on behalf of the appellant. No argument is made by learned counsel for the appellant in respect of quantum of the compensation.

8. I have heard Id. counsel and perused the case file in detail.

9. I find no merit whatsoever in the submissions made on behalf of the appellant. Perusal of the file reveals that present is a clear case of contributory negligence on part of PW2 Giri Prasad Sharma Driver of vehicle Mahindra TUV 300 bearing registration no.HR-51-BT-3824 in which the deceased was travelling. Admittedly, the accident had taken place on 19.12.2020 at about 4:00 p.m. It is the contention of the appellant that the offending vehicle was parked in the middle of the road and was not visible as it was foggy, being a winter evening. However, the said argument is unacceptable as even if it is wintertime, the likelihood of dense fog at 4 PM to render zero visibility in the afternoon is bleak. Furthermore, the offending vehicle was found to be parked on the left side of the road. Although some part of it might have been on the metal Road as well. Assuming that to be so, nonetheless, the same would constitute no ground for complete negligence of the offending vehicle as admittedly, the accident had taken place on the National Highway/Expressway, which was



four lane and 30 feet wide. It is a double road with total width of 30 ft. where 2 heavy vehicles can easily be passed through. Most importantly, as per the mechanical report of the Mahindra TUV 300 bearing registration no.HR-51-BT-3824 in which the deceased was travelling, shows the said vehicle to be totally damaged as the left side of the Mahindra TUV had hit into the right side of the offending truck. This only goes to show that PW2 was driving at such great speed and had hit into the offending truck with such impact, that's such a great damage was caused. Arguments raised by the appellant are demolished by the findings in impugned Award which read as under: -

“No doubt, the offending vehicle was parked on the left side of the road in stationary condition and some portion of it might have been there in the metalled road. It is also not denied that offending vehicle was parked without blowing any parking indicator or putting any signal around the offending vehicle and in absence of same, in such a situation it would have been difficult for the vehicles coming from behind to immediately control over the speed of vehicle. On the other hand, it is also self admission of PW2 in his cross-examination that Lucknow-Ayodhya Highway is a National Highway which is a double road and total width of the road was 30 ft. and two heavy vehicles can pass through the said road. At the same time, there is no iota of evidence to prove that at the time of accident any other vehicle was coming from the opposite side having head lights in high beam by which PW2 was blinded and he could not see the truck. If we believe the version of PW2 that on that day, there was fog and he could only see 5-6 feet distance from the ongoing vehicles, even in that case, PW2 should have been more



careful and vigilant while driving the vehicle in fog on express-way and he was supposed to maintain the speed of the car in such a way that it could be controlled in case of an unforeseen eventuality. Moreover, mechanical report of vehicle being driven by PW2 annexed with challan Ex. P20 shows that body of the vehicle was completely damaged as it hit its left side on the right side of stationary truck. On the other hand, there was no damage to the offending vehicle. It is net the case of PW2 that he had to apply brakes suddenly due to some reason. Likewise, respondent no.1 was equally on fault as he parked the offending vehicle without blowing any parking indicator or putting any signal around the offending vehicle. As such, both drivers failed to take proper care and caution and accident in question, thus, took place due to contributory negligence of both the drivers and they are held equally liable for the accident. Issue no.1 is accordingly decided partly in favour of the claimant.”

10. Ld. counsel for the claimant is unable to dispute or controvert the above said findings. Reliance placed by the appellant upon the judgments in **Jumani Begam** and **Manjeet Kaur supra** is misplaced as the facts of the above said cases are distinguishable. In case of **Jumani Begam**, the accident had taken place at 9 PM; and in case of **Manjeet Kaur supra**, the accident had occurred at 2:30 AM, when it is pitch dark. Whereas, in the present case, accident had occurred at 4 PM in broad daylight. As such, the facts of both the cases cannot be equated.

11. Furthermore, although no argument has been raised by the appellant in regard to enhancement of compensation, yet, even otherwise, no ground is made out to enhance the compensation awarded.



12. It had been pleaded by the appellant in the claim petition that the deceased Rashmi Gupta was hale and hearty, 45 years old lady who was running PG Guest house and was earning approximately Rs.80,000/- p.m. Besides the claim petition, even as per postmortem report Ex.P1, and death certificate Ex.P2, the age of the deceased is mentioned as 45 years. It has been contended by the appellant that as per the Aadhar Card of the deceased Ex.P7, deceased was 41 years 4 months old at the time of the death as her date of birth is mentioned therein was 01.08.1979. However, Aadhar Card is not the reliable proof of age especially when it is not supported by any documentary evidence. As such, age of the deceased is taken as 45 years. It was pleaded by the appellant in the Claim Petition that the deceased was running PG (paying Guest) accommodation from where she was earning Rs. 80,000/- p.m. In support, appellant has produced Income Tax Returns of the deceased for the assessment years 2018-19, 2019-20, 2020-21 as Ex.P15 to Ex.P17 as per which annual income of the deceased was shown to be Rs.9,50,060/-. As per Ex.P17 for the assessment year 2021-21 filed on 23.11.2020, the gross total income of the deceased was shown to be Rs.9,50,060/-. Learned Tribunal had accordingly taken the income of the deceased as Rs.9,50,060/-. As deceased was 45 years old Addition of 25% was correctly made towards future prospects; and therefore, annual income was calculated to be Rs. 11,87,575/- (Rs.9,50,060/- + Rs.2,37,515/-). However, an amount of Rs.1,75,530/- was deducted towards Income Tax thereby annual income comes to Rs.10,12,045/-. Learned Tribunal while relying



upon the judgment of Hon'ble Supreme Court in ***Smt. Sarla Verma vs. Delhi Transport Corporation, 2009(3), RCR (Civil) 77 (SC)***; had made 1/3rd deduction towards personal expenses being married lady and had calculated annual income to be Rs.6,74,697/- (Rs.10,12,045-Rs.3,37,348/-). Learned Tribunal had further correctly applied multiplier of 14 in terms of judgments of Hon'ble Supreme Court in "***National Insurance Company Limited vs. Pranay Sethi and others***", ***Special Leave Petition (Civil) No. 25590 of 2014 and Smt. Sarla Verma's case (supra)***; thereby calculating loss of dependency as Rs.94,45,758/-. Under conventional heads, learned Tribunal had further awarded Rs.16,500/-, Rs.44,000/- and Rs.16,500/- towards loss of estate, loss of consortium and funeral expenses respectively. Hence, the total compensation comes to Rs.95,22,758/- rounded to Rs.95,22,760/-.

13. As already discussed above, PW2 Giri Parsad Sharma, driver of Mahindra TUV 300 bearing registration No. HR-51-BT-3824 in which the deceased was travelling, has been rightly held negligent in driving. Therefore, deduction of contributory negligence of 50% was correctly made.

14. In view of the above, no ground is made out to interfere in the impugned Award dated 21.05.2024. Present Appeal is hereby **dismissed**.

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

07.08.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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