IN THE HIGH COURT OF PUNJAB A ND HARYANA AT CHANDIGARH

119 **FAO-6562-2023 (O&M)**
Date of Decision : 17.03.2025

Reliance General Insurance Co. Ltd. ....Appellant

VERSUS

Nirmal Sharma and others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sunil Kumar, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. Present appeal has been filed by the Insurance Company challenging the award dated 01.09.2023 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal').

2. The brief facts relevant to the present case are that in the accident, which occurred on 04.11.2020, Vivek (hereinafter referred to as the 'deceased') alongwith his friends, namely, Vijay and Rajesh Kumar was coming from Cheeka towards Pehowa on a motorcycle bearing registration No.HR-41-F-9604, which was being driven by Vijay at a moderate speed and on his correct left side of the road. Deceased – Vivek – and Rajesh Kumar were pillion rider on the said motorcycle. At about 11.30 pm, when they reached near Sachdeva Farm in the area of village Saina Saidan, a Canter bearing registration No.HR-56-B-6041 (hereinafter referred to as the 'offending vehicle') came from the opposite side at a very fast speed, which was being driven in a rash and negligent manner by respondent No.4 herein. Though, Vijay moved to the extreme left side of the road, however, the offending vehicle struck against the motorcycle by coming on to the wrong

side of the road as a result of which the occupants of the motorcycle fell down and received serious and grievous injuries. Vijay died at the spot whereas Rajesh Kumar and Vivek were shifted to CHC Pehowa from where Vivek was referred to LNJP Hospital, Kurukshetra where he also succumbed to his injuries. Legal representatives of deceased – Vivek – filed the claim petition being MACP No.3 of 2021 titled 'Nirmal Sharma and Others vs. Satpal and Others'.

3. The stand taken by the driver and owner of the offending vehicle i.e. respondent Nos.4 and 5 herein by filing their joint written statement was that no accident had taken place and that they had falsely been implicated in the present case. It was further averred that the offending vehicle was insured with the appellant-Insurance Company.

4. The appellant-Insurance Company also filed a separate written statement denying the factum of the accident. It was further averred that respondent No.4 was not driving the offending vehicle rashly and negligently. It was further the case set up that the accident occurred due to the fault of Vijay, who was driving the motorcycle in a rash and negligent manner in violation of the rules as they were triple riding the two-wheeler.

5. On the basis of pleadings of the parties, the following issues were framed :

1. Whether Vijay and Vivek died in the accident which occurred on 04.11.2020 at about 11.30 pm in the area of PS Pehowa, District Kurukshetra caused by rash and negligent driving of offending canter bearing registration No.HR-56B-6041 being driven by

respondent No.1 Satpal, owned by respondent No.2 Naresh Kumar and insured with respondent No.3 ? OPP

2. If issue No.1 is proved in affirmative, what amount of compensation, petitioners Nilam Rani, etc. are entitled to on account of death of Vijay and from whom ? OPP

3. If issue No.1 is proved in affirmative, what amount of compensation, petitioners Nirmal Sharma, etc. are entitled to on account of death of Vivek and from whom ? OPP

4. Whether the Canter in question was being driven in violation of the terms and conditions of the insurance policy ? If so, to what effect ? OPR-3

5. Relief.

6. The Tribunal, holding it to be a case of rash and negligent driving, awarded the following compensation :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income of the deceased	Rs.24,479/-
2	Annual income of the deceased	Rs.2,93,748/- (24479 x 12)
3	Future prospects @ 40% (since deceased was 22 years of age)	Rs.1,17,499.20/- (2,93,748 x 40/100)
4	Total annual income	(2,93,748+1,17,499) = 4,11,247/-
5	Deduction for personal and living expenses (1/2 as the deceased is survived by 3 dependents and was unmarried	4,11,247 x ½ = 2,05,623.50
6	Annual dependency	4,11,247 – 2,05,623.50 = 2,05,623.50

7	Multiplier	18
8	Total dependency	2,05,623 x 18 = 37,01,214/-
9	Loss of Estate	Rs.16,500 [10% enhancement as per Pranay Sethi's case (supra) every 3 years]
10	Funeral Expenses	Rs.16,500 [10% enhancement as per Pranay Sethi's case (supra) every 3 years]
11	Loss of Consortium	Rs.44,000/-
	Total Compensation	**Rs.37,78,214/-**

7. Aggrieved by the same, present appeal has been preferred by the appellant-Insurance Company.

8. Learned counsel for the appellant-Insurance Company would contend that it was a clear case of contributory negligence as the riders were triple riding on a motorcycle and they were not wearing helmets. It is further the contention that on account of not wearing helmets the injuries were sustained, which led to deaths of the riders of the motorcycle and hence, it ought to have been held to be a case of contributory negligence.

9. Heard.

10. In the present case the only argument raised by learned counsel for the appellant-Insurance Company is that it was a case of contributory negligence inasmuch as the occupants of the motorcycle were triple riding and were not wearing helmets. Hon'ble Supreme Court in the case of **Anjana Narayan Kamble & Ors. Vs. Branch Manager, Reliance General Insurance Company Limited & Anr. [2023 ACJ 346]** has held as under :

> *"7. In the present case, there is no such evidence of contributory negligence except fact of three riders on the*

motorcycle and of not wearing helmet by the deceased. Therefore, in view of the enunciation of law, we find that the High Court was not justified in deducting 30% of the amount of compensation assessed by the Tribunal for the reason that the deceased was triple riding the Motorcycle or was not wearing a helmet. The violation of rules for driving a motor vehicle is not a ground to deduct the amount of compensation awarded unless there is proof of either the accident could have been averted or the impact could have been minimized."

11. Hon'ble Supreme Court in the case of **D.P. Papegowda & Ors. Vs. The Manager, M/s Cholamandalam MS Gen. Ins. Co. Ltd. (Civil Appeal No.7240 of 2016 decided on 02.02.2023)** has held as under :

"On the first aspect, we note that the only reason for which the Tribunal has arrived at the conclusion that the deceased was negligent to the extent of 20% is because she was not wearing the helmet when she was riding the two wheeler. We are of the opinion that such conclusion is not justified inasmuch as the negligence which is to be determined should be relatable to the cause of accident and not in the manner as done by the Tribunal……."

12. In the case of **Mohammed Siddique & Anr. National Insurance Company Ltd. & Ors. [2020 (1) RCR (Civil) 689]** the Hon'ble Supreme Court has held as under :

"13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along

with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two− wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194−C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the

law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW−3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of

10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

13. In view of the settled law noticed above and the fact that the learned counsel for the appellant-Insurance Company has been unable to point out to any evidence on the record that the act of the rider of the motorcycle had contributed in any manner to the accident, no error is found with the impugned award. In the absence of any evidence to show that there was any act on the part of the rider of the motorcycle which contributed to the accident, no fault can be found with the award passed by the Tribunal.

14. No other argument has been raised.

15. In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

17.03.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO