

**BEFORE SH. KARAMJIT SINGH SULLAR, PRESIDING
OFFICER, MOTOR ACCIDENT CLAIMS TRIBUNAL,
HOSHIARPUR
UID NO. PBO141**

MACT/CIS No. 08 of 2023
CNR No. PBH001-000266-2023
Date of Instt: 10.01.2023.
Date of Decision: 03.01.2025

Harjinder Pal Kaur aged 48 years wife of Shri Yadvinder Singh resident of village Kotli Khas Tehsil Mukerian District Hoshiarpur.

.....Claimant

Versus

1. Beer Singh @ Veer Singh son of Sansar Chand resident of village Sathwan P.O Fatehpur Tehsil Mukerian District Hoshiarpur -(Driver of Motor cycle bearing Registration No. PB-54-G-5021),
2. Akash son of Beer Singh @ Veer Singh resident of village Sathwan P.O Fatehpur Tehsil Mukerian District Hoshiarpur -(Owner of Motor cycle bearing Registration No. PB-54-G-5021),
3. National Insurance Company Ltd. Regional office 4th Floor Grand Walk, Ferozepur Road, Ludhiana (cover note No. 401803298402 valid from 27.3.2021 to 26.3.2026).

.....Respondents.

CLAIM PETITION U/S 166 OF MOTOR VEHICLES ACT 1988

Present: Sh. Amit Katoch Advocate for claimant.
Sh. A.S Minhas Advocate for respondents No. 1&2.
Sh. Bharat Raj Nakra Advocate for respondent No.3.

A W A R D

1. The present claim petition is filed by claimant Harjinder Pal Kaur under Section 166 of the Motor Vehicles Act, for grant of compensation

on account of injuries suffered by her in motor vehicular accident, took place on 18.10.2022.

2. In brief, the facts of the present case as submitted by the claimant are that on 18.10.2022 at about 3:15 PM, after school hours, the claimant was going to her house on her Scooter make Jupiter bearing registration No. PB-06-AH-2511. When she turned towards PUDA colony, then one motorcycle bearing No. PB-54-G-5021, being driven by respondent No. 1 Beer Singh alias Veer Singh in rash and negligent manner and at a high speed, hit against the scooter of claimant, due to which, the claimant alongwith her scooter fall on the road and received multiple grievous injuries on her body including severe head injury, right frontotemporal multiple hemorrhagic cortical, contusions, fracture right tibia and ulna and fracture of right parasymphysis of mandible. Then, the claimant was firstly taken to S.S Maidi City Hospital Mukerian, but due to her serious condition, she was referred to Shrimann Hospital Jalandhar, where she remained admitted from 18.10.2022 to 28.10.2022 as indoor patient and thereafter, she took follow up treatment from the said hospital. The claimant has specifically pleaded that the said accident took place due to rash and negligent driving of above said motorcycle No. PB-54-G-5021 by its driver/respondent No. 1 Beer Singh @ Veer Singh. The said accident was also witnessed by Kulwant Singh neighbour of claimant. Regarding the accident, FIR bearing No. 171 dated 31.10.2022 U/s 279, 337, 338 IPC was registered at P.S. Mukerian District Hoshiarpur on the statement of claimant Harjinder Pal Kaur.

It is further submitted that the claimant, who is aged about 47 years, was having very good health at the time of accident. Due to multiple fractures sustained by her in the accident, she could not attend her work for few months and has suffered a great financial loss. She is not able to do hard work as earlier to the accident. It is further stated that the claimant has suffered much pain and agony. Consequently, a prayer for grant of compensation to the tune of Rs. 15 lakhs has, thus, been made.

3. Upon notice, respondents appeared before the Tribunal through counsel and then respondents No. 1 & 2 filed joint written statement by raising preliminary objection to the effect that the present claim application is not maintainable against the answering respondents as no accident took place with the motorcycle bearing No. PB-54-G-5021 on the alleged, date, time and place. On merits, it is submitted by respondents No. 1 & 2 that the amount being claimed is highly exaggerated and without any basis and norms. However, the answering respondents are not liable to pay any compensation as no accident took place with the above said motorcycle. However, liability to pay, if any, is of the insurance company respondent No. 3 as motorcycle bearing No. PB-54-G-5021 was duly insured with respondent No. 3. Denying all remaining averments, made in this claim petition, the answering respondents No. 1 & 2 prayed for dismissal of the same.

4. Respondent No. 3 appeared before this Tribunal through counsel and filed its separate written statement by raising preliminary objections to the effect that the motorcycle bearing No. PB-54-G-5021, allegedly involved

in the accident, was being driven at the time of alleged accident by the driver, who had no valid driving licence to drive the same; the motorcycle bearing No. PB-54-G-5021 allegedly involved in the accident did not have valid Registration Certificate, route permit and fitness at the time of alleged accident and was being used against the provision of the Motor Vehicle Act and the claim petition is bad for non-joinder of necessary parties. On merits, it is pleaded by the respondent No. 3 that the amount being claimed as compensation is highly exaggerated and bears no relevance to the loss sustained. It is denied that motorcycle bearing No. PB-54-G-5021 was involved in the accident as alleged. However, if by way of evidence, it is proved that the said motorcycle was involved in the accident as alleged, then the alleged accident had taken place due to the negligence of claimant. Denying all other averments made in this claim petition, the answering respondent No. 3 prayed for dismissal of the same.

5. No rejoinder to the written statements of respondents was filed by the claimant. From the pleadings of the parties, the following issues were framed.

1. Whether Harjinder Pal Kaur wife of Yadwinder Singh sustained injuries in vehicular accident on 18.10.2022, due to rash and negligent driving of motorcycle bearing No. PB-54-G-5021 i.e. by the respondent No.1 ?OPP
2. If the issue No.1 is proved, to what amount of compensation, the claimant is entitled for and from whom? OPP ?
3. Whether the present claim petition is not maintainable ?OPR-1,2

4. Whether the respondent No.1 was not holding a valid and effective driving license and other documents i.e. registration certificate, route permit and fitness certificate at the time of accident and its effect upon compensation ?OPR-3
5. Whether the claim petition is bad for non-joinder of necessary parties ?OPR-3
6. Relief.

6. In order to prove her case, claimant Harjinder Pal Kaur herself stepped into the witness box as CW-1 and also examined CW2 Navdeep Singh Teacher at St. Joseph's Convent School, Mukerian and CW3 Dr. Ajay Pal Singh Orthopedic/ Medical officer Civil Hospital Mukerian. Thereafter, the learned counsel for claimant closed evidence on behalf of claimant in affirmative.

7. On the other hand, the learned counsel for respondents No.1 & 2 tendered copy of insurance policy of motor cycle bearing No. PB-54-G-5021 Ex. R1 and copy of driving licence of respondent No.1 Beer Singh Mark-X into evidence of respondents No.1 &2 and closed the same. Whereas, the respondent No. 3 did not examine any witness despite availing opportunities in this regard, as such, evidence of respondent No. 3 was closed by order.

8. I have heard the Ld. counsel for the claimant as well as the learned counsel for respondents and have perused the record of this case carefully. My findings on the above said issues are as under:-

ISSUE NO. 1

9. Onus to prove this issue was upon claimant. It has to be borne in mind that the Motor Vehicles Act does not envisage holding a trial for a

petition preferred under Section 166 of the Act. Under Section 168 of the Act, a Claims Tribunal is enjoined to hold an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. In **State of Mysore and others v. Shivabvasappa Shivappa Makapur, 1963 (2) SCR 943**, the Hon'ble Supreme Court held that the Tribunals exercising quasi-judicial functions are not courts and are not bound by strict rules of evidence. The relevant portion of the report in State of Mysore (supra) is extracted hereunder:

".....that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can unlike courts, obtain all information material for the points under the enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity depend on the facts and circumstances of each case but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

10. In **Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors., (2009) 13 SCC 530**, the Hon'ble Apex Court held that in a Petition under Section 166 of the Act that the Claimants were merely to establish their case on the touchstone of preponderance of probability and holistic view is to

be taken while dealing with the Claim Petition under the Motor Vehicles Act.

Para 15 is extracted hereunder:

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

11. In order to discharge the onus of this issue, it was incumbent upon the claimant firstly to prove that she had suffered injuries in road side accident in question and then to establish on record that the said accident was caused due to rash and negligent driving of respondent No. 1 Beer Singh @ Veer Singh, while driving motorcycle bearing No. PB-54-G-5021.

12. In order to prove the factum of accident, claimant Harjinder Pal Kaur examined herself as CW1 and deposed by way of her duly sworn affidavit Ex. CW1/A that she is serving as Teacher at St. Joseph's Convent School Mukerian. On 18.10.2022 at about 3:15 PM, she was going to her house after school hours on Scooter make Jupiter bearing registration No. PB-06-AH-2511. When she had turned PUDA colony, then one motorcycle bearing No. PB-54-G-5021, being driven by one clean shaven person i.e. respondent No. 1 Beer Singh alias Veer Singh in rash and negligent manner and at a high speed, hit against her scooter, as a result of which, she alongwith her scooter fall on the road and received multiple grievous injuries

on her body including severe head injury, right frontotemporal multiple hemorrhagic cortical, contusions, fracture right tibia and ulan and fracture of right parasymphysis of mandible. This witness further deposed that then she was firstly taken to S.S Maidi City Hospital Mukerian, but due to her serious condition, she was referred to Shrimann Hospital Jalandhar, where she remained admitted from 18.10.2022 to 28.10.2022 as indoor patient and thereafter, she took follow up treatment from the said hospital. She further deposed that the said accident took place due to rash and negligent driving of above said motorcycle by its driver/respondent No. 1. The said accident was also witnessed by her neighbour Kulwant Singh. Regarding the accident, FIR bearing No. 171 dated 31.10.2022 U/s 279, 337, 338 IPC was registered against respondent No.1 at P.S. Mukerian District Hoshiarpur on her statement. This witness has proved the copy of FIR Ex. C1. This witness was cross-examined at length by the learned counsel for respondents, but nothing could be elicited favourable to the respondents.

13. In order to rebut the allegations against him, respondent No. 1 Beer Singh @ Veer Singh did not step into witness box to prove his case that there was no negligence on the part of respondent no. 1 in causing the accident. In his written statement, although the respondent No. 1 denied the said accident, rather he pleaded that no accident of injured/claimant took place with the motorcycle being driven by him. However, in order to prove the said averment, he has not examined himself. Failure on his part to examine himself to prove his case, is sufficient to draw adverse inference

against him and to hold that the plea of respondent No. 1 has gone without proof.

14. Since, in this case FIR Ex. C1 was registered against respondent No. 1 Beer Singh and this is also one of the circumstance to *prima facie* prove the rash and negligent act of respondent No.1 while driving the offending motorcycle as held by our own Hon'ble Punjab & Haryana High Court at Chandigarh in case **Girdhari Lal vs Radhey Shyam and others 1993(2) PLR 109** that if the driver of the offending vehicle is facing criminal trial for causing an accident, then *prima facie* it is safe to conclude that accident took place due to rash and negligent driving of driver of the offending vehicle. Identical view has been expressed by our Hon'ble High Court in case **Lakhu Singh and another vs. Uday Singh and others 2008(1) RCR (Civil) 805**. There is nothing, brought on record to show that any of the respondents have raised their voice and concern before any higher law enforcing agency alleging about the false involvement of respondent No. 1 in said criminal case and also the false involvement of offending car bearing registration No. PB-54-G-5021 in the accident in question on 18.10.2022. The testimony of CW1 Harjinder Pal Kaur inspire confidence and it can be safely concluded that the accident in question occurred on account of rash and negligent act of driver of offending motorcycle bearing registration No. PB-54-G-5021.

15. Thus, the claimant has succeeded in proving the factum of accident through preponderance of probabilities as held in case of **Bimla Devi (Supra)**. In view of the above reasons, there is no escape from the conclusion

that accident on 18.10.2022 had resulted with the rash and negligent driving of respondent No.1, while driving motorcycle bearing registration No. PB-54-G-5021., as a result of which, claimant Harjinder Pal Kaur had sustained multiple grievous injuries. Issue No.1, thus, is decided in favour of claimant and against the respondents.

ISSUE NO. 2

16. Onus to prove this issue was on the claimant. In order to prove this issue, claimant examined CW3 Dr. Ajay Pal Singh, Orthopedic Medical officer Civil Hospital Mukerian, who deposed that on 17.10.2023, he had examined Harjinder Pal Kaur and found that there is 20% permanent disability of right leg ankle and there was loco motor disability. He proved the manual disability certificate Ex CW3/A and the online disability certificate by Government of India, Department of Empowerment of persons with disabilities, Ministry of Social Justice and Empowerment Ex. CW3/B. He deposed that certificate Ex. CW3/B was issued by the Government on the basis of certificate Ex. CW3/A. This witness further deposed that the effect of disability caused difficulty in sitting, squatting running and even patient cannot walk properly permanently without assistance. Any type of heavy or hard work is not advisable. The patient can also not performed her daily routines in a routine manner due to the injury sustained by her. The patient is implanted with the rods in the lower portion of her leg and the said rods are further required to be removed by way of surgery after some time. The said

surgery also costs in amount at the time of removing of above said rods implanted in the lower portion of her leg.

17. The claimant further examined CW2 Navdeep Singh teacher at St. Joseph's Convent School Mukerian, who brought the record pertaining to employment of claimant Harjinder Pal Kaur at St. Joseph's School Mukerian. He deposed that at the time of accident, the claimant Harjinder Pal Kaur was drawing salary from the school @ Rs. 24,857/- and after deducting Rs. 1800/- as EPF, her in hand salary was Rs. 23057/-. He further deposed that after the accident Harjinder Pal Kaur again joined the school in the month of November 2023. Harjinder Pal Kaur is serving in the above said school since 2011. She was on medical leave after the accident till November 2023 and during this period, she was not give salary by the school as their school is a private concern. He further deposed that due to accident, claimant was on medical leave and she has suffered loss of salary for more than one year. This witness has proved the salary certificate of claimant Ex.C27, authority letter Ex. CW2/A, salary account of claimant Ex. CW2/B, attested relevant copy of salary register Ex. CW2/C, attested copies (13 pages) of attendance register Ex. CW2/D. Both these witnesses were cross examined by the respondents, but nothing favourable could be elicited by them. On the other hand, no evidence on the point of quantum was led by the respondents.

18. On the basis of evidence led by the rival parties, this Court shall now proceed to determine the compensation to be awarded in the present case on account of injuries received by the claimant in the present accident.

The guidelines and parameters for awarding compensation in injury cases has been laid down by the Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar and another (2011) 1 SCC 343**, and thus guided by the dictum laid down in the above said case, the compensation is being assessed under the following heads:-

Medical Expenses

19. In this case, the claimant remained admitted in hospital on account of injuries suffered by her from 18.10.2022 to 28.10.2022. The claimant has placed on record original medical bills pertaining to the hospitalization expenses and the expenses incurred on the follow-up treatment totaling to Rs. 3,10,006/-. The said expenditure has been incurred by the claimant on account of injuries received by her in the present accident, as such, she is entitled to the entire amount of Rs. 3,10,006/-

Loss of income

20. So far as the claim under loss of income is concerned, the claimant Harjinder Pal Kaur has claimed herself to be teacher at St. Joseph's School Mukerian and earning Rs. 24,857/- per month and due to the injuries suffered in the accident she became permanent disable upto 20% and she has been left with no income, as such, the learned counsel for claimant has prayed for grant of loss of income on account of disability. On the other hand, the learned counsel for respondent No. 3 argued that the since the claimant has rejoined the school, so there is no loss of income.

21. Having heard the respective contentions of learned counsel for both the parties, it is evident from the record that the claimant is working as teacher at St. Joseph's Convent School Mukerian and is drawing salary of Rs. 24,857/-, which is evident from the testimony of CW2 Navdeep Singh. It is further evident from the testimony of CW2 Navdeep Singh that from October 2022 till November 2023 the claimant remained on medical leave and during this period she was not paid any salary by the School. Thus, at first the claimant is entitled to loss of earning on account of injuries for the period from October 2022 to November 2023 i.e. for a period of 13 months and in this manner loss of income during the period of treatment and recovery is worked out as Rs. 24,857/- X13 = 3,23,141/-.

22. Now, coming to the question of loss of income due to disability, it is evident from the record that the claimant Harjinder Pal Kaur has been permanently disabled to the extent of 20%, which is due to injury on right leg ankle as stated by CW3 Dr. Ajay Pal Singh. No doubt, the claimant has rejoined her job, but it is evident from the effects of the disability as stated by CW3 Dr. Ajay Pal Singh that the claimant must be having some sort of difficulty in performing her job and her future prospectus would have been diminished to some extent if not completely. Although, the work of teacher is not hard job, but due to disability there definitely must be some hindrance in performing job by the claimant and even in her future prospectus. Thus, the functional disability of the claimant is assessed as 10% as against 20% which would be just and reasonable. Perusal of copy of driving license of claimant

reflects her date of birth as 16.11.1975 and since the accident took place on 18.10.2022, the age of applicant as on the date of accident comes out to be 49 years and 1 month and multiplier of 13 is applicable. In this manner, the loss of income due to disability is worked out as 10% of Rs. 24857 = 2485.7 X 12 X 13 = Rs. 3,87,660/-.

Pain and sufferings and Loss of amenities of life:

23. It is evident from the evidence led on record that due to accident, the claimant had suffered multiple injuries including fracture of right tibia and ulna. So, the claimant has certainly suffered much pain and agony due to the injuries received by her in the accident and she will have to suffer agony of the injuries throughout her life, as such, she is held entitled to Rs. 50,000/- under the head 'Pain and Suffering' and further she will be unable to enjoy the enjoyments of the life, as such, she is entitled to Rs. 50,000/- under the head 'Loss of Amenities of Life'

Future medical expenses:

24. In the present case, the claimant has claimed charges towards future medical expenses. The claimant has examined CW3 Dr. Ajay Pal Singh, who stated that the patient is implanted with the rods in the lower portion of her leg and the said rods are further required to be removed by way of surgery after some time, but the fact remain that no fix amount regarding future medical expenses has come on record. Even the claimant has not examined the treating doctor to prove the cost of future medical expenses. However, as per testimony of CW3 Dr. Ajay Pal Singh, the rods

are required to be removed by way of surgery. So, in order to cure herself and ease her life, the claimant would have to undergo surgery and take medicine in future, as such, a lump sum amount of Rs. 50,000/- is awarded under the head of future medical expenses.

Taxi charges, attendant charges and special diet:

25. In view of the evidence led by the claimant and considering the fact of hospitalization and nature of injuries suffered by the claimant, some amount should have definitely been spent by the claimant towards attendant charges to look after her during the hospitalization and period of recovery and she would have consumed some special diet for recovery. Although, there is no evidence led on this point by the claimant, but the above fact cannot be ignored that some amount would have definitely been spent on above heads. Hence, the claimant is held entitled to Rs. 20,000/- under the head attendant charges, Rs. 20,000/- under the head Taxi charges and Rs. 20,000/- under the head special diet.

26. In view of the above discussion, the claimant is held entitled to compensation as below:-

Sr. No.	Head	Calculation
i.	Monthly income	Rs. 24857/-
ii.	Functional Disability @ 10%	Rs. 2485/-
iii.	Multiplier	13
iv.	Loss of income due to disability	Rs. 3,87,660/- (2485X12X13)
v.	Medical Expenditure	Rs. 3,10,006/-

vi.	Pain and suffering	Rs. 50,000/-
vii.	Loss of amenities of life	Rs. 50,000/-
viii.	Future medical expenses	Rs. 50,000/-
ix.	Taxi Charges	Rs. 20,000/-
x.	Attendant charges during hospitalization and recovery	Rs. 20,000/-
xi.	Special diet	Rs. 20,000/-
xii.	Loss of income during treatment and recovery	Rs. 24857X13=Rs. 3,23,141/-
xii.	Total	Rs. 12,30,807/-

27. Now, the question for determination arises as to who is liable to pay the compensation. As discussed above, respondent No.1 Beer Singh @ Veer Singh is driver and respondent No. 2 Akash is owner of offending motorcycle bearing No. PB-54-G-5021. As per copy of insurance policy Ex. R-1, the said motorcycle was got insured by respondent No. 2 with respondent No. 3 and the same was valid as on the date of accident. So, respondent No. 3 Insurance company is held liable to pay the amount of compensation to the claimant. Accordingly, issue No. 2 is decided in favour of claimant and against the respondents.

ISSUE NO. 3

28. Onus to prove this issue was placed upon respondents 1 & 2, however no evidence was led on this point, nor this issue was pressed at the time of arguments, therefore, this issue No. 3 is decided against the respondents No. 1&2 and in favour of claimant.

ISSUE No. 4

29. Onus to prove this issue was placed upon respondent No. 3, however, during the course of arguments, this issue was not pressed nor any evidence was led by the respondent No. 3 in this respect. On the contrary, the learned counsel for respondent No. 1 has placed on record copy of driving license of respondent No. 1 Mark-X and no evidence was led by the respondent No. 3 to show that the said document (driving licence) was not valid at the time of accident. Therefore, this issue is decided in favour of claimant and against the respondent No.3.

ISSUE NO. 5

30. Onus to prove this issue was placed upon respondent No. 3, however no evidence was led on this point, nor this issue was pressed at the time of arguments, therefore, this issue No. 5 is decided against the respondent No. 3 and in favour of claimant.

RELIEF.

31. In view of my findings on the above said issues, the instant claim petition is partly allowed with costs and an award for the sum of Rs. **12,30,807/-** (Rupees Twelve Lakhs Thirty Thousands Eight Hundreds and Seven Only) is passed in favour of claimant Harjinder Pal Kaur and against respondents. The respondent No. 3, being insurer, is directed to make the payment of compensation amount along-with interest @ 7 % per annum from the date of filing of claim petition till the date of realization of this amount. The amount of compensation be disbursed to the claimant directly into her savings bank account, the particulars of which be furnished to the respondent

No. 3. Counsel fee is assessed at Rs. 5000/-. Memo of costs be prepared and file be consigned to record room.

Announced:

Dated: 03.01.2025

Kulvinder Singh JW

Direct dictation

(Karamjit Singh Sullar)
Motor Accident Claims Tribunal
Hoshiarpur, UID No. PB0141