

**FAO-716-2004(O&M)**

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

103 (3 cases)**FAO-716-2004 (O&M)****Reserved on: 28.04.2026****Pronounced on: 12.05.2026****Uploaded on: 18.05.2026**

Deepa Dass and others

...Appellants

Versus

Gurman Singh and others

...Respondents

2.

FAO-1103-2004(O&M)

Darshan Singh(Since deceased through LRs)

.....Appellants

Versus

Deepa Dass and others

...Respondents

3.

FAO-1104-2004(O&M)

Naib Kaur

...Appellant

Versus

Deepa Dass and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Avnish Mittal, Advocate, &
Mr. Gorav Kashyap, Advocate,
for the appellants-claimants in FAO-716-2004,

Mr. Kiran Bala Jain, Advocate, &
Mr. Kamla Malik, Advocate,
for the appellants-claimants
in FAO-1103-2004 and FAO-1104-2004

Mr. Pardeep Goyal, Advocate, with
Mr. Abhishek Goyal, Advocate, &



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Mr. Ayushi Jain, Advocate,
Mr. Ankit Kumar Sabgwan, Advocate,
for respondent No.3-Insurance Company.

AMARINDER SINGH GREWAL, J.

1. This order shall dispose of three appeals, i.e. FAO-716-2004, FAO-1103-2004 and FAO-1104-2004, challenging the same Award, dated 15.10.2003 passed by the learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') on the ground of quantum as well as negligence, whereby a sum of Rs.2,95,050/- was granted on account of death of husband of appellant No.1 in FAO-716-2004 as well as a sum of Rs.16,000/- was granted on account of injuries suffered by appellant in FAO-1104-2004, and a sum of Rs.34,500/- on account of injuries suffered by appellant in FAO-1103-2004, in the motor vehicular accident dated 06.05.1997.

2. For the sake of convenience, the facts are being taken from FAO-716-2004 titled as '*Deepa Dass and others Vs. Gurman Singh and others*'.

3. Succinctly, the facts of the case were that on 06.05.1997, an accident occurred near North Marg Bridge involving Tata Sumo No. HRX-2, driven by Darshan Singh, and Ceilo car No. HR-51A-0026, driven by Mohinder Partap Dass (since deceased). In Claim Petition Nos. 49 and 50 of 1997, filed by Darshan Singh and Naib Kaur respectively, it was alleged that they, along with Nirmal Singh, were travelling in a Tata Sumo when a Ceilo car, driven by Mohinder Partap Dass in a rash and negligent manner, came from the opposite direction and struck their vehicle from the right side. As a result of the impact, the occupants of the Tata Sumo sustained injuries. Conversely, in Claim Petition No. 51 of 1998



filed by the legal representatives of Mohinder Partap Dass, it was alleged that the Ceilo car was being driven at a moderate speed when the Tata Sumo, driven rashly and negligently by Darshan Singh, hit the driver's side door of the car, resulting in the accident. The learned Tribunal vide award dated 15.10.2003, held that the accident occurred due to contributory negligence of both drivers (Ceilo car and Tata Sumo) and accordingly apportioned liability 50:50 while awarding compensation in the three claim petitions. Hence, being dissatisfied with the said findings on negligence as well as the quantum of compensation, the appellants have filed the present appeals.

4. Learned counsel for the appellants-claimants in FAO-716-2004 contended that the impugned award dated 15.10.2003 passed by the learned Tribunal is contrary to the facts on record and settled principles of law and is therefore liable to be set aside. Further, it was contended that the finding of contributory negligence to the extent of 50:50 is wholly erroneous and perverse, as there was no pleading by the respondents, nor any issue framed by the Tribunal, regarding contributory negligence, and in absence thereof, such a finding could not have been returned. Furthermore, it was argued that the evidence on record, particularly the unshaken testimonies of independent eyewitnesses PW-7 R.K. Bhardwaj and PW-8 Y.P. Kalyani, clearly establishes that the deceased Mohinder Partap Dass was driving on the correct side at a moderate speed and the accident occurred solely due to the rash and negligent driving of the Tata Sumo by respondent Darshan Singh, and thus the learned Tribunal has erred in disregarding cogent evidence and instead recording findings based on conjectures and surmises. Additionally, it was submitted that the FIR having been lodged on the statement of an interested party i.e. Darshan Singh,



cannot be treated as conclusive proof of negligence, especially in motor accident claims which are to be decided on the touchstone of preponderance of probabilities, and in absence of any mechanical inspection report or expert evidence, the attribution of contributory negligence is unsustainable. Consequently, it was urged that the compensation awarded is grossly inadequate, as the income of the deceased who was a businessman and Managing Director of a company, has been assessed on the lower side, the multiplier of 10 applied is inappropriate considering his age, and the amounts awarded under conventional heads are meagre and not in consonance with settled law. Hence, it was prayed that the finding of contributory negligence be set aside and the compensation be suitably enhanced in the interest of justice. Reliance has been placed on judgment rendered by Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others 2017 (16) SCC 680, Magma General Insurance Co. Ltd. v. Nanu Ram (2018) 18 SCC 130*** and ***Archit Saini v. Oriental Insurance Company Ltd. (2018) 3 SCC 365***.

5. Learned counsel for the appellants-claimants in FAO-1103-2004 contended that the impugned award dated 15.10.2003 passed by the learned Tribunal is unsustainable in law and on facts, inasmuch as the appellant, who suffered multiple injuries in the accident, has been denied just and fair compensation. Further, it was contended that the finding of the learned Tribunal holding contributory negligence on the part of both drivers is erroneous and contrary to the documentary as well as oral evidence on record, as the accident occurred solely due to the rash and negligent driving of the Ceilo car, which came on the wrong side of the road at a high speed, and even an FIR under Sections 279, 337 and 338 IPC was registered against its driver. Furthermore, it was argued



that the driver of the Ceilo car was under intoxication at the time of the accident and later succumbed to his injuries, which further substantiates the negligence on his part, and therefore the finding of contributory negligence is liable to be set aside. Additionally, it was submitted that the compensation awarded by the learned Tribunal is grossly inadequate, as the appellant suffered a fracture in his right leg, underwent prolonged treatment including hospitalization, surgery with internal fixation and nailing, remained under plaster for 42 days and confined to bed thereafter, and incurred medical expenses to the tune of Rs. 70,000/-, yet the learned Tribunal had awarded only Rs. 9,900/- towards medical expenses without properly appreciating the evidence on record. Consequently, it was urged that the amounts awarded under various heads such as special diet and pain and suffering are meagre and arbitrary, particularly when the appellant has suffered 40% disability, and thus the compensation deserves substantial enhancement. Hence, it was prayed that the findings of the learned Tribunal being based on surmises and conjectures be modified, the finding of contributory negligence be set aside, and the compensation be suitably enhanced in the interest of justice.

6. Learned counsel for the appellant-claimant in FAO-1104-2004 submitted that the impugned award dated 15.10.2003 passed by the learned Tribunal is erroneous both on facts and in law, as the appellant, who suffered multiple injuries in the accident, has been granted wholly inadequate compensation. Further, it was contended that the finding of the learned Tribunal holding contributory negligence on the part of both drivers is perverse and contrary to the evidence on record, inasmuch as the accident occurred solely due to the rash and negligent driving of the Ceilo car, which came on the wrong side of the road at a high speed, and an FIR under Sections 279, 337 and 338 IPC was



duly registered against its driver. Furthermore, it was argued that the material on record clearly established that the driver of the Ceilo car was under intoxication at the time of the accident, thereby completely negating any element of negligence on the part of the Tata Sumo, and thus the finding of contributory negligence is liable to be set aside. Additionally, it was submitted that the learned Tribunal has failed to properly appreciate the nature and extent of injuries suffered by the appellant Naib Kaur, who sustained multiple injuries including fracture of the left foot, remained hospitalized, underwent prolonged treatment with plaster for three months, and suffered stiffness along with 10% permanent disability, yet only a meagre sum of Rs. 16,000/- was awarded, which is grossly inadequate. Consequently, it is urged that the learned Tribunal has further erred in disregarding the medical evidence and disability certificate on record, as well as in failing to award any amount towards pain and suffering, special diet, attendant charges and other heads, despite clear evidence of expenditure of about Rs. 20,000/- on treatment. Lastly, it was prayed that the findings of the learned Tribunal being based on surmises and conjectures be set aside to the extent of contributory negligence, and the compensation be suitably enhanced to a just and reasonable amount in the interest of justice.

7. At the outset, learned counsel for respondent No.3-Insurance Company submitted that the award passed by the learned Tribunal does not suffer from any irregularity or infirmity, and that the findings recorded therein are well-reasoned on the basis of the material available before the learned Tribunal. It was accordingly contended that no ground is made out for interference in appeals.

8. I have heard learned counsel for the parties and examined the record, with their able assistance.

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9. A perusal of limited record available, shows that the accident in question arose out of a collision between Tata Sumo No. HRX-2 (hereinafter referred to as Tata Sumo), driven by Darshan Singh, and Ceilo Car No. HR-51A-0026 (hereinafter referred to as Ceilo car), driven by Mohinder Partap Dass (since deceased). Both sides have sought to attribute sole negligence to the other driver. Darshan Singh and Naib Kaur, while appearing as PW-1 and PW-2 respectively, deposed that the Ceilo car came from the opposite direction at a high speed and struck the Tata Sumo after coming on the wrong side of the road. On the other hand, the claimants in FAO-716-2004 arising out of the death of Mohinder Partap Dass examined PW-7 R.K. Bhardwaj and PW-8 Y.P. Kalyani, who stated that Mohinder Partap Dass was driving on the correct side of the road at a moderate speed and that the Tata Sumo, driven in a rash and negligent manner, came towards the wrong side and hit the driver side of the Ceilo car. Thus, there are two mutually destructive versions with regard to the manner in which the accident occurred.

10. The FIR in the present case was admittedly registered on the statement of Darshan Singh, driver of the Tata Sumo, wherein negligence was attributed to Mohinder Partap Dass. However, it is well settled that an FIR by itself is not conclusive proof of negligence in proceedings arising under the Motor Vehicles Act 1988, where the matter is to be adjudicated on the touchstone of preponderance of probabilities. At the same time, the testimonies of PW-7 R.K. Bhardwaj and PW-8 Y.P. Kalyani also cannot be treated as wholly independent and unimpeachable, inasmuch as both witnesses admitted during cross-examination that they were closely acquainted with Mohinder Partap Dass and were engaged in similar business activities with him. Significantly, no



independent documentary material was produced to substantiate their alleged presence at the spot or their participation in the meeting from where they claimed to be returning.

11. It is further evident from the limited material available on record that the collision was frontal in nature and both vehicles suffered substantial damage. However, no site plan analysis, mechanical inspection report, expert evidence, or any other scientific material has been brought on record by either side so as to conclusively establish that the accident occurred solely due to negligence of one particular driver. The entire case thus rests upon partisan ocular versions advanced by the respective claimants in the connected petitions. In such circumstances, where the evidence led by both sides does not conclusively establish exclusive negligence of either driver, and where the circumstances surrounding the accident indicate failure on the part of both drivers to avert the collision, the finding recorded by the learned Tribunal attributing negligence equally to both the drivers cannot be said to be either perverse or unsupported by evidence.

12. Further, while dealing with the quantum of compensation in FAO-716-2004, this Court, upon perusal of the record, finds that the appellants have placed on record income tax returns of the deceased for the assessment years 1995-96 and 1996-97, wherein his income was assessed at ₹91,230/- and ₹84,000/- respectively. Hence, taking the average of the aforesaid incomes, the annual income of the deceased is reassessed at ₹87,615/-.

13. Furthermore, the deceased was 53 years of age, as reflected in postmortem report (Ex.P28). In view of the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi (2017)***



16 SCC 680, 10% is liable to be added towards future prospects, and the appropriate multiplier applicable for the age group is '11', with deduction of 1/3rd towards personal expenses as there are three dependents. Hence, the compensation amounts to ₹7,06,761/-. ($₹87,615 + 10\% = ₹96,377 - 1/3rd = ₹64,251 \times 11 = ₹7,06,761/-$).

14. However, this Court finds that the amount awarded by the learned Tribunal under the conventional heads is wholly inadequate, inasmuch as ₹15,000/- has been granted towards loss of consortium and ₹15,000/- loss of funeral expenses, which is contrary to the guidelines laid down by the Hon'ble Supreme Court in ***Pranay Sethi (supra)***. In terms thereof, each claimant is held entitled to ₹48,400/- towards consortium ($₹48,400 \times 3 \text{ claimants} = ₹1,45,200/-$). Further, the claimants are entitled to ₹18,150/- towards loss of estate and ₹18,150/- towards funeral expenses (escalation @10% every three years as per the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***). Accordingly, the total compensation payable to the claimants is computed as ₹8,88,261/-. ($₹7,06,761/- + ₹1,45,200/- + ₹18,150/- + ₹18,150/-$)

15. Accordingly, the total compensation assessed at ₹8,88,261/-, is reduced by 50% on account of contributory negligence. Consequently, the claimants in FAO-716-2004 shall be entitled to a sum of ₹4,44,131/-. To the said extent, the award passed by the learned Tribunal in FAO-716-2004 deserves to be modified and enhanced accordingly.

16. Significantly, in FAO-1103-2004, from the limited material available on record, it emerges that the claimant had suffered fracture of tibial condyle and tear of meniscus. Further, PW4 Dr. Pardeep Nigam deposed that the claimant was



suffering from stiffness of right knee and wasting of right thigh and assessed his disability to the extent of 40%. However, from the limited record available it cannot be established that the said disability was permanent in nature or that it resulted in any functional disability affecting the earning capacity of the claimant. It is further noticeable that though the claimant alleged that he owned petrol pumps and agricultural lands and was earning substantial income prior to the accident, no documentary evidence whatsoever was produced in support thereof.

17. The evidence regarding treatment is also limited in nature. PW5 Ashok Kumar stated that the claimant was admitted in Kohli Hospital on 06.05.1997 and discharged on 19.05.1997, however, during cross-examination, he admitted that he did not possess any documentary proof regarding his employment in Kohli Hospital, thereby rendering his testimony unreliable to that extent. On the other hand, PW6 Dr. Deepak Bakshi produced the indoor treatment record from General Hospital, Sector-16, Chandigarh, which reflects that the claimant was admitted on 06.05.1997 and had left the hospital on his own on the same day. The bill issued by Kohli Hospital further reveals that an amount of ₹9,900/- was charged towards his treatment and medical bills of ₹14,500/- were also attached as Ex. P18 to Ex. P17.

18. In the aforesaid circumstances, this Court does not find any ground to interfere with the amount of ₹55,000/- awarded by the learned Tribunal on the account of disability. Nevertheless, keeping in view the nature of injuries suffered by the claimant and the treatment undergone by him, this Court is of the considered opinion that the claimant deserves to be awarded ₹15,000/- towards medical expenses, ₹5,000/- towards future medical expenses, ₹10,000/- towards special diet and attendant charges, ₹5,000/- towards transportation charges and

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₹20,000/- towards loss of amenities, over and above the compensation already awarded by the learned Tribunal. Accordingly, the total compensation awarded by this Court is reassessed as ₹1,10,000/-. the same is reduced by 50% on account of contributory negligence. Consequently, the claimants in FAO-1103 -2004 shall be entitled to a sum of ₹55,000/-.

19. Lastly, in FAO-1104-2004, this Court deems it appropriate to reassess the compensation awarded to claimant-Naib Kaur. From the limited material available on record, it emerges that the claimant was awarded a lump-sum compensation of ₹16,000/-. PW-4 Dr. Pradeep Nigam stated that the claimant was suffering from stiffness of the left ankle and left foot. Though 10% disability has been mentioned in disability certificate Ex.P22, the same was not shown to be permanent in nature. Further, from the card dated 12.05.1997 issued by K.D. Hospital, it stands established that the claimant had suffered fracture of the 5th metacarpal of the left foot along with blunt injury on the chest. Although there is no material on record regarding treatment prior to 12.05.1997 or substantial documentary evidence with respect to medical expenditure, yet keeping in view the nature of injuries suffered and the pain and suffering undergone by the claimant, the compensation awarded by the learned Tribunal is found to be on the lower side. Accordingly, the lump-sum compensation awarded to the claimant is enhanced from ₹16,000/- to ₹30,000/-. However, since the finding of contributory negligence to the extent of 50% has already been upheld, the claimant shall be entitled to ₹15,000/-.

20. Resultantly, FAO-716-2004 is partly allowed and the compensation is enhanced to ₹4,44,131/- after deduction on account of contributory negligence. Further, FAO-1103-2004 is partly allowed and the claimant shall be entitled to

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compensation of ₹55,000/- after deduction on account of contributory negligence.

Lastly, FAO-1104-2004 is partly allowed and the claimant shall be entitled to compensation of ₹15,000/- after deduction on account of contributory negligence.

The enhanced compensation in the appeals, i.e. over and above the compensation awarded by the learned Tribunal, shall also carry interest @ 7.5% per annum from the date of filing of the claim petition till its realization. However, the liability, apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal. The award passed by the learned Tribunal is modified and all the appeals are allowed in above terms.

21. Pending application(s), if any, shall also stand disposed of.

(AMARINDER SINGH GREWAL)
JUDGE

May 12, 2026
anil

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No