

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 6529/2017

1. Smt. Pushpa W/o Late Shri Mahaveer,
2. Dinesh S/o Late Shri Mahaveer,
3. Geeta D/o Late Shri Mahaveer,
4. Pankaj S/o Late Shri Mahaveer,
5. Gopal S/o Shri Bajrang,
6. Smt. Mohani W/o Shri Gopal,
All R/o Village Taswariya, Tehsil - Kekri Distt. Ajmer

----Claimants-Appellants

Versus

1. Hemraj S/o Shri Rang Lal, R/o Village Indoli Tehsil- Malpura, Distt. Tonk (Driver-cum-owner of the Jeep No.RJ-14-UA-2139)
2. National Insurance Company Limited, through Divisional Manager, Branch Office at Kachahari Road, Ajmer (Raj.), having its Regional Office at LIC Building, Ambedkar Circle, Bhawani Singh Road, Jaipur (Insurer of the Jeep No. RJ-14-UA-2139)

----Non-claimants-Respondents

For Appellant(s)	:	Mr. Aditya Sharma for Mr. Jai Prakash Gupta
For Respondent(s)	:	Mr. Arvind Sharma Ms. Manorma Sharma with Ms. Manju Chauhan

HON'BLE MR. JUSTICE SANDEEP TANEJA

Judgment

07/04/2026

1. The present appeal has been filed by the appellants-claimants (for short 'claimants') under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 01.06.2017, passed by the learned Motor Accident Claims Tribunal, Kekri, District - Ajmer (for short 'Tribunal') in MAC Case No. 114/2010 whereby the claim petition filed by the claimants was partly allowed.
2. The brief facts giving rise to the present appeal are that the claimants filed a claim petition before the learned Tribunal stating therein that on 21.04.2010, Mahaveer was going on a motorcycle bearing registration No. RJ-01-13M-9230 alongwith his relatives Shanti



Devi and Santosh Devi from Kekri to village Jhadali. At around 11:00 AM, a Jeep bearing registration No.RJ14-UA-2139 being driven by respondent No.1 in a rash and negligent manner, came from opposite side and hit the motorcycle, as a result of which, Mahaveer sustained injuries and subsequently died.

3. The claimants claimed compensation to the tune of Rs. 79,45,000/- on account of death of Mahaveer.

4. The respondent-Insurance Company filed reply to the claim petition and denied its liability to pay compensation on the ground that the accident occurred due to the negligence of the deceased himself, as he was riding the motorcycle with two pillion riders and was also not in possession of a valid driving license.

5. On the basis of pleadings of the parties, the learned Tribunal framed six issues and after evaluating the evidence on record, partly allowed the claim petition and awarded compensation of Rs. 4,49,384/-, in favour of the claimants, along with interest @ 6% p.a., from the date of filing of the claim petition till payment.

6. Being dissatisfied with the impugned judgment and award, this appeal has been preferred by the claimants seeking enhancement of the compensation so awarded.

7. Learned counsel for the claimants has submitted that the learned Tribunal has committed an error in assessing 20% contributory negligence of deceased merely on the ground that while driving the motorcycle, he was not having a valid driving license and three persons were sitting on the motorcycle at the time of accident. In support of his contentions, the learned counsel has placed reliance on the judgments passed by Hon'ble Supreme Court in the cases of **Mohammed Siddique & Anr Vs. National Insurance Company Ltd. & Ors;**

reported in **2020 (3) SCC 57** and **Sudhir Kumar Rana Vs. Surinder Singh & Ors**, reported in **2008 (12) SCC 436**.

7.1 Learned counsel has further submitted that the learned Tribunal has also committed error in assessing the monthly income of the deceased on the basis of minimum wages payable to an unskilled worker, as notified by the State Government. He has also submitted that as on the date of accident, the deceased was running a salon and was working as a Barber, which is considered to be a skilled job, therefore, the monthly income of the deceased for the purpose of calculation of loss of dependency ought to have been calculated on the basis of minimum wages payable to a skilled worker.

7.2 He has further contended that the compensation under the conventional heads of loss of consortium, loss of funeral expenses and loss of estate should also be re-assessed, as per the guidelines laid down by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, and **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & ors.**, reported in **(2018) 18 SCC 130**.

8. *Per contra*, learned counsel for the respondents has opposed the submissions made hereinabove by learned counsel for the claimants and has submitted that the impugned judgment and award passed by the learned Tribunal is just and fair, therefore, requires no interference by this Court. He has further submitted that since deceased was not having a valid driving license and more than two persons were sitting on the motorcycle, therefore, learned Tribunal has rightly held the deceased liable for contributory negligence to the extent of 20%. He has also submitted that the learned Tribunal has made addition @ 30% in the income of the deceased towards future prospects, however,

considering the age of the deceased at the time of accident i.e. 45 years, addition @ 25% should be made.

9. Heard learned counsel for the parties and perused the material available on record.

10. The first issue for consideration is whether the deceased should have been made liable for contributory negligence to the extent of 20%, merely on the ground that while driving the motorcycle, he was not having a valid driving license and three persons were sitting on the motorcycle at the time of accident.

10.1 From a bare perusal of the impugned judgment and award, it is revealed that the plea raised by the Insurance Company alleging that the accident occurred due to negligence of the deceased, was specifically rejected by the learned Tribunal. Rather, a specific finding of fact was recorded that the accident had occurred due to negligence of the driver of the offending vehicle i.e. Jeep, which was being driven rashly and negligently. However, despite concluding that deceased was not at fault in the accident, the learned Tribunal attributed contributory negligence to him merely because he did not have a valid driving license and was riding the motorcycle alongwith two pillion riders.

10.2 In this regard, it is relevant to refer to the judgment passed by the Hon'ble Supreme Court in the case of **Sudhir Kumar Rana** (supra) where, while dealing with the issue of contributory negligence in case of injured not possessing a valid driving license, it was held that in the absence of a specific finding that the injured was driving the two-wheeler rashly and negligently, the mere fact that the claimant was driving without a valid driving license cannot be a ground to hold him guilty of contributory negligence. The relevant paras are reproduced hereunder:-

"8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion,

may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

9. *The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."*

(emphasis supplied)

Further, the Hon'ble Supreme Court, in the case of **Mohammed Siddique** (supra), has held that if more than two persons are sitting on a motorcycle, such a person cannot be held liable for contributory negligence unless it is established that the act of riding with two others contributed either to the occurrence of the accident or to the impact of the accident on the victim. The relevant para is reproduced hereunder:-

"12. 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 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."

(emphasis supplied)

10.3 In light of the above judgments, it can be said that the driving a motorcycle without valid driving license and with two pillion riders may be a violation of Motor Vehicles Rules but the same by itself cannot be a basis to make the deceased liable for contributory negligence in the occurrence of accident, unless there is a specific finding that the accident occurred due to the negligence of the deceased.

10.4 Hence, taking into consideration the fact that the learned Tribunal specifically recorded a finding of fact that the accident occurred due to the rash and negligent driving of the driver of Jeep and no negligence was accrued upon the deceased, this Court is of the view that the learned Tribunal was not justified in holding the deceased liable for contributory negligence.

10.5 In view of the above, the finding of the learned Tribunal to the extent of holding deceased liable for 20% contributory negligence, is hereby quashed and set aside.

11. The next issue raised by the learned counsel for the claimants is that the deceased was working as Barber, therefore, his income should be calculated on the basis of minimum wages payable to a skilled worker.



11.1 In exercise of the powers conferred upon the State Government under the Minimum Wages Act, 1948, the State of Rajasthan has notified the minimum wages for unskilled, semi-skilled, skilled and highly skilled worker, and while notifying the same, Barber has been treated as a skilled worker.

11.2 In view thereof, this Court is of the opinion that in absence of the cogent evidence regarding income of the deceased, the monthly income of the deceased under the head of loss of dependency will be calculated on the basis of minimum wages payable to a skilled worker at the relevant point of time which was Rs. 115/- per day.

12. Furthermore, in view of the principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) and **Nanu Ram** (supra), the claimants are also entitled to get compensation towards three conventional heads. Accordingly, compensation of Rs.40,000/- will be awarded to each of the claimants separately, under the head of loss of consortium. Also, compensation of 15,000/- for loss of estate and Rs. 15,000/- for funeral expenses will also be awarded to the claimants.

13. Moreover, this Court also finds substance in the submissions made by the learned counsel for the respondents that the learned Tribunal was not justified in making addition @ 30% in the income of the deceased towards his personal expenses. Since, at the time of accident, the age of the deceased was 45 years, therefore, addition @ 25% will be made in the income of the deceased towards future prospects.

14. As a result of the above discussions, the compensation payable to claimants is re-assessed as under:-

S.No.	Particular	Amount assessed
1.	Monthly Income	Rs.115 x 30 = Rs.3450/-
2.	Annual Income	Rs. 3450 x 12 = Rs.41,400/-
3.	According to the age of the deceased i.e. 45 years, multiplier 14 to be applied	Rs.41,400 x 14 = Rs.5,79,600/-

4.	As per dependency, 1/4 income to be deducted for personal expenses of the deceased (-)	Rs.5,79,600 - Rs.1,44,900 = Rs.4,34,700/-
5.	Add 25% towards future prospects (+)	Rs.4,34,700 + Rs.1,08,675 = Rs.5,43,375/-
6.	Total loss of Dependency	Rs.5,43,375/-
7.	Loss of consortium (six dependants)	Rs.40,000 x 6 = Rs.2,40,000/-
8.	Loss of Estate	Rs.15,000/-
9.	Funeral Expenses	Rs.15,000/-
10.	Medical Bills (as awarded by the Tribunal)	Rs.16,850/-
11.	Hospitalization Expenses (as awarded by the Tribunal)	Rs.12,480/-
12.	Transportation Expenses (as awarded by the Tribunal)	Rs.1,000/-
	Total compensation (S.No. 6+7+8+9+10+11+12)	Rs.8,43,705/-
	Less amount awarded by the Tribunal (-)	Rs.4,49,384/-
	Enhanced amount of compensation	Rs. 3,94,321/-

15. Accordingly, the compensation awarded by the learned Tribunal is enhanced by **Rs.3,94,321/-**. The rest of the impugned award shall remain intact. The respondents are directed to deposit the enhanced amount within a period of two months from today.

16. It is directed that the enhanced amount shall carry the rate of interest in terms of the award passed by the learned Tribunal, from the date of filing of the claim petition. The enhanced amount shall be disbursed in terms of the award passed by the learned Tribunal.

17. The present appeal is disposed of in the above terms.

18. All pending applications, if any, also stand disposed of.

(SANDEEP TANEJA),J