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

**FAO No. 821 of 1998(O&M)**

**Surinder Kaur & OTHERS**

…**Appellants**

Versus

Dr. Mohan Dev Saini & OTHERS

…Respondents

**Reserved on: 13.02.2026**
**Pronounced on: 16.02.2026**

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Argued by:-** Mr. Naresh Kumar, Advocate
For the appellants.

Mr. Rajbir Wasu, Advocate
For respondent No.2.

**DEEPAK GUPTA, J.**

This appeal is directed against the award dated 06.11.1997 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur, whereby the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 was disposed of by granting compensation of ₹50,000/- only under the principle of no-fault liability, holding that negligence on the part of the driver of the offending vehicle had not been established.

2. ***Pleadings:***The admitted factual position is that on 20.12.1993 at about 6.30 PM, Amarjit Singh (since deceased) was travelling in Maruti Car bearing registration No. DL1C-7370 from Bunga to Hoshiarpur. The car was being driven by respondent No.1 Dr. Mohan Dev and was owned by his wife, respondent No.3. On the way, near village BhikOwal on the Dasuya-Hoshiarpur road, the vehicle struck against a *Safeda* tree. Amarjit Singh sustained multiple injuries and, despite prolonged treatment at Civil Hospital, Hoshiarpur and thereafter at CMC Ludhiana, succumbed on 08.03.1994. The widow and two minor children filed the present petition alleging that the accident was the result of rash and

negligent driving of respondent No.1 and also on account of failure of brakes and loss of control.

3.1 Respondent No.1–driver contested the claim by asserting that the petitioners were estopped from maintaining the claim, as the widow had earlier submitted an application stating that the accident occurred due to mechanical defect in the vehicle. He pleaded that while driving the car at a slow speed near village BhikOwal, the steering wheel suddenly jammed and, upon applying the brakes, he found that they had failed, resulting in the vehicle striking against a tree. He maintained that the accident was caused solely due to sudden mechanical failure and not due to any rash or negligent driving on his part. He further stated that he himself sustained multiple injuries, became unconscious, and remained admitted in CMC Ludhiana for eight days. It was also pleaded that the deceased, being his employee, used to travel with him in the car, and that the present claim was false and frivolous.

3.2 Respondent No.3 i.e. owner of the car took the same stand.

3.3 Respondent No.2 i.e. insurance company in its separate written statement alleged that driver did not have any valid driving licence and therefore, insurance company had no liability to pay the compensation amount.

4. ***Amendment application :***It has come on record during the course of evidence that the correct registration number of the offending vehicle was DL1C-7370 and not DL1C-7390 as mentioned in the claim petition. An application bearing **CM-11982-CII of 2016** under Order VI Rule 17 CPC has also been moved before this Court seeking correction of the registration number.

5. However, since there is no dispute whatsoever regarding the identity or involvement of the vehicle bearing registration No. DL1C-7370, which was admittedly being driven by respondent No.1, owned by respondent No.3 and insured with respondent No.2 at the relevant time, this Court does not find it necessary to formally allow the amendment. The matter shall, therefore, be considered and decided on the basis that the offending vehicle was Maruti Car No. DL1C-7370.

6. ***Tribunal Findings :***The Tribunal, after appreciating the evidence, discarded the testimony of AW2 and AW4, who were projected as eyewitnesses, and came to the conclusion that rash and negligent driving had not been proved. At the same time, it noticed that the accident occurred due to brake failure and confined the award to compensation under Section 140 of the Act under no fault liability.

7.1 ***Contentions of appellants – claimants*** : Assailing the impugned award, learned counsel for the appellants–claimants contends that the Tribunal has erred in discarding the testimony of AW2 Dalvinder Singh and AW4 Balwant Singh, who were examined as eyewitnesses to the occurrence. It is argued that both witnesses had categorically deposed that the offending Maruti car was being driven in a rash and negligent manner and that their evidence was sufficient to establish negligence on the part of respondent No.1. According to the appellants, the Tribunal misdirected itself in rejecting their testimony on untenable grounds.

7.2 In the alternative, learned counsel submits that even if the version of direct rash & negligent driving were to be doubted, the Tribunal failed to properly appreciate the legal effect of the stand taken by respondent No.1 himself. It is pointed out that respondent No.1 consistently pleaded that the accident occurred due to brake failure and jamming of the steering wheel. The said plea, it is argued, is fortified by the Mechanical Inspection Report (Mark R1) and the testimony of respondent No.1 as RW1. In such circumstances, the Tribunal ought to have drawn an adverse inference against the driver and owner for failure to maintain the vehicle in roadworthy condition. It is contended that proper maintenance of the vehicle was within the exclusive knowledge and control of the respondents, and in the absence of any service record or independent evidence of regular upkeep, the maxim *res ipsa loquitur* ought to have been applied. The mere oral assertion of RW1 that the vehicle was being properly maintained, it is argued, was insufficient to discharge the burden cast upon him.

7.3 In support of the aforesaid submissions, reliance has been placed upon ***Gurdeep Kaur v. Tarsem Singh, 2009 ACJ 314***, wherein it was held by this

court that where the mechanical report reveals defective brakes, a presumption of negligence may arise. Further reliance has been placed on ***Godaabarish Satpathy v. Brundaban Mishra, 1984 ACJ 59***, where the principle of *res ipsa loquitur* was applied in a case of brake failure, and it was held that such defect may justify an inference of negligence.

8. ***Response by respondent – Insurer*** : *Per contra,* learned counsel for the insurance company submits that in a petition under Section 166 of the Motor Vehicles Act, proof of rashness and negligence is a *sine qua non* for maintaining the claim. Placing reliance upon ***Oriental Insurance Co. Ltd. v. Premlata Shukla, 2007(13) SCC 476,*** it is argued that liability under Section 166 cannot be fastened in the absence of cogent proof of negligence. It is further contended that the Tribunal rightly disbelieved testimony of AW2 and AW4, as they were not reliable eyewitnesses to the occurrence. Once their testimony is discarded, there remains no independent evidence to establish rash or negligent driving. According to ld. counsel, the plea of mechanical defect does not automatically translate into negligence, and in the absence of positive proof of rashness, the Tribunal was justified in restricting the award to compensation under the principle of no-fault liability.

9. ***Consideration by this Court :***Having considered the submissions of both the sides and re-appraisal of the record, this Court finds no infirmity in the Tribunal's appreciation of the so-called eyewitnesses. AW2 admitted that he reached the spot nearly an hour after the accident. He could not, therefore, have witnessed the occurrence. AW4 gave a vague version without identifying the vehicle number, the driver, or other material particulars. Their testimony does not inspire confidence so as to independently establish rash and negligent driving.

10. However, the matter does not rest there.It is not disputed that the vehicle in question was under the exclusive control of respondent No.1. It is also not disputed that the accident occurred when the car struck against a tree. The defence consistently taken by respondent No.1, both in his written statement and in his deposition as RW1, is that when he attempted to apply the brakes,

they failed and simultaneously the steering wheel jammed, as a result of which the car went out of control and struck the tree. He further relied upon a mechanical inspection report (Mark R1), dated 02.02.1994, which records leakage of brake vessels, absence of brake seals, cracked brake oil pipe, non-functional wheel cylinder and locked steering.

11. ***Plea of brake failure & the applicability of the doctrine of res ipsa loquitur:***The crucial question is whether the mere plea of brake failure absolves the driver of negligence in a claim under Section 166 of the Act.

12. It is settled that in a petition under Section 166 of the Motor Vehicles Act, negligence must be established. However, the standard of proof is that of preponderance of probabilities and not beyond reasonable doubt. Proceedings before the Claims Tribunal are summary in nature; strict technical rules of evidence are not to be applied with rigidity. The Tribunal is required to assess the material on record in a pragmatic manner consistent with the object of the statute.

13. The doctrine of *res ipsa loquitur,* meaning "the thing speaks for itself", is a rule of evidence, which operates in cases, where the accident is of a kind that ordinarily would not occur in the absence of negligence and the instrumentality causing harm was under the exclusive control of the driver. In such situations, an evidentiary presumption arises, shifting the burden onto the driver or owner to furnish a satisfactory explanation. Hon'ble Supreme Court has repeatedly clarified that the maxim is not to be invoked mechanicallyand that its applicability depends upon the factual matrix of each case.

14. In motor accident claims, where a vehicle under the exclusive control of the driver meets with an accident which, in the ordinary course, would not occur without negligence, the burden lies upon the driver to rebut the presumption by establishing that the occurrence was the result of a sudden and unavoidable cause despite exercise of due care. A mere plea of mechanical failure, unsupported by cogent evidence of proper maintenance and sudden latent defect, is insufficient to discharge that burden.

15. In other words, brake failure, by itself, is not negligence per se, but at the same time, it is not an automatic defence. Mechanical failure may, in a given case, constitute an inevitable accident, but the burden of establishing such inevitability lies squarely upon the driver and owner. It must be shown that the vehicle was properly maintained, that regular servicing was undertaken, that there was no prior indication of defect, and that the defect was sudden and not discoverable by exercise of reasonable care.

16. In the present case, respondent No.1 has merely asserted that he used to maintain the car properly. No maintenance record has been produced. No service station official or mechanic has been examined. There is no evidence indicating when the vehicle was last serviced or whether it had been certified roadworthy. The car was a 1986 model as per the policy Ex.R3 and was thus about seven years old at the time of accident. A vehicle of such vintage demands greater vigilance in upkeep.

17. The mechanical report relied upon by the respondents was prepared nearly one and a half months after the accident and has not been proved by examining its author. More importantly, the report does not clarify whether the alleged defects were sudden or the result of gradual wear and tear. Defects such as leakage of brake vessels, absence of brake seal, cracked oil pipe and non-functional wheel cylinder ordinarily develop over time and, in the absence of evidence of regular maintenance, may legitimately indicate want of due care rather than inevitability.

18. The plea of brake failure, unsupported by cogent evidence of proper maintenance and sudden latent defect, is therefore insufficient to rebut the presumption arising from the circumstances of the accident. Proper maintenance of brakes and steering mechanism is a continuing duty of the driver and owner, and failure of such essential systems, without proof of due diligence, cannot be treated as a neutral event. The presumption arising under the principle of *res ipsa loquitur* remains unrebutted.

19. Consequently, this Court holds that respondent No.1 has failed to discharge the burden of establishing that the accident was the result of a sudden and unavoidable mechanical defect despite exercise of due care. The accident must therefore be held to have occurred due to rash and negligent driving inasmuch as the vehicle was not kept in a roadworthy condition.

20. The finding of the Tribunal restricting compensation to no-fault liability is, therefore, set aside.

21. ***Quantum:*** As regards quantum, the evidence of AW1, Senior Clerk from PSEB, establishes that the deceased was drawing a monthly salary of ₹3,286/- and was 37 years of age at the time of accident. His annual income accordingly comes to ₹39,432/-.

22. In view of the law laid down by the Constitution Bench of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi,*** addition towards future prospects is mandatory, where the deceased was in permanent employment and below 40 years of age. The Court held that in such cases 50% of the established income is required to be added towards future prospects. Since the deceased was a permanent employee and 37 years of age, addition of 50% is justified, thereby taking the annual income to ₹59,148/-.

23. The deduction towards personal and living expenses is required to be made in accordance with the structured guidelines laid down in ***Sarla Verma v. Delhi Transport Corporation***, wherein it was held that where the number of dependents is three, one-third of the income should be deducted towards personal expenses of the deceased. After such deduction, the annual contribution to the family works out to ₹39,432/-.

24. Further, as per the multiplier table approved in ***Sarla Verma*** **(supra)** and affirmed in ***Pranay Sethi*** **(supra),** the appropriate multiplier for the age group of 36–40 years is 15. Applying the multiplier of 15, the loss of dependency is calculated at ₹5,91,480/-.

25. As regards consortium, the Supreme Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram*** clarified that consortium is not limited to spousal consortium alone but includes parental and filial consortium as well. Though the accident in the present case occurred in 1993, having regard to the conventional amounts prevailing at the relevant time and in order to maintain parity with awards granted in similar cases of that period, a sum of ₹15,000/- each to the three claimants, totalling ₹45,000/-, is considered just and reasonable.

26. A further amount of ₹10,000/- (₹ 5,000/- each) is awarded under the conventional heads of funeral expenses and loss of estate, consistent with the principles indicated in *Pranay Sethi* (supra), subject to adjustment keeping in view the time of accident.

27. In addition, the evidence on record clearly establishes that Amarjeet Singh remained under treatment at CMC Ludhiana from 20.12.1993 till his demise on 08.03.1994. The medical expenditure incurred during this period is supported by documentary evidence in the form of Bill Ex. AW3/1, which has been duly proved by AW3 Belan, Senior Accounts Clerk of the Medical College, reflecting an amount of ₹1,19,543.48.

28. Although AW5 Smt. Surinder Kaur has deposed that a larger amount was spent on the treatment of the deceased, no additional documentary proof has been produced in support of that assertion. In the absence of further corroborative evidence, this Court deems it appropriate to award a rounded sum of ₹1,25,000/- towards medical expenses incurred prior to the death of Amarjeet Singh, which appears to be just and reasonable in the facts and circumstances of the case.

29. Accordingly, the total compensation works out to ₹7,71,480/- [5,91,480 + 45,000 + 10,000 + 1,25,000].

30. After deducting ₹50,000/- already awarded by the Tribunal under no-fault liability, the enhanced compensation payable comes to ₹7,21,480/-.

31. ***Conclusion :***Consequently, the appeal is partly allowed. The claimants are held entitled to an enhanced compensation of ₹7,21,480/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. The amount shall be payable jointly and severally by the respondents, and shall be shared equally amongst the three claimants.

Misc. applications if any stands disposed of.

**(DEEPAK GUPTA)**
**JUDGE**

**16.02.2026**
***Jiten***

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

**Uploaded on : February 16, 2026**