# Gurmeet Kaur and Another Vs Mohinder Singh and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 18, 2005

**Acts Referred:** Motor Vehicles Act, 1988 â€" Section 110A

**Citation:** (2006) 142 PLR 684 : (2006) 1 RCR(Civil) 59

**Hon'ble Judges:** Ashutosh Mohunta, J

**Bench:** Single Bench

**Advocate:** Rajbir Wasu, for the Appellant; Muniskwar Puri, for the Respondent

## Judgement

Ashutosh Mohunta, J.
The claimants have filed the present appeal against the judgment of the Motor Accident Claims Tribunal,

Kapurthala, dated 16.4.1986 by which their application u/s 110-A of the Motor Vehicles Act for the grant of compensation on account of death

of Kashmir Singh was dismissed.

2. Briefly the facts of the case are that on 1.12.1984 Narinder Singh was driving truck No.PUQ-7977 on Nadala Bhegowal Road and was going

towards village Ibrahim-wal, another truck bearing No.PBK-8744 loaded with paddy bags was coming from the opposite side and was being

driven by Mohinder Singh at a high speed. Both the trucks met with a head on collision as a result of which Narinder Singh and Kashmir Singh

sustained serious injuries and both of them subsequently died. The incident was witnessed by Malkiat Singh who was also driving truck No. PUQ-

3297 and was coming just behind the truck driven by the deceased Narinder Singh. On account of the death of Narinder Singh and Kashmir

Singh, claim petitions were filed. The respondents filed their written statement and alleged that there was no negligence on part of the driver of

truck No.PBK-8744 which was being driven by Mohinder Singh.

3. The first question before the Tribunal was - Whether the accident took place because of the rash and negligent driving of truck No. PBK-874

by the respondent-Mohin-der Singh ?

4. The claimants examined Malkiat Singh as PW-5 who stated that at the time of accident he was following truck No.PUQ-7977 being driven by

Narinder Singh and whose Conductor was Kashmir Singh. It was stated that when truck No. PUQ-7977 reached near Nadala Rice Mill, another

truck bearing No.PBK-8744 came from the opposite direction being driven at a very high speed and that truck without blowing any horn struck

against the truck being driven by Narinder Singh as a result of which both Narinder Singh and Kashmir Singh died. It was further stated by this

witness-that it was a foggy morning and that the driver of truck No. PBK-8744 was clearly at fault. The Tribunal discarded the statement of the

Eye-witness Malkiat Singh by holding that as PW-5 has not stated that the truck being driven by Mohinder Singh was not being driven on the

wrong side, therefore, it cannot be held that Mohinder Singh was at fault in causing the accident.

5. This finding of the Tribunal is wholly erroneous as there is no evidence on record to suggest that the truck being driven by Narinder Singh was at

fault. As both the trucks were coming in the opposite direction, therefore, the drivers of both the trucks could easily see each other and, therefore,

it has to be held that the accident took place because of the contributory negligence of the drivers of both the trucks being driven by Narinder

Singh and Mohinder Singh respectively. Where two fast moving heavy vehicles approach each other from opposite sides, then it is difficult to draw

a line of distinction between which of the two vehicles is negligent and, therefore, in such cases it would be appropriate to hold that the accident

took place because of the contributory negligence of both the vehicles. In the present case, it cannot be pin-pointed as the driver of which vehicle

was clearly at fault. There is no adequate evidence led by both the sides to fix responsibility on any one particular driver and. therefore, the drivers

of both the vehicles are hold equally liable.

6. The next question that arises is - What should be the compensation that the claimants are entitled to receive on account of death of Narinder

Singh?

7. It has come in evidence that Narinder Singh, who was the driver of the truck, was 27/28 years old and was earning Rs. 2,500/- per month.

There is no rebuttal to his income. Thus, after deducting l/3rd of the amount i.e. Rs. 800/- from his gross salary, the dependency of the claimants is

assessed at Rs. 1,700/- per month which words out to Rs. 20,400/- per annum, the compensation is worked out to Rs. 3,67,200/-. As the drivers

of both the vehicles have been held liable to have caused the accident, therefore, 1 award 50% of the amount assessed as compensation to the

claimants. Accordingly, the claimants are held entitled to receive a sum of Rs. l,83,600/-. Apart from the above, the claimants are also held entitled

to receive a sum of Rs. 5,000/- towards loss of consortium and another sum of Rs. 5,00/- for funeral expenses. Thus, the claimants are held

entitled to a total compensation of Rs. 1,93,600/-.

8. Mr. Munishwar Puri, learned Counsel for the Insurance Company, has argued that as per the insurance policy Ex.R-1 the liability of the

Insurance Company was limited to Rs. 50,000/- only and, therefore, the amount in excess of Rs. 50,000/- has to be borne by the owner and

driver of truck No.PBK-8744.

9. In view of the above, the judgment of the Motor Accident Claims Tribunal, Kapurthala, dated 16.4.1986 is set aside and it is held that the

accident took place because of the contributory negligence of the drivers of both the trucks i.e. truck No.PBK-8744 and No. PUQ-7977 and,

accordingly, the claimants are held entitled to a total compensation of Rs. 1,93,600/-. The claimants shall also be entitled to interest at the rate of

9% per annum from the date of accident till the date of realisation. The Insurance Company is held liable to pay the entire amount of compensation

to the claimants. However, as their liability was limited to the extent of Rs. 50,000/- only, therefore, they may recover the amount in excess of

Rs.50,000/- from the owner and driver of truck No.PBK-8744, after paying the appellants.