

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 449/2012

Kamlesh Devi and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Harshwardhan Gupta, Advocate.

vs

The Oriental Insurance Co. Ltd. and others

..... Respondent(s)

Through: Mr. D. S. Chauhan, Advocate

Ms. Damini Singh Chauhan, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER(ORAL)

06.08.2026

1. This appeal is directed against the award dated 31.07.2012 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Jammu (for short the 'Tribunal') in claim petition titled "Smt. Kamlesh Devi and others vs. The Oriental Insurance Co. Ltd. and others", whereby the claim of the appellants for grant of compensation on account of death of husband of appellant No. 1 and father of appellant Nos. 2 and 3, has been rejected.
2. The appellants have assailed the award dated 31.07.2012 primarily on the ground that the appellants had successfully proved the issue No. 1 by leading cogent evidence, whereas on the contrary, the respondent-Insurance Company, except examining the Investigating Officer, did not lead any evidence to rebut the evidence led by the appellants, as such, the claim petition of the appellants could not have been dismissed by the learned Tribunal. It is further submitted that the appellants had neither relied upon the first investigation report nor the

final report and rather they had filed the protest petition against the final report. In fact, the FIR was appended with the claim petition in compliance with the J&K Motor Vehicle Rules.

3. Heard learned counsel for the parties and perused the record.
4. Brief facts necessary for disposal of the present appeal are that the appellants filed a claim petition for grant of compensation on account of demise of Romesh Singh, by pleading that the deceased was coming to his house at Lehar, Tehsil Akhnoor on scooter bearing Registration No. JK02K1089 and when he reached near Doomi Malpur, a truck bearing registration No. JK02W1835 standing on the Doomi Malpur Link Road was suddenly reversed by its driver in a rash and negligent manner with high speed, as a result of which the said truck collided with the scooter and Romesh Singh suffered serious injuries, who died on the way while he was being taken to GMCH, Jammu for treatment. It was pleaded that the deceased was working as Daily Wager in the PHE Division, Akhnoor, and was due for regularization. Besides, he was also working as electrician in his shop and as such, it was claimed that the deceased was earning around Rs. 1 Lakh per annum.
5. The respondents were put to notice. Respondent No. 1 filed its response thereby objecting to the claim of the appellants on the ground that at the time of accident, truck bearing No. JK02W1835 was stationary and parked on the roadside. The deceased Romesh Singh, due to his negligence struck the scooter with the truck on rear side and lost his life, which is clear from the Police Report. Precisely, the contention of the respondent-Insurance Company was that the

deceased died on account of his own rash and negligent driving, therefore, the appellants are not entitled to any compensation.

6. Respondent Nos. 2 and 3 did not cause appearance before the learned Tribunal and accordingly were set ex-parte.

7. On the basis of pleadings of the parties, following issues were framed by the learned Tribunal:

- i. *Whether an accident occurred on 06.09.2007 at Rajouri Poonch NHW near Doomi Malpur, Dist. Jammu by rash and negligent driving of offending vehicle bearing registration No. JK02W1835 being driven rashly and negligently in the hands of erring driver in which decease Romesh Singh sustained fatal injuries? OPP*
- ii. *If issue No. 1 is proved in affirmative, whether petitioner is entitled to the compensation, if so to what amount and from whom? OPP.*
- iii. *Whether the driver of the offending vehicle at the time of accident was not holding a valid and effective driving license plied the vehicle in violation of insurance policy? OPR-1*
- iv. *Relief? OP Parties.*

8. In support of their claims, the appellants, besides examining appellant Nos. 1 and 3, also examined Rajinder Bali, Subash Singh, Basant Ram, Suresh Kumar and Ramesh Singh, whereas the respondent-Insurance Company examined only Head Constable Mohan Lal.

9. Learned Tribunal, after examining the statements of eyewitnesses i.e. Basant Ram, Suresh Kumar and Ramesh Singh and Respondent witness, namely, Mohan Lal, who had investigated the FIR No. 65/2007 under Sections 279/304 RPC registered with Police Station Kana Chak, decided the issue No. 1 against the appellants and in favour of the respondent-Insurance Company. As issue No. 1 was

decided against the appellants, therefore, learned Tribunal did not determine the other issues.

10. It is contended by the appellants that the learned Tribunal has ignored the evidence of the eye-witnesses examined by the appellants before the learned Tribunal and by placing reliance upon the statement of RW-Mohan Lal, dismissed the claim petition and also observed that the appellants were relying upon the contents of the FIR but at the same time they are disputing the same, which was not the course available to the appellants. Further, the learned Tribunal relied upon the judgment of the Hon'ble Supreme Court of India in cases titled as **Oriental Insurance Co. Ltd. vs. Premlata Shukla and others** reported in **2007 (5) Supreme 370** and **National Insurance Co. Ltd. vs. Rattani and others** reported in **2009 ACJ 925**, while rejecting the claim of the appellants.

11. Perusal of the statements of the PWs Basant Ram, Suresh Kumar and Ramesh Singh reveals that they had seen the occurrence on 09.06.2007. They have stated in unequivocal terms that in the evening they saw a truck bearing No. JK02W1835 parked on Doomi Malpur Road and all of a sudden, the driver of the vehicle reversed the truck, as a result of which, accident took place. Though abovementioned witnesses were cross-examined by the respondent-Insurance Company, but this Court finds that during the cross-examination, the respondent-Insurance Company could not elicit any material thereby either negating their presence on spot or discrediting their statements regarding the accident.

12. The respondent-Insurance Company examined Head Constable Mohan Lal, who had investigated the FIR No. 65/2007 for offences under Section 279/304 RPC of Police Station Kana Chak and in his examination-in-chief, he had stated that from the statements of the eye-witnesses to the occurrence, it was found that the driver of the truck, after parking his truck, had gone to take water from the hand-pump and in the meantime scooter in question collided against the truck and it was on the basis of the statements recorded by him, he stated that the accident took place due to negligence of the deceased. He further stated that closure report was also submitted before the court, which was marked as Mark A.
13. Learned Tribunal has placed reliance upon the judgments passed by the Hon'ble Supreme Court of India in cases titled as **Oriental Insurance Co. Ltd. vs. Premlata Shukla and others** reported in **2007 (5) Supreme 370** and **National Insurance Co. Ltd. vs. Rattani and others** reported in **2009 ACJ 925**.
14. In the Prem Lata Shukla's case, it was held that *once a part of the contents of the documents is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof have not been proved*. Further in the Rattani's case, it was held that *ordinarily an allegation made in the First Information Report would not be admissible in evidence per se but once the allegations made in the First Information Report have been made a part of claim petition, then the Tribunal as well as the appellate court has to look into the same*.

15. It is the positive case of the appellants that the FIR was appended in compliance to the Motor Vehicle Rules, whereas the appellants had led independent evidence to prove the negligence of the driver of the offending vehicle. In, **National Insurance Company Ltd. vs. Chamundeswari and others** reported in **2021 ACJ 2558**, Hon'ble Supreme Court of India after taking note of the judgment in *Premlata Shukla's case* (Supra) has observed as under:

*“It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 and PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the judgment, relied on by the appellant's counsel in the case of **Oriental Insurance Company Ltd. v. Premlata Shukla and others, 2007 (13) SCC 476**, this Court has held that proof of rashness and negligence on part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report. In the Judgment in the case of **Nishan Singh and others v. Oriental Insurance Company Limited, 2018 (6) SCC 765**, this Court has held, on facts, that the car of the appellant therein,*

which crashed into truck which was proceeding in front of the same, was driven negligently by not maintaining sufficient distance as contemplated under Road Regulations, framed under Motor Vehicles Act, 1988. Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the appellant, would not render any assistance in support of his case.”

16. Further in case titled as **Mathew Alexander v. Mohammed Shafi and another** reported in (2023) 13 SCC 510, Hon’ble the Supreme Court of India has held as under:

“In that view of the matter, it is for the Appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reason. This is because the appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law.”

(emphasis added)

17. The respondent-Insurance Company has not examined any eyewitness to rebut the evidence led by the appellants. The evidence of RW Mohan Lal could not have been relied upon by the learned Tribunal for discarding the evidence of eyewitnesses examined by the appellants.

18. In view of what has been said and discussed hereinabove, this Court is of the considered view that the award dated 31.07.2012 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Jammu in claim petition titled "*Smt. Kamlesh Devi and others vs. The Oriental Insurance Co. Ltd. and others*" is not sustainable in the eyes of law.
19. Accordingly, the award dated 31.07.2012 is set-aside and the matter is remitted to the learned Tribunal for deciding the remaining issues in accordance with law.
20. Parties are directed to appear before the learned Tribunal on **19.08.2026.**
21. **Disposed of along with the connected application, if any.**
22. Registry to return the record to the learned Tribunal forthwith along with a copy of this order.

(RAJNESH OSWAL)
JUDGE

Jammu
06.08.2026
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.