

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

MA No. 165/2018

IA Nos. 01/2018 & 02/2018

c/w

MA No. 169/2018

IA No. 02/2018 & 01/2018

Reserved on:- **25.02.2026**

Pronounced on:- **11.03.2026.**

Uploaded on:- **11.03.2026.**

*Whether the operative part or
full judgment is pronounced: Full*

Shriram General Insurance Co. Ltd.,

Branch Bahu Plaza A-2, Hall-2015,

2nd Floor, South Block, Jammu through

its Law Officer.

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

Through: Mr. Baldev Singh, Adv.

vs

1. **Romesh Chander**
S/O Sh. Banashi Ram
R/O Mehra Nagrota,
Tehsil & District Rajouri.

..... Respondent(s)

2. **Hardesh Kumar**
S/O Amar Singh
R/O Mehra Nagrota,
Tehsil & District Rajouri.

Through: Mr. Ajaz Chowdhary, Adv. for R-1
Ms. Jyoti Sharma, Adv. for R-2

Shriram General Insurance Co. Ltd.,

Branch Bahu Plaza A- 2, Hall-2015,

2nd Floor, South Block, Jammu

through its Law Officer.

.....Appellant(s)

Through: Mr. Baldev Singh, Adv.

Vs.

1. **Pritam Singh**
S/O Sh. Sunder Singh
R/O Mehra Nagrota,
Tehsil & District Rajouri.
2. **Hardesh Kumar**
S/O Amar Singh
R/O Mehra Nagrota,
Tehsil & District Rajouri.

Through: Mr. Ajaz Chowdhary, Adv. for R-1
Ms. Jyoti Sharma, Adv. for R-2

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Both the above titled appeals, though against two separate awards passed in two claim petitions by the same Tribunal, arising out of same vehicular accident and involving same question of law regarding liability of insurer or the insured in case of gratuitous passengers having been disabled in the accident, are proposed to be taken up and disposed of through the medium of this common judgment.

2. The appellant-Insurance Company, through the medium of the instant two appeals, has assailed the awards dated 24.12.2016 passed separately by the Motor Accidents Claims Tribunal, Rajouri in File No.160/166 titled '*Pritam Singh V. Hardesh Kumar & Anr.*' granting compensation to the tune of Rs.3,23,000/- along with interest and in File No. 126/166 titled '*Romesh Chander V. Hardesh Kumar & Anr.*' granting compensation to the tune of Rs.2,16,000/- alongwith interest in favour of the claimants- Pritam Singh and Romesh Chander.

3. The appellant has assailed the impugned awards allegedly having been passed by the Tribunal below contrary to the provisions of the Motor Vehicles Act and the established legal principles alleging that the Tribunal had failed to consider the defense raised by the appellant as Insurer of the offending vehicle and also that, without there being substantive evidence, the compensation has been awarded relying on presumptive income of the claimants.

4. The factual backgrounds of the claim petitions are that a Tractor with registration number JK11/0709 (Offending Vehicle) driven by respondent no.2 on **19.03.2012** met with an accident on the roadside near Khandli Bridge Mehra Nagrota of District Rajouri causing grievous injuries to some of the people

including claimants resulting into their permanent disability. The claimants filed the claim petitions before the Tribunal below for grant of compensation. After entertaining the objections from the respondents therein including the appellant herein, the aforesaid compensation was granted in favour of the claimants and appellant Insurer was held liable to pay compensation as the offending vehicle, as on date of accident, was insured with the appellant.

5. The appellant- Company was stated to have filed objections raising legal and factual defenses including that the claimants were gratuitous passengers on the offending vehicle and that the driver also did not hold a valid and effective driving licence, as such, there was no liability of the appellant Company to pay compensation for the contravention of the insurance policy; the Tribunal had raised various issues and the claimants, besides themselves, had examined eye-witnesses and a medical expert and placed on record certified copies of the chargesheet arising out of FIR registered in the case by the police. The appellant as respondent-insurer before the Tribunal, in support of its case, had examined its law officer, IO of the criminal case and official from the registering authority, who confirmed that the tractor had seating capacity only for the driver and that the terms of the insurance policy excluded gratuitous passengers. The Tribunal, however, decided both the claim petitions in favour of the claimants, granting them compensation holding appellant-Insurer liable to pay compensation for its contractual obligations towards the insured for his tortuous liability for the negligence of the agent of the insurer i.e. the driver.

6. Learned counsel for the appellant, however, restricted his arguments to one aspect of the case only that the claimants were travelling by the offending vehicle as gratuitous passengers when it had met with an accident, causing

injuries resulting into disabilities, as such, the appellant- Insurer had no liability to pay compensation for the gratuitous passengers as in the case of a tractor only one person is under the cover of insurance. He has further argued that the claimants had wrongly pleaded before the Tribunal below that they had been waiting for bus at Mehra Nagrota when they were hit by the tractor, whereas, the fact of the matter is that investigator Bashir Ahmad of the appellant-Insurer, who was examined by the appellant before the Tribunal below, had stated that the claimants were travelling over the Tractor as per his inquiry conducted in the case based on FIR and chargesheet; that he further argued that the FIR and the chargesheet also disclosed that the insured persons had been travelling by the offending tractor, as such, the claimants being gratuitous passengers were not entitled to be paid compensation by the insurer and argued that the Tribunal below had wrongly decided the issue holding that the claimants were not gratuitous passengers. He has finally prayed that both the impugned awards be set aside to the extent of liability of the appellant- Insurer. He has relied upon the case laws in the judgments reported as **2007 ACJ 1928, 2009 ACJ 925 and 2011 (4) JKJ 240**, in support of his contentions, wherein it had been held that in case some document is relied upon by a party, whole of it is to be accepted and not its part favouring the person who had relied upon it and that in the case of gratuitous passengers, the insurer has no liability to pay compensation.

7. Learned counsel for the respondents, on the other hand, vehemently argued that the appellant- Insurer had examined IO of the case, which had been investigated by him, stated in his cross-examination that the claimants were not travelling by the offending vehicle, as such, the Tribunal had rightly decided the case by holding that the claimants cannot be stated to have been gratuitous

passengers. He has further argued that the claimants were waiting for the bus and, in the meantime, they were hit by the offending vehicle driven by the owner and insured by the appellant- Insurer, as such, being third party, the claimants were not only entitled to receive compensation but from the Insurer as the liability to pay compensation for the vicarious and tortuous liability of the insured. They have relied upon law laid down by the Apex Court reported as **2023 LiveLaw SC 531**, paras 9 and 10.

8. Heard learned counsel for the parties at length, perused the record and considered the matter.

9. The Apex Court in a case reported as 2007 ACJ 1928 has held that once a part of the contents of the document is admitted in evidence, party bringing same on record cannot be permitted to turn around and contended that other contents contained in rest part thereof had not been proved. This Court followed the aforesaid judgment passed by the Apex Court in a case of '*United India Assurance Co. Ltd. V. Amina Begum*' reported as **2011 (4) JKJ 240** holding that once the respondent no.1 produced and placed reliance on the investigating report (chargesheet), the Tribunal ought not to have made selective use of a chargesheet to hold that the vehicular accident had taken place and respondent No.1 was injured and not relied on the part of the investigating report indicating that the respondent No.1 was travelling as a gratuitous passenger in the offending vehicle at the time of accident and not standing on the roadside as projected in the claim petition and the award was set aside.

10. The Apex Court in a case titled '*National Insurance Company Ltd. V. Rattani & Ors.*' reported as **2009 (2) SCC 75** has laid a rule, regarding insurer's liability vis-à-vis gratuitous passenger and held that the insurer is not liable to pay

compensation to the gratuitous passenger. High Court of Gauhati in a case titled '*Shri Ram General Insurance Co. Ltd. V. Khitin Chandra Roy & Ors.*' reported as **2023 ACJ 2149** held that in case of gratuitous passengers travelling by the offending vehicle a Tractor and receiving injuries, as such, insurer was not liable to pay compensation and it was the owner alone who was liable for the same.

11. Hon'ble the Supreme Court in a case titled '*National Insurance Company Ltd.. V. Chamundeswari & Ors*' reported as **2021 ACJ 2558**, however, held in paragraph 8 that the statements recorded before Tribunal are to be relied upon while deciding the claim petition and if any evidence before the Tribunal runs contrary to the contents of FIR, then the evidence recorded before the Tribunal has to be given weightage over FIR. Paragraph 8 being relevant, for ready reference, is reproduced as under:

*“8. 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 & 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 Limited v. Premlata Shukla and Others](#)*

[2007 (13) SCC 476], this Court has held that proof of rashness and negligence on the 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.”

12. Hon’ble the Supreme Court in **2023 LiveLaw (SC) 531** titled ‘*Mathew Alexander V. Mohammed Shafi & Anr*’, held in paras 9 & 10 as under:

“9. Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the

accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.

In this context, we could refer to judgments of this Court in the case of *N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal* reported in AIR 1980 SC 1354, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under [Section 304-A](#) of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case of *Bimla Devi vs. Himachal Road Transport Corporation ("Bimla Devi")*, it was observed that in a claim petition filed under [Section 166](#) of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. **A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes vs. Joaquim Xavier Cruz*, (2013) 10 SCC 646 which has referred to the aforesaid judgment in *Bimla Devi*.**

- 10. 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 reasons. 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.

13. Hon'ble the Supreme Court in **2025 INSC 1301** titled '*Akula Narayana V. The Oriental Insurance Company Limited & Anr.*', in paragraph 12 held as under:

“12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered. Taking a conspectus of various pronouncements, this Court in '[Rama Bai v. Amit Minerals](#),' reported as [2025 SCC OnLine SC 2067](#) again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).”

14. The accident had taken place on **19.03.2012** regarding which FIR No.132/2012 was registered at local Police Station. As per the contents of the

FIR, on **19.03.2012**, Tractor No. JK11/0709 driven by respondent- Hardesh Kumar rashly and negligently, met with an accident at Khandli resulting into injuries to the driver and some people travelling by vehicle, who were shifted to Rajouri hospital for treatment. As such, in the FIR, except driver, no other injured had been named. After investigation of the case, chargesheet was laid before the court vide Final Report 122/2012 for the commission of offences punishable under Sections 279/337 RPC. As per investigation, the aforesaid offences were proved to have been committed by the driver of the offending vehicle namely Hardesh Kumar; but again in the final report, there is no mention with regard to names of the injured and the chargesheet also does not explicitly mention with regard to the fact that the injured claimants had been travelling by the offending vehicle.

15. There was sufficient evidence as led by the claimants before the Tribunal by examining witnesses Ramesh Chander besides themselves to state that while walking from Khandli Bridge to Mehra Nagrota, they were hit from backside, by the offending vehicle driven rashly and negligently by its driver, wherein they got serious injuries and were shifted initially to local hospital, wherefrom, they were referred to Jammu and remained hospitalized there for 15/20 days. In their cross-examination, claimants and the witnesses had categorically stated that claimants were walking on foot and were not travelling by the offending vehicle; the IO Mohd. Bashir, who had investigated the criminal case with regard to the accident of the offending vehicle in his statement had stated that there was no evidence collected by him, so as to suggest that the claimants were not travelling by the offending vehicle and were walking on foot at the time of accident.

16. In the aforesaid legal backdrop, the matter warrants consideration, on the basis of evidence led by both sides. The claimants, besides oral evidence, relied upon the documentary evidence including FIR registered in the case and the chargesheet arising out of it. The investigator of the appellant insurer namely Mohd. Bashir who was examined as witness, is stated to have formulated his opinion with regard to the fact that the claimants were travelling as gratuitous passengers based on the FIR and chargesheet is, thus, misconceived, as there is no mention with regard to such a fact in both the documents, which had been relied upon by the claimants.

17. The contention made on behalf of appellants by their learned counsel that the FIR and the Charge-sheet had been relied upon by the petitioners to claim compensation had stated that the claimants were travelling by the offending vehicle, is not substantiated on perusal of these documents as in both the documents, except the driver of the offending vehicle, none has been named to have been injured while travelling by the offending vehicle. Therefore, it cannot be said that the Tribunal has not considered some part of the document which was not favouring the claimants. In this situation of the matter when oral evidence led by the claimants had proved that the claimants were walking on road while being hit by the offending vehicle causing injuries to them resulting into their disablement. In this factual situation, it can safely be held that the claimants are not proved to have been travelling by the offending vehicle, so as to bracket them as gratuitous passengers travelling on the offending vehicle, particularly in view of the law laid down by the Apex Court, in the case reported as 2021 ACJ 2558; that the evidence recorded before the Tribunal has to be given weightage over the contents of FIR, even if it runs contrary.

18. In the considered opinion of this court, the Tribunal has rightly decided the issue on this point holding that the claimants were not gratuitous passengers, as such, under its contractual liability the insurer cannot be absolved from its liability to pay compensation on behalf of the insured/owner of the vehicle for his vicarious/tortuous liability to pay compensation to the claimants for the injuries and disabilities caused to them, due to the negligence of the driver of the offending vehicle.

19. Having regard to the foregoing reasons and the aforesaid discussion, both the appeals, bereft of any merit and substance, are ordered to be **dismissed**, along with the application(s). No order as to costs.

20. The compensation, if deposited, with this court is ordered to be released in favour of the claimants on their proper verification, court fee being first charge on the amounts of compensation, under Rules.

21. The copies of this judgment shall be placed across both the files.

(MA CHOWDHARY)
JUDGE

Jammu
11.03.2026
Raj Kumar

Whether the order is speaking? : Yes/No.

Whether the order is reportable? : Yes/No.