



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

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FAO-1280-1999 (O&M)

Date of Decision : 21.05.2025

HIRA SINGH AND ANR

.... Appellants

VERSUS

OM PARKASH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.P. Bhandari, Advocate and
Ms. Bhargavi, Advocate for the appellants.

Service of respondent No.1 dispensed with
vide order dated 21.11.2016.

Service of respondents No.2 and 3 dispensed with
vide order dated 08.02.2016.

Mr. Aseem Aggarwal, Advocate for respondent No.4.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants aggrieved by the award dated 05.02.1999 passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide which their claim petition was dismissed.

2. Brief facts relevant to the present *lis* are that the claim petition was filed by the claimant-appellants seeking compensation on account of death of their son, namely, Sunder Singh, who died in a road accident which took place on 09.02.1997 on account of rash and negligent driving of canter bearing registration No.HR-26/2577 (hereinafter referred to as the offending vehicle). It was averred in the claim petition that on 09.02.1997 at about

10:30 am Sunder Singh (since deceased) was standing on the kaccha berm of the road at Hassanpur Chowk along with his friend, namely, Arun son of Dev Pal. The offending vehicle came from the side of Kosi. The offending vehicle was being driven at a fast speed and in a rash and negligent manner by the driver. The offending vehicle struck against Sunder Singh (since deceased) as a result of which he fell and received multiple injuries. Arun then shifted Sunder Singh to the hospital where he succumbed to his injuries.

3. The driver-respondent No.1 herein filed his written statement denying the involvement of the canter in the accident. It was further pleaded, in the alternative, if the accident is proved then the liability was of the Insurance Company as the offending vehicle was insured at the relevant time. The owner and the Insurance Company also filed their separate written statements. They denied the liability to pay any compensation denying the factum of the accident. Respondent No.4-Insurance Company also denied its liability.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the accident in question resulting into the death of Sunder Singh was caused on account of rash/negligent driving of canter No.HR-26/2577 by Om Parkash respondent No.1 ? OPP
2. In case issue No.1 is proved, to what amount of compensation the petitioners are entitled for and from whom ? OPP

3. Whether respondent No.1 had no valid driving licence at the time of this accident, if so, to what effect ? OPR-3

4. Relief.

5. The Tribunal holding that the statement of the eyewitness, namely, Arun Rawat (PW-1) was not trustworthy, dismissed the claim petition. Aggrieved by the same the present appeal has been preferred by the claimant-appellants.

6. Learned counsel for the claimant-appellants would contend that the Tribunal had dealt with the claim petition as if it was dealing with a criminal case. It is further the contention of the learned counsel that the cases before the Motor Accident Claims Tribunal are to be decided on preponderance of probabilities and in the present case not only the eyewitness had stepped into the witness box and withstood the cross-examination but also an FIR had been lodged and respondent No.1-driver was facing a criminal trial.

7. Service of respondent No.1 was dispensed with vide order dated 21.11.2016 and that of respondents No.2 and 3 was dispensed with vide order dated 08.02.2016.

8. *Per contra*, learned counsel for respondent No.4-Insurance Company would contend that since the statement of the eyewitness was not trustworthy hence the Tribunal had rightly rejected the claim petition.

9. Heard.

10. In the present case the Tribunal has dismissed the claim petition on account of the fact that during cross-examination, PW-1 Arun Rawat

(eyewitness) was confronted with the First Information Report and it was found that neither the number of the offending canter nor the name of the driver was mentioned therein. Holding that the eyewitness had improved the case at the behest of the claimant-appellants, the claim petition was dismissed.

11. It is trite that in a motor vehicular accident the case is to be decided by the Tribunal on the touch stone of preponderance of probabilities. The Hon'ble Supreme Court in the case of **Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** has held that while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases. It was held as under :

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard

of proof beyond all reasonable doubt which is followed in criminal cases.”

Further, the Hon’ble Supreme Court in the case of **National Insurance Company Limited Vs. Chamundeswari & Ors. [2021 (4) RCR (Civil) 494]**, which was a case where there were three occupants of the car which had met with an accident and one of the passengers had died and the other two passengers were injured, and in the said case also the witness, who was also an injured, had given the statement before the Police and had also appeared before the Tribunal, their Lordships, while holding that the weightage has to be given to the evidence recorded before the Tribunal over the contents of the FIR, held 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’.

Similar view was taken in the case of **Halappa Vs. Malik Sab** [2018 (1) RCR (Civil) 279] which reads as under :

‘.....The High Court has proceeded to reverse the finding of the Tribunal purely on the basis that the FIR which was lodged on the complaint of the appellant contained a version which was at variance with the evidence which emerged before the Tribunal. The Tribunal had noted the admission of RW1 in the course of his cross-examination that the insurer had maintained a separate file in respect of the accident. The insurer did not produce either the file or the report of the investigator in the case. Moreover, no independent witness was produced by the insurer to displace the version of the incident as deposed to by the appellant and by PW 3. The cogent analysis of the evidence by the Tribunal has been displaced by the High Court without considering material aspects of the evidence on the record. The High Court was not justified in holding that the Tribunal had arrived at a finding of fact without applying its mind to the documents produced by the claimant or that it had casually entered a finding of fact. On the contrary, we find that the reversal of the finding

by the High Court was without considering the material aspects of the evidence which justifiably weighed with the Tribunal. We are, therefore, of the view that the finding of the High Court is manifestly erroneous and that the finding of fact by the Tribunal was correct’.

Further, in the case of **Ramamurthy Vs. National Insurance Co. Limited [Civil Appeal No.4612-2017 decided on 30.03.2017]** it was held as under :

‘9. The High Court, in appeal, took into account the F.I.R. filed by the injured pedestrian (Ramesh), on which reliance was placed by the claimant to prove the accident. While relying on the said F.I.R., the High Court took the view that as the appellant-claimant himself has relied on the F.I.R., the entire version of the F.I.R. must be accepted. Inasmuch as in the F.I.R. filed by the injured pedestrian (Ramesh) rash and negligent driving was alleged against the appellant-claimant, the High Court took the view that the appellant-claimant had admitted the contents of the F.I.R., including the allegation of rash and negligent driving contained therein.

10. We fail to see as to how the High Court could come to the aforesaid conclusion and/or placed reliance on the F.I.R. as a substantive piece of evidence. The facts

discussed by the learned Tribunal in coming to its conclusion, as noted above, were also not adverted to by the High Court in the impugned order’.

12. Admittedly, the Tribunal instead of dealing with the matter and deciding it on the preponderance of probabilities had gone into the matter as if it was deciding the criminal case. As noticed above, the cases before the Motor Accident Claims Tribunal are not to be dealt with as in a criminal trial and once the factum of the accident is duly proved, it would be sufficient for the Tribunal to determine the compensation. Accordingly, the impugned award cannot be sustained.

13. In view of the above, the present appeal is allowed, and the impugned award is set aside. The matter is remanded back to the successor Presiding Officer of the Tribunal concerned for a decision of the claim petition afresh in accordance with law after affording opportunity of hearing to the parties concerned. The parties shall appear before the successor Presiding Officer concerned at Faridabad on **02.07.2025** at 10:00 am.

14. Pending applications, if any, also stand disposed off.

21.05.2025

Aman Jain

NOTE:

*Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*

**(ALKA SARIN)
JUDGE**