



FAO-3345-2007 (O&M)

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

**CM-10174-CII-2025 IN/AND
FAO-3345-2007 (O&M)
Date of decision : 23.05.2025**

Smt. Angrejo Devi and others

.....Appellants

Vs.

Sushil Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Goyal, Advocate,
for the appellants.

Mr. Mayank Mathur, Advocate,
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J.**CM-10174-CII-2025**

1. This is an application for impleading the legal representatives of appellant No.3-Jasmeet Singh @ Jaswant Kumar.
2. For the reasons mentioned in the application, the same is allowed and the persons mentioned in Para 2 of the application are impleaded as legal representatives of appellant No.3, subject to all just exceptions.
3. Amended memo of parties attached with the application is ordered to be taken on record.
4. Registry is directed to tag the same at appropriate place.

**FAO-3345-2007 (O&M)**

1. The present appeal has been preferred for setting aside the award dated 07.02.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal'), whereby, claim petition filed by the appellants/claimants, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 11.11.2004, at about 6:30 p.m., Randhir Singh was coming from the side of Kalayat on his motorcycle at a moderate speed. When he reached near bus stand of Village Kailram, a Maruti van bearing registration number HR-64T-0240, driven by respondent Sushil Kumar, struck against the motorcycle in a rash and negligent manner. As a result of the impact, Randhir Singh sustained multiple and grievous injuries, which ultimately led to his death. After the collision, the driver of Maruti van stopped at the spot for a moment and then sped away. The driver, Sushil Kumar, was later challaned for rash and negligent driving in connection with the accident. Following the incident, two separate claim petitions were filed by the appellants/claimants. In Claim Petition No. 165 of 2005, they sought compensation of Rs.15,00,000/- along with interest for untimely death of Randhir Singh. In a subsequent petition, Claim Petition No.4 of 2006, the appellants/claimants sought compensation of Rs.50,000/- alongwith interest for the damage caused to the motorcycle bearing registration number HR-08E-9328 and belonged to the appellants/claimants.



3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

- “1. Whether accident resulting into death of Randhir Singh and damage to vehicle No.HR-08E-9320, took place due to rash and negligent driving of vehicle No.HR-64T-0240 on the part of its driver, respondent No.1, as alleged? OPP.
2. If issue No.1 is proved, whether the claimants are entitled to compensation on account of death of Randhir Singh, if so to what amount and from whom? OPP.
3. If issue No.1 is proved, whether the claimants are entitled to compensation on account of damage to vehicle No.HR-08E-9328, if so to what amount and from whom? OPP.
4. Whether there has been any violation of the terms and conditions of the insurance policy, if so to what effect? OPR-3.
5. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. The learned counsel for the appellants/claimants contends that the learned Tribunal erred in dismissing the claim petition only on the ground that the list of witnesses filed in criminal case was not brought on the record and the Investigation Officer, a material witness, was not examined. Therefore, the present appeal be allowed and the award dated 07.02.2007 passed by the learned Tribunal be set aside.



7. *Per contra*, learned counsel for respondent No.3-Insurance Company, however, vehemently argues on the lines of the award dated 07.02.2007 and submits that the claim petition has rightly been dismissed by the learned Tribunal. He further submits that the appellants/claimants could not prove that the accident occurred with the Maruti van bearing registration No.HR-64T-0240 as the present case pertains to a hit and run case, where the identity of offending vehicle remained unverified. Therefore, he prays for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award reads as under:-

Issue No.1:

“Whether accident resulting into death of Randhir Singh and damage to vehicle No.HR-08E-9328, took place due to rash and negligent driving of vehicle No. HR-64T-0240 on the part of its driver, respondent No.1, as alleged? OPP.

8. *In order to prove this issue, claimants have examined Balwan Singh as PW3. He deposed that on 11.11.2004 at about 6.30 p.m. he was grazing his cattle near bus adda of village Kailram, when he saw that Randhir Singh, deceased was coming from the side of Kalayat on his motorcycle at a moderate speed. When he reached near bus stand, a maruti van bearing No. HR-64T-0240 driven by respondent Sushil Kumar in a rash and negligent manner, had struck against the motorcycle and as a result Randhir had received multiple and grievous injuries. The maruti van had stopped at the spot for a moment and then it had sped away. The accident took place because of the said rash driving by the maruti van driver.*

Besides the above oral evidence, the petitioners have also placed on the file copy of final report under Section 173 Cr.P.C. Ex.P.4, copy of site plan Ex.P.3, copy of remand paper E.G., copy of death report Ex.P.7, copy of MLR Ex.P.8 and copy of post mortem report Mark A.



9. The alleged accident took place on 11.11.2004 at about 6.30 p.m. and the FIR was registered on 12.11.2004. Copy of final report Ex.P4 shows that the FIR was lodged by Hari Singh, who was uncle of deceased Randhir Singh. This document produced by the claimants further shows that FIR was registered against an unknown vehicle and unknown driver. As per the complainant, he had reached the spot at about 7/7.15 p.m. and seen that a person was lying injured besides his motor cycle near bus stand, Kailram. When he went near, he saw that the injured was his nephew Randhir Singh. So he had shifted him to the hospital. It is nowhere mentioned in the FIR that Balwan Singh had seen this accident. As per Balwan Singh, he had noted down the number of the offending car, but he did not inform the police about the identity of the offending car on 11.11.2004. He was called by the police on the next day at about 9.00 a.m. and then he had disclosed the particulars of the offending vehicle. The accident is alleged to have taken place near bus stand Kailram at 6.30 p.m. Balwan Singh claims that he had seen the accident. But there is no explanation as to why he would not disclose the particulars of the offending vehicle to Hari Singh, who is alleged to have reached the spot at about 7/7.15 p.m. It is most unnatural that Balwan Singh would leave the spot while the injured was still lying there and fighting for his life. So in the natural course, he would have called for help from the village and would not have left the spot till the injured was removed to the hospital and in natural course many persons would have collected at the spot and it is unbelievable that Balwan Singh would not disclose to any of them about the particulars of the offending vehicle. So if this witness had actually been present at the spot, he would have disclosed the said particulars to Hari Singh who is stated to have removed the injured to the hospital and in that case Hari Singh would have disclosed those particulars to the police when his statement was recorded. There is a delay of more than 12 hours in the lodging of the FIR and yet Hari Singh was not able to disclose any particulars of the offending vehicle or of the driver when his statement was recorded by the police.

Balwan Singh claims that his statement was recorded by the police on the next day. But there is no material on the file to show that Balwan Singh is cited as a witness in the criminal case. The said list of witnesses filed in the criminal case, has not been produced in evidence in this case. The investigating officer of the criminal case was also a material witness. He has also not been examined. Hari Singh who lodged the FIR was also a material witness. He has also not been examined.



It is thus clear from the aforesaid discussions that the evidence produced by the claimants cannot be considered as reliable for reaching the conclusion that the accident had actually been witnessed by Balwan Singh. Hence, there is merit in the submission of counsel for insurance company that in fact it was a case of hit and run and the claimants family was not aware of the offending vehicle and they waited for more than 12 hours before lodging the FIR and even till then they could not find out the particulars of the offending vehicle and later on this false version was introduced to implicate maruti van No. HR-64T-0240 in order to succeed in obtaining compensation from the insurance company. Hence, it is held that petitioners have not succeeded in discharging the onus of this issue and have failed to prove that the accident in question had taken place with the maruti van No. HR-64T-0240 and the same was driven by respondent No.1 Sushil Kumar. So, issue No.1 is decided against the petitioners.

Issue No.2:

*“If issue No.1 is proved, whether the claimants are entitled to compensation on account of death of Randhir Singh, if so to what amount from whom?
OPP.*

10. One of the claimants Amit Kumar has appeared as PW4 and deposed that deceased Randhir Singh was his father. He was about 43 years of age and was employed as Senior Division Clerk in Construction Divn. No.9, Kaithal and getting a salary of Rs. 11,000/- per month.

PW1 is a clerk from the office of XEN, Construction Division. He proved that Randhir Singh was drawing a gross salary of Rs. 10,846/- at the time of his death. He proved the salary certificate Ex.P1.

11. The relationship of the petitioners with the deceased is not disputed. The age of the deceased mentioned as 45 years in Ex.P8 and Mark A. So in absence of any other evidence, the age of deceased Randhir Singh is taken as 45 years. In order to prove the income of deceased, PW1 has proved the salary certificate Ex.P1 showing that deceased was drawing a net salary of Rs.8166/- at the time of his death.

It has been explained by the Hon'ble Apex court in the case of New India Assurance Co. Ltd. Vs. Charlie and another, Vol. CXL (2005-2) PLR, 661 that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, then that should be



capitalized by multiplying it by a figure representing the proper number of year's purchase. The net income of the deceased has been proved as Rs.8166/-, out of which the deceased must be spending at least 1/3rd on himself, so the annual dependency of the petitioners is assessed at Rs.60,000/-. Keeping in view the age of deceased, a multiplier of thirteen would be appropriate. The petitioners would also be entitled to another sum of Rs.10,000/- towards funeral expenses etc. Thus in all, they would be entitled to compensation of Rs. 60,000 X 13 + 10,000 = Rs.7,90,000/-.

It was submitted from the side of the insurance company that the widow of deceased is received a family pension and that amount should be deducted while calculating the compensation. This argument cannot be accepted. It has been laid down by a Division Bench of our Hon'ble High Court in the case of National Insurance Co. Ltd. Vs. Renu Bala and Others, Vol. CXXXVIII-(2004-3) PLR, 320 that the family pension which is received by the claimant is not deductible while determining the dependency of the claimants. This issue is accordingly answered.

Issue No.3:

"If issue No.1 is proved, whether the claimants are entitled to compensation on account of damage to vehicle No. HR-08E-9328, if so to what amount from whom? OPP.

12. PW4 has further deposed that their motor cycle bearing No. HR-08E-9328 was also totally damaged in this accident and the said motorcycle was worth Rs.40,000/-. He has also placed on the file copy of registration certificate as Mark E, showing that the motorcycle was registered in the name of deceased Randhir Singh. He has also produced photographs Mark D1 to Mark D4 of the damaged motorcycle. It is clear from the photographs that it was not a case of total damage of the motorcycle. The involvement of the motorcycle and its damage in the accident is also proved from the report under Section 173 Cr.P.C. (EX.P4) The said evidence has not been rebutted. Considering the same, it is held that motorcycle had suffered damages of about Rs.20,000/- and the petitioners would be entitled to the said compensation. However, in view of my findings on issue No.1, none of the respondents can be held liable to pay any compensation to the claimants. Hence, this issue decided accordingly."



10. A perusal of the award shows that the learned Tribunal erred in dismissing the claim petition on the ground that the appellants/claimants failed to establish the involvement of the offending vehicle in the accident.

11. A careful examination of the record shows that the testimony of PW-3, Balwan Singh, is of crucial evidentiary value. He is the eye witness to the accident and gave a detailed and consistent account of the incident. He categorically deposed that on 11.11.2004, at about 6:30 p.m., he witnessed the Maruti van bearing registration No. HR-64T-0240, being driven in a rash and negligent manner by respondent No.1, strike the motorcycle of the deceased Randhir Singh, resulting in fatal injuries. He further stated that he had noted the registration number of the offending vehicle and disclosed the same to the police when his statement was recorded the following day, i.e. on 12.11.2004.

12. Although PW-3 was subjected to extensive cross-examination, his testimony remained firm, consistent and unimpeached. The learned Tribunal, however, chose to discredit his version on the basis that the FIR, which was lodged by Hari Singh (the uncle of the deceased), did not mention the registration number of the offending vehicle or the name of its driver, and was registered against an unknown vehicle and driver. This reasoning is legally flawed.

13. It is pertinent to note that the FIR was not got registered by PW-3, but by Hari Singh, who had arrived at the spot after the accident had occurred and had shifted the deceased to the hospital. Therefore, there was



no occasion or opportunity for PW-3 to communicate the details of the offending vehicle to the author of the FIR. The mere absence of the vehicle number in the FIR, thus, cannot be a ground to discredit the cogent and reliable testimony of an eye witness, especially when no material contradiction has been elicited during cross-examination.

14. Furthermore, it is a well-settled principle of law that the standard of proof required in criminal proceedings is not applicable to the proceedings before the Motor Accident Claims Tribunal. In claim proceedings under the Motor Vehicles Act, the test is that of preponderance of probabilities, not proof beyond a reasonable doubt. In this regard, reliance may be placed on the decision of the Hon'ble Supreme Court in **Anita Sharma v. New India Assurance Co. Ltd., 2021(1) SCC(Cri) 475**, wherein Hon'ble the Supreme Court reiterated that strict rules of evidence are not applicable in claim petitions, and the Tribunal should assess evidence with a view to doing substantial justice. The relevant extract of the **Anita Sharma's** case (supra) is reproduced as under:-

*22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in **Dulcina Fernandes v. Joaquim***



Xavier Cruz (2013) 10 SCC 646. wherein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])

(emphasis supplied)”

15. The learned Tribunal also doubted the version of the appellants/claimants on the ground that there was a delay in lodging the FIR. However, it is equally well-settled that mere delay in the registration of the FIR is not fatal to the case of the appellants/claimants in a motor accident claim petition. Reference at this stage can be made to the case of **Ravi Vs. Badrinarayan and others, 2011(4) SCC 693**, wherein Hon’ble the Apex Court has conclusively held that delay in lodging the FIR cannot be deemed fatal to motor claim proceedings, provided the claimant satisfactorily explain the delay with cogent and reasonable grounds. The relevant extracts of the **Badrinarayan’s** case (*supra*) is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer



scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

16. It is also noteworthy that PW-2, an Additional Ahlmad, deposed that the challan in the criminal case arising out of the FIR had been filed and that the case was pending for prosecution evidence. Once an FIR is registered, a final report filed, and charges framed, it constitutes *prima facie* evidence of the fact that the accident occurred due to the rash and negligent driving of the accused. In this regard, reference can be made to judgment passed by this Court in **FAO-1866-2007** titled as ‘**Smt. Gayatri Devi and others Vs. Ashwani Kumar and others**’, decided on 21.03.2025, wherein it was held that the filing of the challan and the framing of charges support the



claim of negligence for the purposes of compensation under the Motor Vehicles Act. Relevant portion of the same is reproduced as under:-

“14. Furthermore, PW3-Raja Ram, Criminal Ahlmad to the CJM, Narnaul, testified that a challan had been duly presented in FIR No. 27 dated 4.2.2005 against Respondent No.1 and the charges were already framed under Sections 279 and 304-A IPC. Jurisprudence in motor accident cases unequivocally holds that once the FIR has been registered and a charge sheet has been filed, it constitutes prima facie evidence of the fact that the accident occurred due to the negligent driving of the accused. The learned Tribunal, however, erroneously disregarded this crucial piece of documentary evidence, which lends substantial credence to the case of the appellants/claimants.”

17. Additionally, the site plan (Ex.P3) prepared during the investigation supports the version of the eye witness and corroborates the place and manner of the accident as described by the appellants/claimants. The post-mortem report (Mark A) also records that the deceased died as a result of injuries sustained in a motor vehicle accident, thereby further corroborating the occurrence of the accident.

18. The learned Tribunal also fell into error in holding that there appeared to be collusion between the appellants/claimants and the owner/driver of the offending vehicle in order to claim compensation from the insurance company. This finding is speculative and without any evidentiary basis. It is trite law, as laid down by the Hon’ble Supreme Court in **Geeta Dubey v. United India Insurance Co. Ltd., 2024 INSC 998**, that allegations of collusion must be specifically pleaded and proved by the insurance company through cogent evidence. In the present case, the



insurance company has not adduced any evidence to substantiate such a plea. Therefore, the finding of collusion is wholly untenable and based on conjecture and surmises.

19. In view of the above discussion, and in light of the settled legal principles, this Court is of the considered opinion that the appellants/claimants have successfully established, on the touchstone of preponderance of probabilities, that the accident in question occurred due to rash and negligent driving of vehicle No. HR-64T-0240 by respondent No.1. The impugned findings of the learned Tribunal are accordingly set aside. The appellants/claimants are held entitled to compensation in accordance with law.

20. With respect to determination of compensation for damages caused to motor cycle bearing No. HR-08E-9328, is concerned, the learned Tribunal has assessed the compensation as under:-

“Issue No.3:

If issue No.1 is proved, whether the claimants are entitled to compensation on account of damage to vehicle No. HR-08E-9328, if so to what amount from whom? OPP.

12. PW4 has further deposed that their motor cycle bearing No. HR-08E-9328 was also totally damaged in this accident and the said motorcycle was worth Rs.40,000/-. He has also placed on the file copy of registration certificate as Mark E, showing that the motorcycle was registered in the name of deceased Randhir Singh. He has also produced photographs Mark D1 to Mark D4 of the damaged motorcycle. It is clear from the photographs that it was not a case of total damage of the motorcycle. The involvement of the motorcycle and its damage in the accident is also proved from the report under Section 173 Cr.P.C. (EX.P4) The said evidence has not been rebutted. Considering the same, it is held that motorcycle had suffered damages of about Rs.20,000/- and the petitioners



would be entitled to the said compensation. However, in view of my findings on issue No.1, none of the respondents can be held liable to pay any compensation to the claimants. Hence, this issue decided accordingly.”

21. I have perused the finding of the learned Tribunal and this Court is of the considered opinion that the learned Tribunal has rightly assessed the compensation to the tune of Rs.20,000/- after taking into consideration the entire evidence on record. Consequently, the appellants/claimants are held entitled to the compensation of Rs.20,000/- on account of damage caused to motor cycle bearing No. HR-08E-9328.

RELIEF

22. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is **allowed** and the award dated 07.02.2007 is set aside accordingly. The appellants/claimants are entitled to the compensation to the tune of Rs.20,000/-.

23. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R. Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

24. So far as finding on Issue No.4 i.e. *Whether there has been any violation of the terms and conditions of the insurance policy, if so to what effect?*, is concerned, the learned Tribunal has held as under:-



“This issue was not pressed by the counsel for respondent-insurance company at the time of arguments. Hence, this issue is decided against the insurance company.”

Meaning thereby, the Insurance Company is held liable to pay the compensation.

25. The respondents No.3 is directed to deposit the amount of compensation along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed to disburse the amount of compensation along with interest in the accounts of the appellants/claimants in equal share. The appellants/claimants and legal representatives of appellant No.3-Jasmeet Singh @ Jaswant Kumar are directed to furnish their bank account details to the Tribunal.

26. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Mayank Mathur, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

27. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

23.05.2025
Virrendra

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