

**IN THE HIGH COURT OF PU NJAB AND HARYANA AT CHANDIGARH**

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FAO-1992-2011 (O&M)**Date of Decision : 25.03.2025**

Devender Singh and Others

....Appellants

VERSUS

Avesh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Kumar, Advocate for the appellants.

Mr. Man Mohan, Advocate for

Mr. Suman Jain, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the claimant-appellants aggrieved by the award dated 19.11.2010 passed by the Motor Accident Claims Tribunal, Faridabad whereby the claim petition was dismissed on the ground that there was a delay in lodging the First Information Report (FIR) and the name of the driver of the offending vehicle was not mentioned in the FIR.

2. Learned counsel for the claimant-appellants has contended that the evidence was led by the claimant-appellants herein to show that it was a case of negligence on the part of the driver of the offending vehicle. Learned counsel for the claimant-appellants has relied upon the upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Chamundeswari & Ors. [2021 (4) RCR (Civil) 494]** to contend

that in matters relating to the motor accident claims, the Tribunal has to give weightage to the evidence produced before it over the contents of the FIR.

3. *Per contra* learned counsel for respondent No.3 has contended that the conduct of the claimant-appellant No.1 has also to be seen in the present case as despite being injured he did not get any treatment and there was no evidence regarding his treatment.

4. Heard.

5. In the present case the claim petition was dismissed primarily on the ground that the FIR was lodged a day later and name of the driver of the offending vehicle was not mentioned in the FIR. Dr. Davinder Singh stepped into the witness-box as PW-1 and testified that the offending truck was being driven by its driver in a rash and negligent manner and during his cross-examination he testified that after the accident, the driver of the truck was got stopped at the spot by the public and was beaten. The Tribunal while deciding issue No.1 as regards taking place of the accident due to rash and negligent driving of the truck by its driver has rendered its finding by giving weightage to the contents of the FIR whereas the evidence recorded before the Tribunal suggests that the accident had taken place due to rash and negligent driving of the offending truck. Hon'ble Supreme Court in the case of **Chamundeswari** (supra) has 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.”

6. Further, Hon’ble Supreme Court in the case of **Parameshwar Subray Hegde Vs. New India Assurance Co. Ltd. & Anr [Civil Appeal No.2223 of 2025 arising out of SLP (C) No.27072 of 2024 decided on 10.02.2025]** has held that even mere mis-description of the make of the vehicle would not be treated as a ground for inconsistency. Further, in motor vehicle accident cases, delay of one day in lodging the FIR cannot be said to be fatal and the finding of the Tribunal in this regard is not sustainable in the eyes of law.

7. The argument of learned counsel for respondent No.3 that the conduct of the claimant-appellant No.1 has to be seen and that despite injuries he has not been admitted in the hospital and that there was no evidence on the record qua his injuries deserves to be rejected. The claim petition has been filed on account of death of Rachna wife of the claimant-

appellant No.1 and not for the injuries received by him. Merely because claimant-appellant No.1, who was travelling with his wife, did not produce any evidence of the injuries received by him would be no ground for rejecting the claim petition.

8. In view of the above, the impugned award cannot be sustained and the same is accordingly set aside. The matter is remanded to the successor Presiding Officer of the Tribunal concerned for decision afresh in accordance with the law. Parties to appear before the Tribunal concerned on **09.04.2025 at 10.00 am.**

9. Disposed off. Pending applications, if any, also stand disposed off.

25.03.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO