

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

... Appellant(s)

... Respondent(s)

... Appellant(s)

... Respondent(s)

... Appellant(s)

... Respondent(s)

... Appellant(s)

... Respondent(s)

Mr. Abhishek Thakur, Advocate for
Mr. Arnav Sood, Advocate for respondent No.1.

Mr. R.C. Gupta, Advocate for respondent No.2.

Mr. Munish Gupta, Advocate with
Mr. Anil Saini, Advocate for respondent Nos.3(i) to 3(iii).

ALKA SARIN, J. (Oral)

1. This order shall dispose off the above captioned appeals filed by the claimant-appellants aggrieved by the impugned award dated 20.11.2013 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'Tribunal') whereby four claim petitions were dismissed. For the sake of clarity, the parties are being referred to as claimants, owner and driver of the offending vehicle (Car bearing Registration No.PB-07-X-3772) and the Insurance Company.

2. Brief facts relevant to the present *lis* are that on 28.05.2012 the claimants - Venika Jain, Sheetu Jain, Sachin Jain alongwith Silvi Jain (deceased) - were travelling in Swift Dzire Car bearing registration No.PB-07-X-3772 which was being driven by respondent No.3 - Rajan Jain, from Asha Devi Mandir to Hoshiarpur after paying obeisance. The said car was followed by an Alto car in which Vipin Jain, Meena Jain, Anoop Jain and Sanhat Jain were travelling. The Swift Dzire Car was being driven by respondent No.3 - Rajan Jain - in a rash and negligent manner and at high speed. At about 2.00 PM on 28.05.2012, when the offending vehicle reached in the area of Village Kotla Gaunspur, near Kohrian Diya Kullian, it went out of control and struck against a roadside tree as a result of which all the occupants of the car sustained injuries on their persons and they were shifted to Civil Hospital, Hoshiarpur except the driver of the offending vehicle, namely, Rajan Jain. Rajan Jain was shifted to Narad Hospital, Hoshiarpur where he succumbed to his injuries on the same day. Smt. Silvi Jain died on

the same day in Civil Hospital, Hoshiarpur and the other injured claimants were shifted to different hospitals for treatment. A DDR bearing No.29(A), dated 28.05.2012 was recorded at Police Station Sadar, Hoshiarpur. No criminal case was registered against the driver of the offending vehicle.

3. Written statement was filed by the Insurance Company stating that the driver of the offending vehicle was not holding a valid and effective driving licence and the claim petitions were filed in collusion with the owner of the offending vehicle. The involvement of the car in the accident was also denied and that there was no rashness and negligence on part of the driver of the offending vehicle.

4. The Tribunal had dismissed all the four claim petitions vide a common award dated 20.11.2013 on the ground that firstly there was no FIR which was lodged and that no eyewitness had been examined in the case. All the claimants were said to be interested as some of them were occupants of the car and all the occupants of the car belonged to the same family.

5. Learned counsel for the claimants has pointed out to the insurance policy (Ex.R5) to contend that the said policy is a comprehensive policy and, hence, all the occupants of the car would be covered. Learned counsel has further pointed out that even the claim qua damage to the car has been cleared by the Insurance Company.

6. Learned counsel for the Insurance Company is not in a position to deny that the insurance policy in the present case was a comprehensive policy and, hence, would cover all the occupants travelling in the car. Learned counsel further is not in a position to deny that the claim for the damage to the car has also been cleared by the Insurance Company.

7. I have heard the learned counsel for the parties.

8. In the present case, all the four claim petitions were consolidated before the Tribunal and during the evidence as many as 14 witnesses were examined by the claimants. AW6 – Vipin Jain – the alleged eyewitness has narrated the factum of happening of the accident and he has proved on record all the documents including the registration of DDR (Ex.P15). Learned counsel for the Insurance Company before the Tribunal has also tendered in evidence the Insurance Policy (Ex.R5) which is a comprehensive policy. Merely non-lodging of a FIR cannot be a ground for rejection of the claim petitions. In the present case, not only the insurance policy is a comprehensive policy but also a DDR (Ex.P15) was lodged. Further still, because the occupants of the car belonged to the same family, they cannot be held to be interested witnesses.

9. It is trite that the cases under the Motor Vehicles Act, 1988 are to be decided on the touchstone of preponderance of probabilities and weightage has to be given to the evidence recorded before the Tribunal. Hon'ble Supreme Court in the case of **National Insurance Company Limited V/s Chamundeswari & Ors. [2021 (4) RCR (Civil) 494]** 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.”

10. Similar view was taken in the case of **Halappa V/s 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 PW3. 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.”

11. Further, in the case of **Ramamurthy V/s 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. Qua non-examination of eye-witness, Hon’ble Supreme Court has held as under :

*“31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in *Dulcina Fernandes and Ors. v. Joaquim Xavier Cruz* and Anr. 2013(4) RCR (Civil) 751, faced a similar situation where the evidence of claimant's eye-witness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was *prima facie* sufficient to establish that the respondent was negligent. In the present case, therefore,*

the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.”

13. Some of the claimants were eyewitnesses and their statement cannot be discarded on the ground that no independent eyewitness was not examined. In view of the above, the impugned award cannot be sustained in law and the same is hereby set aside. The matter is remanded to the successor Presiding Officer of the Tribunal concerned for a decision on the claim petitions afresh on merits in accordance with law. The parties shall appear before the Tribunal concerned on **04.08.2025** at 10:00 am.

14. Since the claim petitions pertain to the year 2012, the Tribunal is requested to conclude the matter, in accordance with law, within a period of six months from today.

15. All the appeals stand disposed off accordingly. Pending applications, if any, also stand disposed off.

10.07.2025

Yogesh Sharma

(ALKA SARIN)

JUDGE

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