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

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**FAO-5765-2014 (O&M) with
XOBJC-76-CII-2018
Date of decision : 14.07.2025**

Reliance General Insurance Co. Ltd. ...... Appellant

versus

Kunal and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sanjeev Kodan, Advocate
for the appellant.

Mr. Rajesh Bansal, Advocate
for respondents No.1 to 3, 5/cross objectors.

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PANKAJ JAIN, J. (Oral)

CM-16009-CII-2014

This is an application for condonation of delay of 82 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 82 days in filing the appeal stands condoned.

Main case

1. By way of instant order, I intend to dispose off the afore captioned two cross appeal filed against award dated 11.02.2014 passed by MACT, Panipat allowing the petition filed under Section 166 of the Motor Vehicles Act, 1988 by the cross-objectors/respondents seeking compensation on account of death of Madan Kumar, who lost his life in a motor vehicular accident dated 11.01.2011 at the age of 37 years.

2. Insurance company is in appeal aggrieved of findings recorded by the Tribunal on issue No.1 questioning the involvement of the offending insured vehicle and thereby denying its liability to pay the compensation.

3. Mr. Kodan while assailing the findings submits that the FIR pertaining to accident Ex.P3 was registered on the statement made by one Ramesh Kumar. He was never examined before MACT. Ramesh Kumar turned hostile before Criminal Court which led to acquittal of the driver of the offending vehicle. He thus submits that the entire version put forth by the claimants has come under cloud.

4. *Per contra*, counsel for the claimants submits that it is a matter of record that FIR Ex.P-3 was registered which led to investigation by the police authorities. After investigation, police report was filed under Section 173 Ex.P5. The charges were framed by the criminal trial. Driver of the offending vehicle was put to trial. He submits that even though Ramesh Kumar was not examined, but one Ram Niwas appeared as PW-3 who is also an eye witness to the accident and fully proved the version of the claimants.

5. Having heard counsel for the parties and after going through the records of the case, this Courts finds that counsel for the insurance company is not in a position to dispute that the registration of FIR and filing of the police report after investigation is matter of record. So far as issue regarding standard of proof in MACT cases is concerned, the same stands answered by Supreme Court in the case of ***Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646.*** As per which,

the same is based upon preponderance of probability and is beyond reasonable doubt.

6. The same view has opted by Supreme Court in the case of ***ICICI Lombard General Insurance Co. Ltd. vs. Rajani Sahoo reported as 2025(2) SCC 599***, observing as under:-

> “xx xx xx
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> 7. The core contention of the appellant is that the Tribunal as also the High Court relied on the fraudulent chargesheet prepared by the respondents in connivance with the police. In short, the contention of the appellant is that the High Court erred in relying on the chargesheet to arrive at the conclusion that the accident in question in which Udayanath Sahoo lost his life had occurred due to the rash and negligent driving of the truck insured with the appellant. Though respondent Nos.1 and 2 did not file any counter affidavit, the learned counsel appearing for them would submit that there is absolutely no illegality in relying on such documents consisting of FIR and the final report prepared in relation to the accident in question by the police, for the purpose of considering the question of negligence in a motor vehicle accident case. That apart, it is contended that the appellant despite attributing connivance of the respondents with the police, the appellant failed to prove the same. In short, it is submitted that the appeal is devoid of merit and the same is liable to be dismissed.
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> 8. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of Mangla Ram v. Oriental Insurance Co.

Ltd. [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819 : 2018 INSC 311], held in para No.27, thus : (SCC p.672)

> "27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13]*, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. *Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly*. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same

may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal". (Emphasis Supplied)

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi [Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510 : 2023 INSC 621], this Court held thus : (SCC p. 514, para 12)

"12….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 v. Joaquim Xavier Cruz* [*Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13]* which has referred to the aforesaid judgment in

Bimla Devi [*Bimla Devi v. Himachal RTC*, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]."

11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible. 12. It is also a fact that the appellant had attributed that the respondent claimants connived with police and fraudulently prepared the chargesheet. The contention is that the vehicle insured with the appellant was not involved in the accident and the accident had occurred solely due to the rash and negligence on the part of the deceased. But the evidence on record would reveal that pursuant to the filing of the final report, cognizance was taken for rash and negligent driving which resulted in the death of Udayanath Sahoo."

7. In the presence of overwhelming evidence on record to show that the accident was in fact caused due to rash and negligent driving of respondent No.6-Gordhan. This Court finds that the findings recorded by Tribunal on issue No.1, cannot be faulted and ordered to be maintained.

8. The claimants have filed cross objections questioning the quantum of compensation. Tribunal while calculating the compensation observed as under:-

"21. Therefore, if the actual salary, last drawn, was Rs. 14,724/-, 50% of the same will be Rs.7,362, which will be added to arrive at actual salary. In this way, actual salary of the deceased comes to Rs.22,086.00 (14,724 + 7,362), which, in round figure, comes to Rs.22,000/-. Keeping in mind the fact that some expenses would have been incurred by the deceased towards his personal expenses, cut of 1/3 will be appropriate, which comes to Rs.7.300 approximately. As such, Rs. 14,700/- shall be the amount which would have been spent by the deceased upon his Family/dependents. In this way, annual dependency comes to Rs.14,700 x 12 = 1,76,400/- and this amount, when multiplied by multiplier of 15, comes to Rs.26.46,000/-. However, claimant Balwan Singh, being major brother of deceased Madan and as admitted by PW2 Ratti Ram, during his cross examination himself, being an agriculturist, can not be held entitled to any compensation on account of death of deceased Madan in the present accident.

22. In this way, claimants Kunal, Puram, Ratti Ram and Parshadi are held entitled to the compensation under various heads as follows:

Loss of dependency	Rs. 26,46,000/-
Loss of love/affection	Rs. 10,000/-
Loss of estate	Rs. 10,000/-
Transportation	Rs. 10,000/-
Funeral and last rites	Rs. 10,000/-
Total	**Rs.26,86,000/-"**

9. Keeping in view the ratio of law laid down by Supreme Court in the case of ***'National Insurance Company Limited vs. Pranay Sethi and others', (2017) 16 SCC 680, 'Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121***, this Court finds that the quantum of compensation needs to be reworked.

10. The salary of the deceased has been taken on actual basis i.e. Rs.14,724/- which calls for no interference. Keeping in view that the deceased was Government employee, 50% of future prospects need to be added. Deduction of 1/3rd has been wrongly applied, which needs to be pegged down to 1/4th to calculate the dependency. Amount under the conventional heads of loss and consortium has also been wrongly

awarded. The same is enhanced to Rs.48,000/- for each of the claimants apart from Balwan Singh. Rs.18,000/- is awarded under the head of funeral expenses and Rs.18,000/- for loss of estate.

11. At this stage, Mr. Kodan submits that it has come on record that the deceased was a Government employee. He refers to ratio of law laid in ***Reliance General Insurance Comp. Ltd vs Shashi Sharma 2016 (9) SCC 627,*** to submit that whatever has been paid by the State authorities under the compensation rules, the same need to be deducted from the awarded amount.

12. Ratio of ***Shashi Sharma's case (supra)*** was further clarified by Supreme Court in ***National Insurance Company Ltd. vs. Birender and others 2020(1) RCR Civil 694***, observing as under:-

> "18. As a matter of fact, in the present case, the High Court committed manifest error in assuming that the respondent Nos. 1 and 2 would be eligible to receive financial assistance under the 2006 Rules. The eligibility to receive such financial assistance has been spelt out in Rule 3 of the 2006 Rules read with the provision of Pension/Family Pension Scheme, 1964. It appears that major sons and married daughters are not included in the definition. However, we need not dilate on that aspect in the present proceedings any further. It has come in the evidence of Gobind Singh, Clerk in SDM Office (PW-1) that the legal representatives of the deceased have not submitted any request for getting financial assistance till he had deposed. Indeed, respondent No. 1, who had entered the witness box, did depose that they had applied for getting salary of their deceased mother. The fact remains that there is no clear evidence on record that respondent Nos. 1 and 2 are held to be eligible to get financial assistance or in fact, they are getting such

> financial assistance under the 2006 Rules. The High Court, therefore, instead of providing for deduction of the amount receivable by the legal representatives of the deceased on this count (under the 2006 Rules), from the compensation amount, should have independently determined the compensation amount and ordered payment thereof subject to legal representatives of the deceased filing affidavit/declaration before the executing Court that they have not received nor would they claim any amount towards financial assistance under the 2006 Rules, so as to become entitled to withdraw the entire compensation amount.
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> xxxxx
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> 22. xxxxxxx The respondent Nos. 1 and 2, therefore, can be permitted to withdraw the compensation amount only upon filing of an affidavit-cum-declaration before the executing Court that they have not received nor would claim any amount towards financial assistance under the 2006 Rules and if already received or to be received in future on that account, the amount so received will be disclosed to the executing Court, which will have to be deducted from the compensation amount determined in terms of this order. The compensation amount, therefore, be paid to the respondent Nos. 1 and 2 subject to the above and upon giving an undertaking before the executing Court to indemnify the insurance company (appellant) to that extent."

13. In view thereof, the aforesaid issue is left to be raised before and adjudicated by the Executing Court.

14. With the aforesaid observations, the present appeals are disposed off in view of the aforesaid order.

15. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

14.07.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No