



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

208

**FAO-827-2013 (O&M)
Date of decision : 10.01.2025**

Oriental Insurance Company Limited

..... Appellant

versus

Gurjit Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashwani Talwar, Advocate and
Mr. Deepak Goyat, Advocate
for the appellant.

Mr. J.S. Cooner, Advocate for
respondents No.1 to 3-claimants.

PANKAJ JAIN, J. (Oral)

1. Insurance company is in appeal aggrieved of award dated 07.11.2012 passed by MACT, Patiala whereby the claim petition filed by the claimant under Section 166 of the Motor Vehicles Act has been allowed granting him compensation of Rs.4,20,964/-.

2. Claimant filed claim petition seeking compensation on account death of Jarnail Singh in a motor vehicular accident. As per the claimants on 02.08.2000, Jarnail Singh lost his life in a motor vehicular accident caused due to rash and negligent driving of Rajesh Kumar. Jarnail Singh who was riding scooter as pillion rider was hit from behind by offending vehicle driven by Rajesh Kumar. FIR came into being.

3. Claim petition was contested by owner and driver denying the allegations levelled in the claim petition. Insurance company, who



was impleaded as respondent No.3, contested the claim petition denying its liability on the ground that the driver was not having valid and effective driving licence on the date of accident.

4. Following issues were framed by the Tribunal:-

“1. Whether the road accident, wherein Jarnail Singh son of Gurdial Singh had died took place on 07.12.2000 due to rash and negligent driving of Maruti car bearing registration No.HP-05P-0072 by its driver Rajesh Kumar respondent No.2? OPP

2. Whether the driver of the offending vehicle was not having a valid and effective driving licence and the vehicle was being driven in violation of terms and conditions of the Insurance Policy? OPR-3.

3. Whether the claimants are entitled to compensation, if so to what extent and from whom? OPP.”

5. Answering issues in favour of the claimants, the claim petition stands allowed.

6. While assailing the impugned award passed by the Tribunal, Mr. Talwar submits that a claim petition was initially preferred under Section 163-A before MACT, Ambala. The same was dismissed as withdrawn vide order dated 10.11.2010. Without there being any permission to file fresh petition on the same cause of action and the present petition preferred at MACT, Patiala was not maintainable in the absence of there being any permission to file fresh one. He further submits that Tribunal relied on testimony of Prem Chand PW-5 as eye witness. He resiled from his statement during



criminal trial. Other alleged eye witnesses never appeared. This led to acquittal of respondent-Rajesh Kumar, false implication of moved vehicle is evident. The accident having not been proved, findings recorded by the Tribunal on issue No.2 cannot be sustained.

7. The issue with respect to filing of the instant petition without there being any liberty to file fresh one having been granted to the claimants at the time the earlier petition filed under Section 163-A was dismissed as withdrawn, already stands answered by this Court in FAO No.1977 of 2007 decided on 10.11.2010 observing as under:-

“xx xxx

It is significant that in this case the Tribunal had found the involvement of the vehicle to have been established and even the entitlement of the claimants as representatives of the deceased had been upheld. The dismissal arose on a technical issue by invoking the principle enunciated under Order 23 Rule 1 relating to withdrawal of case without seeking for permission for filing a fresh petition on the same cause of action. The Motor Vehicles Act so far as it makes provision for claiming compensation in Tribunal specially for claiming compensation in the Tribunal specially constituted under the Act enacts a welfare principle and I cannot apply Order 23 Rule 1 provisions indiscriminately without minding whether it causes any prejudice to the contesting parties or not. If the vehicle had been involved and the accident was true the dismissal of the petition for default or abandonment of proceedings before Tribunal and prosecution of the case is yet another Tribunal on the same particulars of accident cannot be treated in isolation without seeing whether such a proceeding has caused any material prejudice. If the merits of the claim cannot be attacked, I cannot allow a technical plea of abandonment of case by not taking permission for filing a petition before another Tribunal as barring a fresh petition. The finding regarding maintainability of the petition is therefore, set aside. The Tribunal has already found the negligence of the driver of the vehicle to have been



established. The case has to be now dealt with for the ascertainment of compensation. The matter is therefore, remanded to the Tribunal for determination of the compensation in accordance with law”.

8. Thus, objection raised by Mr. Talwar invoking Order 23 Rule 1 CPC depends upon the result on merits of the case. Apart therefrom, it is matter of record that the earlier petition was filed under Section 163-A, whereas the present petition has been filed under Section 166 of the Motor Vehicles Act.

9. Coming on to the reliance by the Tribunal on the testimony of Prem Chand, Mr. Talwar does not dispute that the testimony of Prem Chand before the Criminal Court was never put to him when he appeared as PW-5 before the Tribunal. Accordingly, the statement made by Prem Chand before Criminal Court has been rightly discarded in view of Section 33 of the Evidence Act. Thus, the plea raised by Mr. Talwar cannot be accepted.

10. Apart therefrom, Tribunal rightly recorded that the best person to dispute the negligent and rash driving was Rajesh Kumar. After filing written statement, Rajesh Kumar did not step into the witness box to rebut the allegations levelled in the claim petition. Contents of claim petition stand corroborated by the testimony of Prem Chand. No effort was made by the insurance company to examine Rajesh Kumar to controvert the testimony of Prem Chand.

11. In view thereof, the evidence led by the claimants with respect to rash and negligent driving of Rajesh Kumar has remained unrebutted. Thus, no fault can be found with the findings recorded by the Tribunal on issue No.1. In view of the findings on merit, the



objection raised by Mr. Talwar invoking Order 23 Rule 1 regarding maintainability of present petition stands overruled.

12. Nothing concrete could be said with respect to the quantum of compensation.

13. Finding no merit in the present appeal, the same is ordered to be dismissed.

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

(PANKAJ JAIN)
JUDGE

10.01.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No