

2025:PHHC:067047



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

254

FAO-6194-2016 (O&M)

Date of Decision : 19.05.2025

HASHINA AND ORS

.... Appellants

VERSUS

SARIF AND ORS

.... Respondents

AND

254-A

FAO-6341-2016 (O&M)

UMAR MOHD. (DECEASED) THR LRS

.... Appellants

VERSUS

SARIF AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Gupta, Advocate
for the appellants in both the appeals.

None for respondent No.1 (the driver) in both the appeals.

Respondent No.2 (the owner) proceeded against *ex parte*
vide order dated 04.11.2019 in both the appeals.

Mr. Shubham Gupta, Advocate for
Mr. D.P. Gupta, Advocate
for respondent No.3-Insurance Company in both the appeals.

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off the above noted two appeals being FAO-6194-2016 filed by the claimant-legal representatives of deceased, namely, At-ur Rehman and FAO-6341-2016 filed by Umar Mohd. (claimant-injured) impugning the award dated 21.11.2015 passed by the

Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') dismissing the claim petitions.

2. Before the Tribunal, MACT Case No.395 of 2014 titled as 'Hashina & Ors. V/s Sarif & Ors.' was filed by the claimant-legal representatives of deceased, namely, At-ur Rehman and MACT Case No.430 of 2014 titled as 'Umar Mohd. V/s Sarif & Ors.' was filed by the claimant-injured, namely, Umar Mohd. on account of the injuries received by him in a motor vehicular accident which took place on 08.12.2013.

3. The parties herein are being referred to as the driver, the owner, the claimant-appellants, the claimant-injured and the Insurance Company for the sake of clarity.

4. Brief facts relevant to the present *lis* are that on 08.12.2013 Umar Mohd. (claimant-injured in FAO-6341-2016) and deceased, namely, At-ur Rehman (on account of whose death the claimant-appellants have preferred FAO-6194-2016) were going from Village Ghasera, Tehsil Nuh, District Mewat to Village Kumharhera, Tehsil Hathin, District Palwal on motorcycle bearing registration No.HR-27-G-0936 which was being driven by Umar Mohd. (claimant-injured) on the correct left side of the road. At-ur Rehman (since deceased) was a pillion rider. At about 11:30 am when they reached in front of Balaji Petrol Pump, Alwar-Sohna Road, Nuh, the offending vehicle i.e. Tata Safari bearing registration No.HR-26-AQ-5506 came from extreme left side and hit the motorcycle from the side. Umar Mohd. and At-ur Rehman both sustained grievous injuries and they were

shifted to Nalhar Medical College, Nuh. At-ur Rehman was referred to Safdarjung Hospital, New Delhi where he died on 18.12.2013.

5. The claim petitions were contested by the driver and the owner. Since the factum of the accident was denied, it was stated by them that the claimant-appellants and the claimant-injured were not entitled to any compensation. It was further stated that the vehicle was insured and hence if any liability is to be fastened, the same would be that of the Insurance Company. Insurance Company also filed its written statement raising various preliminary objections. The factum of the accident was denied. The injuries received by Umar Mohd. and At-ur Rehman were also denied.

6. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether the accident in question was caused by respondent No.1 while driving the vehicle No.HR-26-AQ-5506 rashly and negligently and caused death of At-ur Rehman and also caused injuries to Umar Mohammed, the relatives of petitioners ? OPP
- 2) If issue No.1 is proved, whether the petitioners are entitled for compensation, if so, to what effect and from whom ? OPP
- 3) Whether respondent No.1 was not having valid and effective driving licence at the time of alleged accident ? OPR

4) Whether respondents No.1 and 2 have violated the terms and conditions of the insurance policy ? OPR

5) Relief.

7. The Tribunal dismissed both the claim petitions vide the impugned award dated 21.11.2015. Hence, the present two separate appeals by the claimant-appellants and the claimant-injured.

8. Learned counsel for the claimant-appellants and the claimant-injured would contend that the Tribunal even without referring and advertng to the evidence led before it, has dismissed the claim petitions only on the ground that there was a delay in lodging the FIR. Learned counsel, in support of his arguments, has relied upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited V/s Chamundeswari & Ors. [2021 ACJ 2558 (SC)]**.

9. Respondents No.1 and 2 i.e. the driver and the owner of the offending vehicle have not put in appearance despite service.

10. *Per contra*, learned counsel for respondent No.3-Insurance Company would contend that there was delay in lodging the FIR and therefore the Tribunal had rightly rejected the claim petitions.

11. Heard.

12. The 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’.

Further still, mere delay in lodging of the FIR cannot be a ground for rejection of the claim petitions without even advertng or referring to the evidence led before the Tribunal.

13. In view of the fact that the Tribunal, solely on the ground that there was delay in lodging the FIR, has rejected the claim petitions, the impugned award cannot be sustained and the same is accordingly set aside. The matter is remanded back to the successor Presiding Officer of the Tribunal concerned for decision of the claim petitions afresh, in accordance with law. The parties shall appear before the Tribunal concerned on 01.07.2025 at 10:00 am.

14. In view of the above, both the appeals being FAO-6194-2016 and FAO-6341-2016 are disposed off. Pending applications, if any, also stand disposed off.

19.05.2025

Aman Jain

(ALKA SARIN)

JUDGE

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