



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

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**FAO-8891-2014 (O&M)
Date of Decision : 10.03.2025**

SHAHNAJ AND ANR.

.... Appellants

VERSUS

LAKHAN CHAND AND ANR.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Gupta, Advocate for the appellants.

None for respondent No.1.

Mr. Punit Jain, Advocate for respondent No..2.

ALKA SARIN, J. (ORAL)

1. Present appeal has been preferred by the claimant-appellants challenging the award dated 30.07.2014 passed by the Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') whereby their claim petition filed under Section 166 of the Motor Vehicles Act was dismissed on the ground of delay in lodging the FIR and the fact that the accident had occurred on 22.05.2012 whereas the injured, in order to obtain disability certificate, had appeared before the Medical Board on 23.06.2012 and that it could not be established that the injured got injuries as a result of the accident in question or by fall from the roof or tree.

2. Learned counsel for the claimant-appellants would contend that the delay in lodging the FIR was occasioned due to the fact that the claimant-appellants remained admitted in the hospital from 22.05.2012 to 30.05.2012 and the relevant documents pertaining to hospitalization were

also produced and proved on record. Learned counsel for the claimant-appellants has relied upon a judgment of the Hon'ble Supreme Court in the case of **Ravi vs. Badrinarayan & Ors. [2011(2) RCR (Civil) 190]** to contend that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases and has further placed reliance upon the case of **Anita Sharma & Ors. V/s The New India Assurance Co. Ltd. & Anr. [2021 (1) RCR (Civil) 200]**.

3. None has put in appearance on behalf of respondent No.1.

4. *Per contra* learned counsel for respondent No.2 would contend that the claim petition has rightly been dismissed inasmuch as there was a delay in lodging the FIR.

5. Heard.

6. In the present case the claim petition was dismissed on the grounds of delay in lodging the FIR as also due to the fact that the accident had occurred on 22.05.2012 whereas the injured appeared before the Medical Board on 23.06.2012 and that it could not be established whether the injured got injuries as a result of the accident in question or as a result of falling from the roof or tree. The accident had taken place on 22.05.2012 and the FIR was lodged on 25.06.2012 as is apparent from a copy of the FIR (Ex.P75) i.e. after a delay of about one month and three days. As per the statements of PW-1, namely, Mubin Ansari, Record Keeper, Saniya Hospital, Alwar, the claimant-appellant No.1, was admitted in the said hospital on the same day and this witness has proved on record the treatment record as Ex.P1 to Ex.P66. Similarly, the treatment record of claimant-

appellant No.2 was proved on record by PW-2, namely, Prem Chand Sharma, Record Keeper, Khandaka Hospital, Jaipur. Father of the injured claimant-appellants stepped into the witness as PW-3 and testified about the date, time and place of the accident in question. This witness testified about the detailed period of treatment of his children, which reveals that due to treatment of his children he could not lodge the FIR in time. Learned counsel for the respondents could not elicit anything from the cross-examination of the above witnesses to prove that the accident in question had not taken place as alleged. Even no suggestion has been put to these witnesses that the injured claimant-appellants did not receive any such injuries in the accident in question or that the injuries were received by them due to a fall etc. A perusal of the final report (Ex.P76) also reveals that the challan under Sections 279, 337, 338 IPC against respondent No.1-owner/driver has already been presented before the Illaqa Magistrate concerned.

7. In motor accident cases the delay in lodging the FIR would not be fatal to the claim. Hon'ble Supreme Court in the case of **Ravi** (*supra*), wherein there was a delay of 03 months in lodging the FIR, held as under :

'21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other

words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.'

8. It is well settled that in motor accident claim cases once the foundational fact, namely, the actual occurrence of the accident has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver. The standard of proof to be borne in mind must be preponderance of probabilities and not the strict standard of proof beyond all reasonable doubt which is followed in a criminal case. Reference in this regard can be made to a judgment of the Hon'ble Supreme Court in the case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020 (13) SCC 486]**.

9. Further in **Anita Sharma's** case (supra) it was held as under :

'22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646. wherein this Court reiterated that:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC

530: (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri)
1101])"

(emphasis supplied)

23. *The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof.'*

10 As discussed above, there is a delay of about one month and three days in lodging the FIR, which has satisfactorily been explained by the

claimant-appellants and hence the finding of the Tribunal in that regard is erroneous.

11. In view of the above, the impugned award passed by the Tribunal dismissing the claim petition of the claimant-appellants 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 of the claim petition afresh, on merits, in accordance with the law. Parties shall appear before the Tribunal concerned on **07.04.2025 at 10.00 am**.

12. Present appeal stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

10.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

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