



(224)

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

FAO-3767-2017 (O&M) with
XOBJ-225-CII-2017
Reserved on:- 25.08.2025
Pronounced on:- 05th September, 2025

Magma HDI General Insurance Co. Ltd.

...Appellant(s)

Versus

Raj Kumari and others

...Respondent(s)

FAO-3821-2017 (O&M) with
XOBJ-230-CII-2017

Magma HDI General Insurance Co. Ltd.

...Appellant(s)

Versus

Darshna Devi and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Vishal Aggarwal, Advocate,
for the appellant.

Mr. Tushar Gera, Advocate,
for the respondents.

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VIRINDER AGGARWAL, J.

1. Motor Accident Claims Tribunal (in short the 'Tribunal'), Bhiwani vide common Award dated 18.04.2017 has disposed of two claim petitions filed by respondents-claimants.
2. Aggrieved by the Award, appellant-insurance company filed FAO-3767-2017 and FAO-3821-2017 on the ground that liability of insured vehicle has been wrongly fixed and excessive compensation has been awarded,

whereas the respondents-claimants preferred XOBJ-225-CII-2017 in FAO-3767-2017 and XOBJ-230-CII-2017 in FAO-3821-2017 assailing the Award for grant of less compensation.

3. Briefly stated, Arun Kumar and his brother Parveen Kumar on 06.04.2015 left Bhiwani for Village Bass on their respective motorcycles. Vijay Kumar was made to sit as pillion rider on the motorcycle of Arun Kumar. Parveen Kumar stopped the motorcycle to relieve his urge for urination and when they reached a distance of 1/1.5 kms from Mundhal towards Bass, Parveen Kumar saw that Arun Kumar and Vijay Kumar were lying on the road in injured condition and their motorcycle was also lying down on the road and it was revealed that some unknown vehicle had caused the accident and the driver alongwith vehicle had fled away. Both the injured were taken to General Hospital, Hansi, where Arun Kumar was declared dead and Vijay Kumar was shifted to V.K. Neuro Care and Trauma Research Hospital, Hisar. He died during treatment on 08.04.2015. FIR was lodged against driver of unknown vehicle. Later on, Gulshan Kumar disclosed the identity of the vehicle and that of the driver as he was an eye-witness of the accident. Accordingly, claim petitions were preferred before the Tribunal.

4. On notice, respondent No. 1 (driver) and respondent No. 2 (owner) of the tractor trolley filed joint written statement raising preliminary objections with regard to locus-standi, cause of action, maintainability of the claim petitions and denied that any accident took place with the vehicle of respondent No. 2 driven by respondent No. 1 and alleged that false FIR had been registered against the respondent.

5. Insurance company also filed written statement raising similar preliminary objections and alleged that false FIR had been lodged in order to

extract money from the insurance company and that respondent No. 1 was not having valid and effective driving license at the time of accident and the claim petitions are the result of collusion between the parties.

6. From the pleadings, following issues were framed:-

- “1. Whether the accident causing death of Arun Kumar son of Sh. Pawan Kumar and Vijay Kumar son of Shri Dharambir had taken place on 06.04.2015 due to rash and negligent driving of Tractor bearing registration No. 21J-4874 by respondent No. 1 as alleged? OPP*
- 2. If issue No. 1 is proved, whether the claimants Raj Kumari & another of claim petition No. 354 dated 27.08.2015 are entitled for compensation, if so, to what amount and from whom? OPP*
- 3. If issue No. 1 is proved, whether the claimant Dharshna of claim petition No. 355 dated 27.08.2015 is entitled for compensation, if so, to what amount and from whom? OPP*
- 4. Whether the respondent No. 1 was not holding a valid and effective driving licence at the time of accident, if so its effect? OPR*
- 5. Whether the petitioners have no locus standi or cause of action to the present petitions? OPR*
- 6. Whether the petition is not maintainable in the present form? OPR*
- 6. Relief.”*

7. After the parties were given opportunity to lead evidence, the Tribunal vide common Award allowed both the claim petitions and awarded compensation to the tune of Rs. 13,26,000/- alongwith interest at the rate of 7.5% per annum in Claim Petition No. 354 of 2015 and in Claim Petition No.355 of 2015, compensation amounting to Rs. 13,26,000/- alongwith interest at the rate of 7.5% per annum was awarded.

8. Aggrieved by the Award so passed, the insurance company filed two separate appeals and the claimants-respondents filed cross-objections assailing the award for grant of less compensation.

9. Notice was accordingly issued to the opposite parties.

10. Record of the Tribunal was requisitioned.

11. I have heard the arguments advanced by learned counsel for the parties and have also gone through the file carefully.

12. Learned counsel for the insurance company assailed the Award on the ground that the Tribunal has failed to appreciate the evidence before it and it is clear that it is a case of hit and run accident. The accident was caused by some unknown vehicle, but later on in order to extract compensation, the insured vehicle was falsely implicated after a gap of more than 40 days of registration of the FIR against unknown vehicle. The Tribunal wrongly relied upon the testimony of Gulshan Kumar (PW4) by ignoring the fact that Gulshan Kumar has not come forward to make statement for a period of more than 40 days and in cross-examination, he has admitted the same. He is a procured witness in order to falsely implicate the vehicle in this case. Furthermore, the Tribunal has wrongly assessed the income of the deceased at Rs. 8,000/- per month and has wrongly added 50% of income on account of future prospects.

13. On the other hand, learned counsel for the cross-objectors/claimants argued that the Tribunal has erred in granting less compensation. The Tribunal has not taken into consideration that the minimum wages at the time of accident were Rs. 9699.74/- per month and less compensation has been awarded under Conventional Heads and he argued that the Tribunal has rightly come to the conclusion with regard to the liability of respondents in the accident. He argued that approach of the Tribunal was correct as it has to decide the claim petition on the basis of evidence which is sufficient to satisfy the test of preponderance of probability and evidence beyond reasonable doubt, as required in criminal case, is not required in claim petitions. So, the appeals be dismissed and cross-objections be allowed.

14. The Tribunal has recorded its findings in paras 17 to 19 with regard to liability of the respondents. The same read as under:-

“17. After having heard, this Tribunal has come to the conclusion that no doubt there is delay in reporting the number of the offending vehicle and name of the driver on part of PW4 Gulshan. However, this fact cannot be made basis to reject his testimony. PW4 Gulshan is not related to the deceased or the petitioner's family in any way. No cross-examination was conducted by the respondents in this regard. The most important document in this case is the mechanical report of offending tractor. At the time of its inspection, bumper of the aforesaid tractor from driver side was found to be damaged and this can only happen in case of accident. It has not been claimed by the respondents that aforesaid damage to the tractor was caused some where else and not in this accident. It is also a fact to be taken is that after investigation accused-respondent no.1 was sent to face trial. Charges were framed against him. On 10.09.2015 vide charge sheet Ex.P24 accused-respondent No.1 was facing a criminal trial, without any protest of lodging any false FIR against him. This Tribunal is of the considered opinion that unless or until there is some smell found between owner, driver and petitioners. Mere delay is not significant factor itself on basis of which it can be held that the vehicle in question has been planted. Therefore, finding support from Lakhu vs Uday Singh” 2008(1) RCR (Civil) 805 it is held that the accident was caused by respondent No.1.

18. This Tribunal is also of the considered opinion that negligence in compensation cases has to be decided on preponderance of probabilities and not on basis of proof beyond reasonable doubt. My aforesaid views is fortified by law laid down in Rama Sood and others Vs. Chavan Singh and others 2016(5) RCR (Civil), 797. This tribunal is also of the considered opinion that the accident cases should not be decided on basis of niceties and hyper technicalities of law and right of the claimants is not be defeated on technical grounds.

19. From the above discussed evidence adduced by the claimants one fact is clear that the FIR No.146 dated 07.04.2015 under sections 279,337, 304-A of IPC Ex.P3 was registered against the respondent no.1 at Police Station Narnaund for causing the accident in question. It has been held by the Hon'ble Punjab & Haryana High Court in the authorities “Lakhu vs Uday Singh” 2008(1) RCR (Civil) 805 and National Insurance Company Limited Vs Sanjay Kumar & Ors II (2011) ACC 75 that facts of registration of FIR and trial of the accused in a criminal court are sufficient to arrive at a conclusion in the cases under the Motor Vehicles Act that the accident has taken place. Hence, this issue is decided in favour of the claimants.”

15. Learned counsel for the appellants has placed reliance upon an order of Coordinate Bench of this Court in FAO-3414-2014 titled ***Future Generali India Insurance Company Limited Vs Kella Devi and others*** (decided on 27.04.2016).

16. A bare perusal of the aforesaid order shows that in that case also FIR was lodged against unknown vehicle and driver, but in that case, no

evidence was led by claimants to prove that when and from whom the claimants or Investigating Officer of the criminal case came to know that the offending canter was the vehicle involved in the accident. The only witness examined by the claimants was Vikram Singh who had not supported the case in criminal proceedings and had denied the involvement of respondent No. 1 and also that of the offending vehicle in the accident and even the Investigating Officer could not point out as to on whose instance the offending vehicle was involved in the accident, whereas in the present case, facts are distinguishable. The claimants have examined Gulshan Kumar (PW4) who is eye-witness of the accident and who has deposed that he has seen the accident. He was following the offending tractor trolley. The tractor trolley was driven in rash and negligent manner and had hit the motorcycle of Arun Kumar. No doubt, he has not come forward to make a statement in criminal investigation for a period of nearly 40 days, but that fact cannot be taken into consideration while awarding compensation in motor vehicle accident claim petitions when from the testimony of the eye-witness his credibility could not be impeached. Furthermore, his testimony found corroboration from the mechanical report of the tractor as bumper of the tractor from driver side was found to be damaged and the investigating agency after investigating the matter has presented the final police report against respondent No. 1 and respondent No. 1 has not stepped into the witness-box to rebut the testimony of Gulshan Kumar (PW4). The testimony of Gulshan Kumar remained un-rebutted on record. So, the Tribunal has rightly fixed the liability of the offending vehicle and that of the respondents in causing the accident which resulted in the death of Arun Kumar and Vijay Kumar.

17. As regards quantum of compensation is concerned, the insurance company has claimed that monthly income of the deceased has been wrongly assessed at Rs. 8,000/- per month, whereas the claimants in cross-objections have assailed the Award on the ground that the monthly income has been assessed at the lower side. The Tribunal has taken the monthly income of the deceased (Arun Kumar) as Rs. 8,000/- by taking him as a daily wager. The Tribunal has ignored the evidence led by the claimants with regard to employment of Arun Kumar as driver with Pardeep Kumar Gupta, Surveyor and Loss Assessor, Bhiwani. The claimants have examined Pardeep Kumar Gupta as PW5 who has deposed that Arun Kumar was working with him as driver earlier at the salary of Rs. 9,000/- per month and later on at Rs. 10,000/- per month. The Tribunal discarded the statement of Pardeep Kumar Gupta (PW5) on the ground that from the record produced by the claimants, the Tribunal is not satisfied that the deceased was earning Rs. 9,000/- per month or was earning Rs. 20,000/- per month i.e. Rs. 10,000/- from working as driver and Rs. 10,000/- by taking private tuitions.

18. The Tribunal has rightly discarded the claim of income on the basis of taking private tuitions as there is no evidence to that effect. However, as regards Arun Kumar being employed as driver by Pardeep Kumar Gupta is concerned, the same has been duly proved on record from evidence as Pardeep Kumar Gupta has deposed that his car met with an accident and a criminal case was registered. He placed on record copy of FIR No. 764 of 2013 registered under Sections 279, 337 and 338 of the Indian Penal Code at Police Station Bhiwani City. The copy of the FIR is Exhibit PW5/F and that FIR was registered against unknown driver of car bearing registration No. HR-16-5001 and later on during investigation, Arun son of Pawan resident of Bhiwani was

found to be driver of the vehicle and challan was presented against him. Exhibit PW5/E is copy of order passed by Chief Judicial Magistrate, Bhiwani on 12.08.2015 vide which the proceedings against Arun Kumar were dropped on account of his death on 07.04.2015. So, this clearly proved that the version of Pardeep Kumar Gupta (PW5) is correct to the effect that Arun Kumar was working as driver with him and he has deposed that he was paying him monthly salary of Rs. 10,000/- per month. So, the Tribunal was not right in assessing the income of Arun Kumar as Rs. 8,000/- per month after discarding the reliable and cogent evidence led by the claimants. Thus, the income of the deceased (Arun Kumar) is to be taken as Rs. 10,000/- per month. Tribunal has granted future prospects at the rate of 50%. But considering the fact that the deceased (Arun Kumar) was in private employment and he was 25 years of age on the date of his death, so in view of the law laid down by Hon'ble Apex Court in ***National Insurance Company Limited Vs Pranay Sethi and others***, 2017 AIR (SC) 5157, future prospects should have been calculated at the rate of 40% and the Tribunal was not right in awarding the same at 50%.

19. As regards award of compensation under Conventional Heads, the same has not been awarded in terms of ***National Insurance Company Limited Vs Pranay Sethi and others*** (supra). So, the claimants are entitled to compensation of Rs. 15,000/- on account of funeral expenses; Rs. 15,000/- on account of loss of estate and Rs. 40,000/- each claimant on account of loss of consortium.

20. The total compensation is, thus, re-calculated in respect of deceased (Arun Kumar) as under:-

Monthly Income	Rs. 10,000/-
40% future prospects	Rs. 4,000/-
	Rs. 14,000/-
1/2 deduction for self expenses	Rs. 7,000/-

	14,000-7,000 = Rs. 7,000/-
Multiplier of 18	Rs. 7000 x 18 x 12
	Rs. 15,12,000/-
Conventional Heads (funeral expenses, loss of estate and loss of consortium	Rs. 1,10,000/-
Total	Rs. 16,22,000/-

21. As regards compensation payable to the claimant on account of death of Vijay Kumar in Claim Petition No. 355 of 2015, the claimant has claimed monthly income of Rs. 20,000/-, but the Tribunal has rightly concluded that there is no evidence on record to prove that Vijay Kumar was earning Rs. 20,000/- per month or was having any fixed employment. So, he was rightly held to be a daily wager and his monthly income was taken as Rs. 8,000/- per month which appears to be reasonable and can neither be held to be excessive nor too little. However, the Tribunal has awarded 50% increase on account of future prospects. Thus, considering the fact that Vijay Kumar was below 40 years of age and was not having any permanent employment, increase of 40% on account of future prospects was required in view of *National Insurance Company Limited Vs Pranay Sethi and others* (supra). So, the Tribunal has given the increase of 50% which is required to be reduced to 40%. The Tribunal has rightly deducted 50% income on account of personal expenses as Vijay Kumar was unmarried and issueless and multiplier has also been correctly applied. So, compensation on account of loss of dependency comes to Rs. 12,09,600/- (Rs. 5600 x 12 x 18). The Tribunal has not awarded any compensation on account of loss of consortium and has awarded funeral expenses of Rs. 25,000/- and loss of estate as 5,000/-, whereas as per the settled legal position, Rs. 40,000/- was required to be awarded on account of loss of consortium; Rs. 15,000/- on account of funeral expenses and Rs. 15,000/- on

account of loss of estate. So, this compensation on account of Conventional Heads awarded as Rs. 30,000/- is required to be increased to Rs. 70,000/-.

22. The total compensation is, thus, re-calculated in respect of deceased (Vijay Kumar) as under:-

Monthly Income	Rs. 8,000/-
40% future prospects	Rs. 3200/-
	Rs. 11,200/-
1/2 deduction for self expenses	Rs. 5600/-
	11,200 – 5600 = Rs. 5600/-
Multiplier of 18	Rs. 5600 x 18 x 12
	Rs. 12,09,600/-
Conventional Heads (funeral expenses, loss of estate and loss of consortium	Rs. 70,000/-
Total	Rs. 12,79,600/-

Awarded amounts shall carry interest awarded by learned Tribunal in terms of Award.

23. Accordingly, FAO-3767-2017 and FAO-3821-2017 as well as XOBJ-225-CII-2017 in FAO-3767-2017 and XOBJ-230-CII-2017 in FAO-3821-2017 are disposed of in the aforesaid terms.

(VIRINDER AGGARWAL)
JUDGE

05th September, 2025
Amodh Sharma

Whether speaking/reasoned	√ Yes/No
Whether reportable	√ Yes/No