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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**FAO-4675-2025 (O&M)****Date of Decision : 01.08.2025**

Cholamandalam MS General Insurance Co. Ltd.

....Appellant

VERSUS

Pooja and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhimanyu Batra, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the Insurance Company aggrieved by the award dated 07.05.2025 passed by the Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (hereinafter referred to as the 'Tribunal').

2. The brief facts relevant to the present *lis* are that on 08.10.2023 Surinder Singh alias Rinku (hereinafter referred to as the 'deceased') alongwith Sawan was returning to his village from Radaur on a motorcycle bearing registration No.HR-75D-9864. Sawan was riding the motorcycle and the deceased was the pillion rider. At about 06:30 pm, when they reached near DAV School, Radaur to Jathlana Road, respondent No.6 herein while driving a motorcycle bearing registration No.HR-05-BJ-6054 (hereinafter referred to as the 'offending vehicle') in a rash and negligent manner, came on the wrong side of the road and rammed the same into the motorcycle of the deceased as a result of which Sawan and the deceased fell on the road

and sustained multiple and grievous injuries. Respondent No.6 fled from the spot leaving behind the offending vehicle. The deceased and Sawan were shifted to Civil Hospital, Radaur from where they were referred to Civil Hospital, Yamunanagar. Due to his critical condition, the deceased was referred to PGIMER, Chandigarh but he was taken to M.M. Hospital, Mullana by his family, where he succumbed to his injuries. On the basis of statement of Sawan, FIR No.253 dated 09.10.2023 under Sections 279, 304-A and 337 of the Indian Penal Code, 1860 was registered at Police Station Radaur.

3. Learned counsel for the appellant-Insurance Company would contend that the Tribunal has overlooked the evidence available on the record and has wrongly passed the impugned award. Learned counsel would further contend that there was material contradiction in the statement of alleged eye-witness, namely, Sawan who stepped into the witness-box as PW2 inasmuch as during his cross-examination he has stated that the deceased was shifted to Civil Hospital, Radaur in an ambulance. However, RW2 Mahesh, Assistant, Civil Hospital, Radaur has stated that it was nowhere mentioned as to who had brought the deceased to the hospital. Learned counsel for the appellant-Insurance Company has further contended that no accident as alleged by the claimant had taken place and the offending vehicle was falsely involved in the present case only in order to claim the compensation. Learned counsel for the appellant would further contend that there was no evidence on the record to prove that the deceased died as a

result of the accident due to rash and negligent driving of the offending vehicle by its driver.

4. Heard.

5. In the present case, Sawan eye-witness of the accident was examined as PW-2, who proved on the record the certified copy of the charge-sheet filed against the driver of the offending vehicle as Ex.P1, certified copy of the final report under Section 173 CrPC as Ex.P2 and certified copy of the FIR registered qua the accident in question as Ex.P5. This witness has deposed on oath that respondent No.6 herein was riding the offending vehicle in a rash and negligent manner at a high speed and came on the wrong side of the road and rammed the same into the motorcycle of the deceased, which resulted in the death of the deceased. He further deposed that on his statement FIR (Ex.P5) was registered against respondent No.6 at Police Station Radaur and that respondent No.6 after being charge-sheeted has been facing trial before the Judicial Magistrate Ist Class, Yamunanagar at Jagadhri. This witness was cross-examined at length by the appellant-Insurance Company and respondent Nos.6 and 7 i.e. driver and owner of the offending vehicle however, nothing contrary could be elicited from his statement to falsify the accident in question.

6. A perusal of the impugned award reveals that the Tribunal has given due weightage to the evidence recorded before it. It is trite that the cases under the Motor Vehicles Act, 1988 are to be decided on the touchstone of preponderance of probabilities and weightage has to be given to the evidence recorded before the Tribunal. Hon'ble Supreme Court in the

case of **National Insurance Company Limited V/s Chamundeswari & Ors. [2021 ACJ 2558 (SC)]** 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.”

7. Further, Hon’ble Supreme Court in the case of **Halappa V/s Malik Sab [2018 (1) RCR (Civil) 279]** has held as under :

‘.....The High Court has proceeded to reverse the finding of the Tribunal purely on the basis that the FIR which was lodged on the complaint of the appellant contained a version which was at variance with the evidence which emerged before the Tribunal. The

Tribunal had noted the admission of RW1 in the course of his cross-examination that the insurer had maintained a separate file in respect of the accident. The insurer did not produce either the file or the report of the investigator in the case. Moreover, no independent witness was produced by the insurer to displace the version of the incident as deposed to by the appellant and by PW 3. The cogent analysis of the evidence by the Tribunal has been displaced by the High Court without considering material aspects of the evidence on the record. The High Court was not justified in holding that the Tribunal had arrived at a finding of fact without applying its mind to the documents produced by the claimant or that it had casually entered a finding of fact. On the contrary, we find that the reversal of the finding by the High Court was without considering the material aspects of the evidence which justifiably weighed with the Tribunal. We are, therefore, of the view that the finding of the High Court is manifestly erroneous and that the finding of fact by the Tribunal was correct.”

8. Hon’ble Supreme Court in the case of **Ramamurthy V/s National Insurance Co. Limited [Civil Appeal No.4612-2017 decided on 30.03.2017]** has further held as under :

“9. The High Court, in appeal, took into account the *F.I.R. filed by the injured pedestrian (Ramesh), on which reliance was placed by the claimant to prove the accident. While relying on the said F.I.R., the High Court took the view that as the appellant-claimant himself has relied on the F.I.R., the entire version of the F.I.R. must be accepted. Inasmuch as in the F.I.R. filed by the injured pedestrian (Ramesh) rash and negligent driving was alleged against the appellant-claimant, the High Court took the view that the appellant-claimant had admitted the contents of the F.I.R., including the allegation of rash and negligent driving contained therein.*”

9. Further, admittedly pursuant to the FIR (Ex.P5) and as is apparent from the charge-sheet (Ex.P1) and final report filed under Section 173 CrPC (Ex.P2), the driver of the offending vehicle i.e. respondent No.6 has been facing trial under Sections 279, 304-A and 337 IPC before the Judicial Magistrate Ist Class, Yamunanagar at Jagadhri, which is a sufficient evidence to establish the negligence of the driver in view of the judgment of the Hon'ble Supreme Court in case of **Ranjeet & Anr. Vs. Abdul Kayam Neb & Anr. [2025 SCC OnLine SC 497]**.

10. In view of the above, there is no merit in the arguments of learned counsel for the appellant-Insurance Company and the same stand rejected.

11. Accordingly, present appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed off.

01.08.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO