



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

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Date of decision : 20.02.2025

1. FAO-7156-2019 (O&M)

National Insurance Company Ltd.

..... Appellant

versus

Ramandeep Kaur and others

..... Respondents

2. FAO-40-2025

Ramandeep Kaur and others

..... Appellants

versus

Vinod Kumar and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Paul S. Saini, Advocate
for the appellant in FAO-7156-2019.

Ms. Divya Godara, Advocate
for respondents No.1 to 5 and 7 in FAO-7156-2019 and
for the appellants in FAO-40-2025.

PANKAJ JAIN, J. (ORAL)

1. These are two cross appeals impugning the same award passed by MACT, Sirsa.

2. FAO No.7156 of 2019 is at the behest of insurance company disputing the involvement of the vehicle. FAO No.40 of 2025 is at the behest of claimants seeking enhancement of the compensation.

3. As per the claimants, deceased Krishan Singh was returning from village Ottu riding motorcycle on 18.08.2018. When he reached



near Suraj Petrol Pump, Rania at around 10.30 p.m., he was hit by the offending vehicle being driven in a rash and negligent manner. Krishan Singh died on the spot at the age of 30 years. He was earning Rs.20,000/- per month as a driver. Claimants claimed an amount of Rs.30 lakhs as compensation.

4. Claim petition was contested by the respondents. Respondent No.1 driver-cum-owner denied the factum of accident. He claimed that a false case has been registered against him.

5. Insurance company-the appellant objected to the petition on the ground of maintainability and contested the same on merits. On the basis of the pleadings, following issues were framed:-

- “1. Whether accident in question resulting into death of Krishan Singh had taken place on 18.08.2018 at about 11.00 PM in the area of Town Rania, P.S. Rania, District Sirsa on account of rash and negligent driving of truck Tata bearing registration No.HR-74-4377 by respondent No.1. If so, its effect? OPP*
- 2. If issue No.1 is proved, to what amount of compensation petitioners are entitled to get and from whom? OPP*
- 3. Whether petition deserves to be dismissed on the ground of maintainability? OPR*
- 4. Relief.”*

6. Deciding issue No.1, Tribunal relied upon PW-2 Bhajan Singh. The Tribunal held that driver who was the best person to deny the accident did not step into the witness box. It being not denied that the driver is facing trial after police submitted report against him, it decided issue No.1 in favour of the claimants and against the



respondents. The Tribunal further awarded compensation of Rs.17,68,600/- to the claimants along with interest @7.5% per annum from the date of institution of the petition till actual realization.

7. Mr. Paul S. Saini, counsel for the appellant-insurance company has assailed the findings recorded by the Tribunal on issue No.1. He submits that the claimants examined alleged eye witness Bhajan Singh as PW-2. However, his testimony was completely shattered as he admitted that he knew the family of Krishan Singh for the last 20-25 years. He being interested witness cannot be relied upon. He submits that there is overwhelming evidence on record to prove that the vehicle in question was falsely implicated. FIR No.297 dated 19.08.2018 was lodged by father of the deceased against an unknown vehicle and unknown driver. Driver of the offending vehicle was taken into custody on 01.10.2018. He thus, submits that there is a delay of one day in lodging of FIR that too was lodged against an unknown vehicle. Police recorded statement of PW-2, Bhajan Singh. He failed to disclose the mode and manner in which the accident was caused. His statement was recorded only on 16.09.2018. Despite being known to the family, he failed to assign any reason as to why he kept mum from 18.08.2018 till 16.09.2018. He thus, submits that the claimants at the best can be awarded compensation under Section 161 of the Act for hit and run category. He thus, submits that the Tribunal erred in answering issue No.1 in favour of the claimants. In order to hammerforth his contention, he relies upon ratio of law laid down by



this Court in '*Reliance General Insurance Company Limited vs. Munshi Singh and others*' reported as *2015(9) RCR Civil 190* and order dated 14.01.2025 passed by this Court in FAO No.944 of 2017, titled as '*Sunita and others vs. Tarun Kumar and others*' decided on 14.01.2025.

8. *Per contra*, Ms. Godara appearing for the claimants submits that the FIR pertaining to the accident was recorded on the very next day of accident i.e. on 19.08.2018 by father of the deceased who lost his 30 year old son. During investigation, police found involvement of the offending vehicle. Statement of PW-2 Bhajan Singh was recorded. Bhajan Singh entered the witness box and proved the version given to the police authorities. Police investigated the matter and presented report under Section 173 of Cr.P.C. against the offending vehicle. The burden thus, shifted upon the driver of the offending vehicle to dislodge the testimony of Bhajan Singh. The best person to dislodge testimony of Bhajan Singh was Vinod Kumar-the driver of the offending vehicle. He opted not to enter the witness box. Merely for the reason that Bhajan Singh was known to the family, his testimony cannot be discarded.

9. I have heard counsel for the parties and have carefully gone through the records of the case.



10. Death of Krishan Singh in a motor vehicular accident stands proved. FIR was registered on the very next day. Admittedly, the same was registered against unknown vehicle. Pillion rider made a statement that he noticed the number and details of the offending vehicle, but thereafter fell unconscious. Police recorded statement of Bhajan Singh on 16.09.2018. Driver was arrested. Vehicle was taken into custody. Matter was investigated and thereafter challan was presented. The driver, i.e. respondent No.1, opted not to appear before the Tribunal. In *Sunita's case (supra)*, it was the conduct of the deceased Sudesh Kumar, which was under cloud. It was claimed that he met with an accident on 28.01.2015. He was discharged from hospital in a stable condition on 29.01.2015. He was again hospitalized on 01.02.2015 and thereafter died on 06.02.2015. During that period, he made no effort to report the accident to his family members or to the medical authorities or to the police officials. It was in these circumstances, that the version of the claimants was disbelieved by the Tribunal and the same was upheld by this Court. In *Munshi Singh's case ibid*, this Court observed as under:-

“xx xx xx

The police invariably puts in the challan on the basis of the statement without getting into the truthfulness of the statements. The presence of any other witness at the accident site is also suspicious and is artificial and is not believable and no liability could have been placed upon the insurance company as the claimants could not establish the involvement of the offending vehicle.”



11. The observations appear to be in teeth of law laid down by Supreme Court in the case of *Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646*. Reiterating the ratio of law laid down by Supreme Court in the case of *Dulcina Fernandes ibid*, Supreme Court in *ICICI Lombard General Insurance Co. Ltd. vs. Rajani Sahoo reported as 2025(2) SCC 599*, observed as under:-

“xx xx xx

7. The core contention of the appellant is that the Tribunal as also the High Court relied on the fraudulent chargesheet prepared by the respondents in connivance with the police. In short, the contention of the appellant is that the High Court erred in relying on the chargesheet to arrive at the conclusion that the accident in question in which Udayanath Sahoo lost his life had occurred due to the rash and negligent driving of the truck insured with the appellant. Though respondent Nos.1 and 2 did not file any counter affidavit, the learned counsel appearing for them would submit that there is absolutely no illegality in relying on such documents consisting of FIR and the final report prepared in relation to the accident in question by the police, for the purpose of considering the question of negligence in a motor vehicle accident case. That apart, it is contended that the appellant despite attributing connivance of the respondents with the police, the appellant failed to prove the same. In short, it is submitted that the appeal is devoid of merit and the same is liable to be dismissed.



8. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of Mangla Ram v. Oriental Insurance Co. Ltd. [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819 : 2018 INSC 311], held in para No.27, thus : (SCC p.672)

“27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes* [*Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13], noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of



proof beyond reasonable doubt. *Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly.* Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal”. (Emphasis Supplied)

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi [Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510 : 2023 INSC 621], this Court held thus : (SCC p. 514, para 12)

“12....A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by



the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes v. Joaquim Xavier Cruz* [*Dulcina Fernandes v. Joaquim Xavier Cruz* (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in *Bimla Devi* [*Bimla Devi v. Himachal RTC*, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101].”

11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.

12. It is also a fact that the appellant had attributed that the respondent claimants connived with police and fraudulently prepared the chargesheet. The contention is that the vehicle insured with the appellant was not involved in the accident and the accident had occurred solely due to the rash and negligence on the part of the deceased. But the evidence on record would reveal that pursuant to the filing of the final report, cognizance was taken



for rash and negligent driving which resulted in the death of Udayanath Sahoo.”

12. Applying the aforesaid parameters to the present case, this Court finds that Tribunal has rightly taken a holistic view of the matter in hand taking into consideration the entire evidence on record. Taking note of the police records available on record being permissible to return finding on the basis of preponderance of probabilities, the Tribunal has rightly returned finding on issue No.1 against the offending vehicle and in favour of the claimants. The same deserves to be maintained.

13. Resultantly, the appeal preferred by the insurance company i.e. FAO-7156-2019 is ordered to be dismissed.

14. The claimants in their appeal seek enhancement of the compensation. Tribunal has taken monthly income of the deceased as Rs.8,000/-. Admittedly, on the date of accident i.e. 18.08.2018, the minimum wages prescribed were Rs.11,000/-. The same is accordingly modified to Rs.11,000/-. 40% of the future prospects have been rightly granted in favour of the claimants. Deduction of 1/4 has been rightly applied. Multiplier of 17 has been rightly applied. Rs.48,000/- need to be awarded to each of the claimants for loss of consortium for which the Tribunal awarded composite sum of Rs.40,000/- to all. The same is modified. Likewise, Rs.15,000/- awarded for funeral expenses are enhanced to Rs.18,000/-. Further sum of Rs.18,000/- is awarded for loss of estate.



15. With the aforesaid modification in the impugned award, FAO-40-2025 stands disposed off. Apportionment of the claimants shall be as per the award.
16. A photocopy of this order be placed on the file of other connected case.
17. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

20.02.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No