IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No.337 of 2018.
Date of Decision: 30th October, 2026.

Bhagwan Sahay and Ors.

.....Appellants.

Versus

Dhandev (since deceased) through LRs Geeta Devi & Ors.

…..Respondents.

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the Appellants: Mr. Dalip Singh Kaith, Advocate.

For the Respondents: Mr. Nishant Khidtta, Advocate, for respondents No.1(a) to 1(c) and 2.

Mr. Raman Sethi, Advocate, for respondent No.3.

Bipin Chander Negi, Judge *(oral).*

The present appeal has been preferred against the impugned judgment dated 21.05.2018, passed by the learned Motor Accident Claims Tribunal-II, Shimla, whereby the claim petition preferred by the present appellants has been dismissed on account of the fact that the claimants/appellants have failed to prove rashness and negligence of respondent No. 2, i.e., driver of the vehicle in question.

2. As per the claimants/appellants, Anand Kumar, his sister Archana Sharma, brother-in-law Anand

1 Whether reporters of Local Papers may be allowed to see the judgment? YES

Swarup, and Ms. Narvada Devi were travelling in an Alto taxi bearing registration No.HP-01A-8448 from Shimla to Naina Devi on 08.03.2014. When the taxi reached Ghambrola Pul, it went off the road, as a result of which Ms. Narvada Devi succumbed to her injuries on the spot. The accident, as per the claimants, had occurred on account of the rash and negligent driving on the part of the driver-Kamlesh Kumar.

3. Per contra, the case of respondent No.1 (owner) and respondent No. 2 (driver) is that the accident had occurred on account of a hit by a truck, which was coming from behind, and the driver (respondent No.2-Kamlesh Kumar) was not at fault at the time of the accident.

4. One of the present appellants, namely Shri Bhagwan Sahay, had appeared as a witness during the trial as PW-3. According to him, the deceased was his sister, who had died in the motor accident on 08.03.2014. The said individual had further stated that the accident in question had occurred due to the rash and negligent driving on the part of respondent No.2, i.e., driver-Kamlesh Kumar. The FIR, Ex.PW-3/A, had been tendered

in evidence by the said Shri Bhagwan Sahay. Reference of the FIR had been made in the claim petition.

5. ASI Rajinder Singh had appeared as a witness during trial as RW-5. On account of him being posted in PS Sadar, Bilaspur in the year 2014, he had investigated the matter in pursuance of FIR Ex.PW-3/A. After completion of investigation, the case file had been handed over by the said ASI Rajinder Singh to Inspector/SHO, PS Sadar, Bilaspur, who prepared the untraced report Ex.RW-4/A. During his testimony, ASI Rajinder Singh had deposed that he had prepared a spot map Ex. RW-5/A. He had further deposed that the accident had occurred on account of some unknown truck hitting the Alto taxi in the case at hand from behind, as a result of which the taxi went off the road. Since the driver of the unknown truck could not be found, therefore, an untraced report had been filed. In his cross-examination, he had categorically stated that since no rash and negligent act of driving had been found qua respondent No.2, i.e., driver Kamlesh Kumar, hence no case had been registered against the said individual.

6. The Criminal Ahlmad of the Court of Chief Judicial Magistrate, Bilaspur, one Shri Mukesh Garg, had appeared and deposed at trial as RW-4. He had tendered

the copy of FIR as Ex.RW-4/A and had also tendered a copy of the statement of the complainant, Ex.RW-4/B. He further categorically deposed that till his examination on 28.10.2017, no objections had been filed against the untraced report.

7. In the aforesaid facts and circumstances, the Motor Accident Claims Tribunal-II, Shimla correctly concluded that both the parties have placed reliance on the FIR and the untraced report submitted by PS Sadar, Bilaspur. The Motor Accident Claims Tribunal-II correctly observed that though PW-2 Anand Kumar, whose statement FIR Ex. PW-3/A had been registered, in his deposition before the Motor Accident Claims Tribunal-II had deposed a different version of the accident in the case at hand, yet he had not opted to file any objections before the Chief Judicial Magistrate, Bilaspur where the police had filed the untraced report. Along with the untraced report, a mechanical report had also been filed wherein it has been mentioned that the Alto car in question was pressed, thereby showing that the taxi was struck by the truck from behind.

8. Once the FIR in the case at hand is being relied upon by the claimants/appellants, hence they cannot

be permitted to turn around and contend to the contrary that the contents contained therein have not been proved.

9. In this respect, reliance has correctly been placed upon the judgment of the Apex Court in ***Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors., 2007 ACJ 1928***. Relevant extract whereof stands reproduced in the impugned judgment.

10 For the aforesaid reasons, the present appeal is dismissed being devoid of any merit, so also the pending application(s), if any.

(Bipin Chander Negi)
Judge

30th October, 2026
(Gaurav Rawat)