

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****134****FAO-977-2023(O&M)****Date of decision: 26.05.2026****Sushila & Others****...Appellant(s)****Vs.****Rajesh & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Sharad Choudhary, Advocate
for the appellants.***********NIDHI GUPTA, J.****CM-10831-CII-2026**

This is an application under Order 41 Rule 19 read with Section 151 CPC for restoration of the main appeal at its original number, which was dismissed for non-prosecution vide order dated 22.04.2026 (Annexure A1).

After going through the contents of the application, which is supported by affidavit of learned counsel for the applicants/appellants, the same is allowed subject to all just exceptions and main appeal i.e. FAO-977-2023 is restored to its original number and is taken on board today itself.

MAIN CASE

Present appeal has been filed by the claimants assailing Award dated 20.10.2022 passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter 'the learned Tribunal') whereby Claim Petition filed by the claimants/appellants bearing No.MACP-175 dated 10.05.2018 under Section 166 of Motor Vehicles Act (hereinafter "the Act"), has been



dismissed. The 6 claimants are the 33-year-old wife, 16-year-old son, 15-year-old son, 13-year-old son, 72-year-old mother and 74-year-old father of deceased Rajesh Kumar.

2. The pleaded case of the claimants/appellants before the learned Tribunal as recorded in Para 2 of the Award, is that: -

"2. The facts in brief, as per claim petition, are that on 16.02.2018, Rajesh Kumar, since deceased, had died in a road side accident; on that day, Karan Singh, father of Rajesh Kumar had no knowledge that how he met with the accident. It is averred that later on Yudhisther son of Shri Hardev Singh and Charan Singh son of Sh. Mandrup informed him that they had witnessed the said accident, which had occurred due to rash and negligent driving of Bolero vehicle bearing registration HR-16T-3318 by respondent No.1. It is further averred that on the basis of statement of Karan Singh, FIR No. 94 dated 22.02.2018, under Sections 279 and 304-A of IPC was registered with Police Station, Tosham.

It is further averred that Rajesh Kumar, aged 39 years, was the member of "The Sangwan Mahila Milk Producer's Cooperative Society Ltd", Sangwan and was also owner of tractor bearing registration No.HR-15-3024; used to fill earth on hire basis and also used to do agricultural work; thus was earning Rs.60,000/70,000/- per month from the said society by supplying milk and Rs.2,45,000/- per annum from agriculture. It is further averred that as the present accident had occurred due to sole rash and negligent driving of Bolero bearing registration No.HR-16T-3318 by respondent No.1, therefore,



the respondent No.1, being driver and owner and respondent No.2 being insurer, are liable jointly and severally to pay compensation to the petitioners.”

3. Learned counsel for the appellants assails the impugned Award by submitting that in dismissing the Claim Petition, the learned Tribunal has failed to take into account the evidence of two eyewitnesses the same being PW2 Yudhisther and PW5 Charan Singh, who had duly witnessed the accident of deceased Rajesh Kumar. It is submitted that conclusion of the learned Tribunal that the said witnesses were procured witnesses and that they had not witnessed this accident dated 16.02.2018, is patently incorrect and contrary to the evidence on record.

4. It is further submitted that the learned Tribunal has gone totally wrong while discarding all the evidence adduced before it, without recording any reasons to this regard. The learned Tribunal has also ignored the fact that the respondent No.1 i.e. the owner and driver of the offending vehicle is facing trial on account of rash and negligent driving in a criminal case in a Court of law. It is further submitted that this Court has specifically stated in the case titled as **“Gurdeep Kaur vs Tarsem Singh” 2008(2) RCR (Civil) Page 775** that “if the driver is being tried on account of rash and negligent driving in a criminal case in a court of law, it is prima facie safe to hold that the accident occurred on account of his rash and negligent act.”

5. It is further submitted that the learned Tribunal has also stated that mere filing of challan or framing of charges in the State case is not



enough to prove the case of the appellants which in itself shows the non-applicability of the judicial mind while deciding the case of the appellants. Further, all the evidence led by the appellants before the learned Tribunal has been overlooked by the learned Tribunal and no observation on the same has been given in the impugned Award dated 20.10.2022.

6. It is further submitted that the Tribunal has failed to appreciate the evidence led by the appellants pertaining to the income of the deceased and the fact that the offending vehicle Bolero bearing registration No. HR-16T-3318 was legally insured with the respondent No.2 and the respondent No. 1 was also having valid Driving Licence. It is accordingly prayed that the impugned Award be set aside and compensation to the tune of Rs.90 lakh along with interest @ 18% per annum from the date of accident till final realisation be awarded to the appellants.

7. No other argument is made on behalf of the appellants. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

8. A perusal of record of the case shows that in respect of the accident dated 16.02.2018, FIR No.94 dated 22.02.2018 was registered under Sections 279 and 304-A IPC at Police Station Tosham on the basis of statement made by claimant/appellant No.6 Karan Singh/father of the deceased. It is to be noted that initially, Karan Singh had made statement (Ex.R1) before the Police to the effect that after verification they had come



to know that a stray animal had suddenly appeared before the motorcycle of the deceased Rajesh Kumar; as a result of which he/deceased got imbalanced and fell in the pits and sustained injuries; and no one was at fault in causing the accident. However, subsequently, Karan Singh has changed his story by stating that the accident had been caused due to rash and negligent driving of the alleged offending vehicle by respondent No.1.

9. The said version put forth by the claimants appears to be concocted on account of the fact that the alleged eyewitnesses Yudhisther PW2 and Charan Singh PW5 appear to be procured witnesses. No details have been given as to when and how, and where did the persons approach Karan Singh. No reasons are forthcoming as to why the said persons did not immediately go to the police or take the deceased to the hospital. Thus, learned Tribunal has rightly discarded the evidence of PW2 and PW5 on the ground that they were procured witnesses. Relevant reasoning of the learned Tribunal in this regard is in Paras 11-13 of the impugned Award, which reads as follows: -

“11. After hearing the learned counsels for the parties, it can be ascertained from the perusal of file that in order to prove this issue, Karan Singh PW1, the petitioner No.6 has deposed by way of affidavit as Ex. PW1/A tendered in his examination-in-chief reiterating the contents of the petition. He has deposed that he is father of Rajesh Kumar, since deceased. He has further deposed that on 15.02.2018, at night, Rajesh Kumar was returning from Tosham to village Sagwan on motorcycle



bearing registration No.HR-48B-6268. He has further deposed that a vehicle bearing registration No.HR-16T- 3318 make 'Bolero' being driven rashly and negligently came from behind and hit against motorcycle of his son; as a result thereof, he alongwith motorcycle fell in the mustard field. He has further deposed that when his son did not reach home on 15.02.2018, in the morning of 16.02.2018, they enquired about him from Tosham and were informed that he had left Tosham in the night of 15.02.2018 for village Sagwan. He has further deposed that thereafter they went to Police Station and came to know that some unknown person had been admitted in Civil Hospital, Tosham, upon which they went to Civil Hospital, Tosham, where they came to know that Ambulance had taken his son to Civil Hospital, Bhiwani. He has further deposed that when they came to Civil Hospital, Bhiwani, they found their son as dead and his postmortem examination was conducted there. He has further deposed that after 4-5 days, Yudhisther son of Hardev Singh and Charan Singh son of Mandrup told him that in the night of 15.02.2018, they were coming from Tosham; when they reached at Sagwan road, a vehicle bearing registration No.HR-16T-3318 make 'Bolero' was found parked in the middle of the road. He has further deposed that then they asked the driver about parking of the vehicle in the middle of the road, upon which the driver told that his vehicle had hit against a motorcycle and thereafter driver of the said Bolero' fled away from there. He has further deposed that his son had died due to accident with vehicle bearing registration No. HR-16T-3318 make 'Bolero' being driven by Rajesh, the respondent No.1. He has further deposed that on his statement, FIR No.0094 dated



22.02.2018 as Ex.P1 was registered with Police Station Tosham. During cross-examination he has deposed that he was not present at the time of accident, therefore, cannot depose about the manner in which the alleged accident had taken place.

12. Yudhisther PW2 has deposed that on 15.02.2018, in the night, he alongwith Charan Singh was returning from Tosham to their village Dang Kalan at about 10.00 p.m.; when they reached at Sagwan Road, they found vehicle bearing registration No.HR-16T-3318 make 'Bolero' white in colour parked in the middle of the road. When they asked the driver about parking of the vehicle in the middle of the road, upon which he told that an accident of his vehicle had taken place with motorcycle and thereafter he fled away from there. He has further deposed that after 2-3 days, they came to know that Rajesh of village Sagwan had met with an accident on Sagwan road on 15.02.2018; therefore, he alongwith Charan Singh came to village Sagwan and told about registration number of the offending vehicle and its colour to Karan Singh, which had caused the accident.

13. Challan as Ex. P4 reveals as if Yudhisther PW2 and Charan Singh PW5 had witnessed the accident, but, it has nowhere come in their evidence that they had in fact witnessed the aforesaid accident. Even testimony of HC Pardeep Kumar PW3 reveals that he has involved the vehicle in question merely on the basis of statements of Yudhisther and Charan Singh, referred above, and it has nowhere been established on record that they had witnessed the accident in question. HC Pardeep Kumar PW3 during cross-examination has admitted about the



correctness of statement as Ex.R1 of Karan Singh and Karan Singh during cross-examination has also deposed that on 16.02.2018, his statement as Ex.R1 was recorded, wherein it is mentioned that after verification, they had come to know that due to sudden appearance of animal before the motorcycle of Rajesh, since deceased, it got imbalanced; fell in the pits as a result thereof he suffered injuries and nobody is at fault. Thus, alleged eyewitnesses namely Yudhisther PW2 and Charan Singh PW5 appear to be procured witnesses and their evidence reflects that driver of the offending vehicle had stopped in the middle of the road about two acres away from the place of accident just to tell them about the factum of accident, which is altogether unbelievable.”

10. Prima facie, learned counsel for the appellants is unable to dispute or controvert the above-said findings of the learned Tribunal. Needless to say, it defies belief that respondent no.1 after causing the accident would wait a little distance away; and then confess his guilt to 2 strangers/Yudhishter and Charan Singh; and then again flee away from there.

11. The collusion amongst the claimants and the respondents and the alleged eyewitnesses is further established from the fact that in the FIR No.94 dated 22.02.2018, the respondent No.1 has been acquitted by the learned Sub-Divisional Judicial Magistrate, Tosham vide judgment dated 01.03.2023; on account of the fact that the above said witnesses, namely Karan Singh, Yudhister, and Charan Singh, have turned hostile. Relevant



findings of the learned SDJM in this regard are in Para 7 of the judgment dated 01.03.2023, which read as follows:-

“7. PW3 Karan Singh, is the father of the deceased Rajesh and on his complaint also the present case was registered. He has deposed that on 15.02.2018 at about 2.00 P.M., his son Rajesh had left on motor cycle and did not return to home in the night and in the morning they received information that Rajesh had met with an accident. His son was taken to CHC Tosham and G.H., Bhiwani. Thereafter, he along with Ramesh and Surjit had gone to G.H., Bhiwani where dead body of his son was available in mortuary and there was injury sign on his mouth. Rajesh had succumbed to the injuries while shifting in ambulance. On enquiry, they came to know that the motor cycle of Rajesh had fallen into a ditch on account of coming of an animal in front of his motor cycle and he received injuries and expired. Police had recorded his statement Ex.PW3/A at G.H., Bhiwani. On 22.02.2018, he had moved application Ex.PW3/B with the police due to misguidance. The driver of the vehicle no. HR 16T 3318 had not hit the motor cycle of his son nor his son expired due to negligence of the driver of the abovesaid vehicle.

These witnesses (PW1, PW2 and PW3) were declared hostile on the request of learned APP for the State and permission to cross-examine the witnesses was allowed. However, nothing fruitful could be elicited out from these witnesses in favour of the prosecution. During cross-examination, PW1 has denied his statement Ex.PW1/C being made with the police. Similarly, PW2 has denied his statement Ex.PW2/D being made with the police. Further, PW3 the complainant has stated that he had moved



application Ex.PW3/B with the police due to misguidance by someone. All these witnesses have stated that they are not deposing falsely on the basis of any compromise with accused. PW4 Yudisther and PW5 Charan Singh, the alleged eye witnesses have deposed that on 15.02.2018 in the night when they were returning to their village Dang Kalan via Sangwan, there was a Bolero vehicle at Sangwan road and its driver had told them that a motorcyclist had met with accident with his vehicle. Later on, they came to know that Rajesh had met with accident with that bolero vehicle. Thereafter, they disclosed this fact to the family members of deceased Rajesh. After registration of the case, police had obtained their signatures on plain papers. Except, it they have no knowledge about the present case.

These witnesses were declared hostile on the request of learned APP for the State and permission to cross-examine the witnesses was allowed. However, nothing fruitful could be elicited out from these witnesses in favour of the prosecution. During cross-examination, PW4 and PW5 have denied their statements Ex.PW4/A and Ex.PW5/A to be made with the police. They have denied the contents of their respective statement being made by them to the police. Both these witnesses have stated that they are not deposing falsely on the basis of any compromise with accused.”

12. Karan Singh/claimant No.6 had appeared before the learned Tribunal as PW1 and before the learned SDJM as PW3; Yudhisther, the alleged eyewitness had appeared before the learned Tribunal as PW2 and before the learned SDJM as PW4; and Charan Singh, second alleged eyewitness had appeared before the Tribunal as PW5 and before the learned SDJM as PW5.



13. A bare reading of the above facts shows that the claimants' side has turned turtle on its previous statement. No doubt, proceedings under the Act have to be decided on the preponderance of probabilities. However, this Court cannot shut its eyes in an ostrich like manner to the starkly diametrically opposite stance taken by the claimants' side in the criminal trial. Thus, no credence can be attributed to the contrary statements made by the claimants' side before the learned Tribunal. It would therefore appear that the claimants' side had deposed falsely before the Tribunal only to get the compensation. In such a situation, reference may be made to a judgment of this Court in **"United India Insurance Company Limited Vs. Kamla Devi & Others"** (P&H) : Law Finder Doc Id # 251230 wherein it has been held that:

"5. It should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal court. The several decisions which have come about on this issue are to the effect that a judgment in a criminal court is not binding on the Tribunal; the non-filing of a FIR is not material; even the fact of involvement of the vehicle as found by the criminal court is not binding. While the Tribunal is competent to assess the evidence which is brought before it and take an independent decision, then the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come a finding that the particular vehicle was involved in the accident. It can be either that the version of Sitar Mohd. cannot be relied for he has contradicted himself wholesale with the version given before the criminal court or looked



for other evidence which was placed before the Court. Alternatively if any explanation had been given by the witness as to why he deposed falsehood before the criminal court, even such an explanation could have been accepted to enter a finding that the accident took place only involving the particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the criminal court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that he ever made any such statement before the criminal court, necessitating the statement made before the criminal court to be exhibited for contradiction before the Tribunal. It must be remembered a statement in criminal court case by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence. If it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice."

14. The above said view has been reiterated by this Court in **"Shri Ram General Insurance Company Limited Vs. Jeeto Devi & Others"** FAO-2231-2014 decided on 03.12.2019, wherein it is held as under:-

*"(6) This Court cannot loose sight of the judgment rendered by this Court in the case of **United India Insurance Company Limited versus Kamla Devi and others**, wherein it was specifically*



held that in case an eye witness gives totally different version before the Court conducting trial in criminal case from the statement made by the said eye witness before the Tribunal, the testimony of such a witness is unworthy of being accepted and the evidence should be simply rejected. In fact, the learned Single Bench came down heavily on such witness and held that the said witness is also liable for perjury.”

15. Learned counsel for the appellants is unable to dispute or controvert the aforesaid factual and legal position.
16. In view of the above, present appeal stands **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

26.05.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No