



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

**FAO-2868-2005 (O&M)
Date of Decision: 24.02.2026**

KULWANT SINGH Appellant

VERSUS

MAHINDRO AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Ajay Kumar, Advocate with
Mr. Vinod Chaudhri, Advocate
for respondent No.3-Oriental Insurance Company.

YASHVIR SINGH RATHOR, J. (Oral)

1. The present appeal has been instituted by owner of the offending vehicle against the Award dated 13.12.2003 passed in MACT case No.89 of 2001 passed by the Motor Accident Claims Tribunal, Kaithal (**for short “Tribunal”**) in claim petition titled as **“Smt. Mahindro Vs. Kulwant Singh and Others”**, vide which a sum of Rs.62,000/- has been awarded as compensation to the claimant on account of death of her daughter aged 6 years payable by respondents No.1 and 2 jointly and severally. However, it has been ordered that Insurance Company shall pay the compensation along with interest but it shall have the right to recover the same from the insured as vehicle was being driven in violation of the terms and conditions of the insurance policy.



2. The case of claimant is that on 05.10.2001 at about 7.30 PM, Jaimal was standing on the road in front of his Basti at Kaithal. His daughter Mahindro along with her daughter Pooja and Kama Devi wife of Balbir were going to the other side of the road. Mahindro asked her daughter Pooja to go towards the other side towards Kacha portion. Meanwhile, Truck bearing No.HR-64-0137 came from the side of New Anaj Mandi, which was being driven in a rash and negligent manner by respondent No.2 and hit Pooja after going towards Kacha portion of the road. Pooja suffered injuries and died at the spot. The occurrence was also witnessed by Dev Pardan. It has been alleged that the accident took place due to rash and negligent driving on the part of respondent No.2. Deceased was 8 years of age and used to earn Rs.2000/- per month being a labourer with her mother. FIR No.444 dated 05.10.2001 under Sections 279 and 304-A of IPC was registered at Police Station City Kaithal and the claimant being mother of the deceased instituted the claim petition.

3. Respondents No.1 and 2 in their written statement have refuted the contents of the claim petition. It is submitted that the FIR has been got registered in collusion with the police just to grab compensation. It is further submitted that the vehicle in question was insured with Oriental Insurance Company Limited and dismissal of the claim petition has been sought.

4. Respondent No.3- Insurance Company in its written statement has taken a plea that no accident had taken place with the offending vehicle and false case has been got registered by the police in



collusion with the claimant just to grab compensation. Remaining averments of the claim petition have been refuted to be wrong. It is further submitted that driver was not having a valid and effective driving licence on the date of accident and Insurance Company is thus not liable to indemnify the insured.

5. From the pleadings of parties, following issues were framed:-

- “1. Whether accident dated 5-10-2001 at about 7.30 P.M. in the area of Jakholi Adda, Kaithal, resulting into death of Pooja took place due to rash and negligent driving of vehicle/truck No.HR-64-0137 driven by respondent No.2 as alleged? OPP*
- 2. If issue No.1 is proved whether the claimant is entitled for compensation on account of death of Pooja and if so to what amount and from whom? OPP*
- 3. Whether the claim petition is not maintainable as alleged? OPR-1 and 2.*
- 4. Whether the claim petition has been filed in collusion with respondents No.1 and 2 as alleged? OPR-3*
- 5. Whether respondent No.2 Om Parkash was neither driver of the alleged offending vehicle nor was having any valid and effective driving licence at the time of alleged accident? OPR..3*
- 6. Whether the Hon'ble Tribunal has no jurisdiction to entertain and try this petition? OPR.3*
- 7. Relief.”*



6. Thereafter, the parties led their respective evidence.
7. After hearing learned counsel for the parties and going through the material on file, learned Tribunal came to the conclusion that the accident in question had taken place on account of rash and negligent driving on the part of driver of the offending vehicle and awarded a sum of Rs.62,000/- as compensation along with interest @9% per annum from the date of filing of the petition till realization, payable by owner and driver of the vehicle jointly and severally. However, it has been ordered that Insurance Company shall pay the compensation along with interest but it shall have the right to recover the same from the insured as vehicle was being driven in violation of the terms and conditions of the insurance policy.
8. Feeling aggrieved, the present appeal has been filed by the appellant, who is the owner of the offending vehicle. The material on file has been perused and parties have been heard.
9. At the very outset, it is pertinent to mention that the record of the appeal as well as the Tribunal has got burnt in a fire incident in the branch and the appeal in hand shall be decided as per facts and evidence mentioned in the award passed by the Tribunal.
10. Learned counsel for the appellant argued that the impugned award passed by the Tribunal is based on conjectures and surmises. The pleadings of the parties and evidence on file have not been appreciated in the correct perspective while coming to the conclusion that accident in question had taken place due to rash and negligent driving on the part of



respondent No.2 while driving the offending vehicle. Learned counsel contended that deceased herself was negligent as she suddenly came in front of the truck on the road. Learned counsel further contended that the Insurance Company has been wrongly exonerated of its liability to indemnify the insured as driver possessed a driving licence which had expired but had been got renewed and learned counsel prayed that the impugned judgment be set aside.

11. On the other hand, learned counsel for respondent No.3 has argued that the impugned award is legal and valid and the same has been passed by appreciating the facts and evidence on the file in the correct perspective and no interference in the award is called for and has prayed for dismissal of the appeal.

12. To prove rash and negligent driving on the part of respondent No.2, claimant Mahindro has appeared as PW1 and deposed that about one and a half years ago, she along with her daughter Pooja (since deceased) and Kama Devi had gone in front of their locality after crossing the road to answer the call of nature at about 7/7.30 P.M. Her daughter Pooja was standing on the Kacha/unmetalled portion of the road. In the meanwhile, offending truck came from the side of Anaj Mandi which was being driven by respondent No.2 at a high speed and hit her daughter Pooja, resulting in her death.

13. PW2 Jaimal stated that about one and a half years ago, he was standing in front of his Basti, New Anaj Mandi, Kaithal. Kama Devi, Pooja and Mahindro were going to answer the call of nature. Pooja was



standing on the unmetalled portion of the road when the offending truck came and hit her, which was being driven at a high speed resulting in death of Pooja at the spot. On his statement, formal FIR was registered vide FIR No.444/2001 under Sections 279 and 304-A of IPC, Police Station City Kaithal.

14. Nothing to shatter the veracity of PW1 and PW2 could be elicited during their cross-examination and their stand has remained consistent throughout. The driver of the offending vehicle has not stepped into the witness-box to controvert the evidence led by the claimant and has not offered himself for cross-examination. It is well settled that if a party does not step into the witness box and to offer itself for cross-examination, an adverse inference has to be drawn against it to the effect that the case set up by him is not true. In these circumstances, the un rebutted evidence led by claimant has to be relied upon.

15. In addition to this, the copy of final report under Section 173 of Cr.P.C. Ex.P1 has been led in evidence, which shows that respondent No.2 has been challaned by the police for the offences under Section 279/304-A of IPC and he is facing the trial. It has been held by a Coordinate Bench of this Court in 1993(2) PLR 109 – **Girdhari Lal Vs. Radhe Shyam and others**, that if the driver of the offending vehicle has been challaned by the police and is facing trial for causing accident due to rash and negligent driving, it is safe to presume that accident had taken place due to rash and negligent driving on his part. In the present case also, there is no evidence on the file that respondents No.1 and 2 had ever



filed any protest petition before higher authorities against the false implication of respondent No.2 or false involvement of the offending vehicle and their silence for such a long period also goes against them. In holding so, I have relied upon 2008(2) RCR (Civil) 72 (P&H) – **Sudama Devi and others Vs. Kewal Ram and others.** Hon’ble Supreme Court while deciding Special Leave to Appeal (C) 10351/2019 titled **Ranjeet and another Vs. Abdul Kayam Neb and another** vide judgment 25.02.2025 has held that once a charge-sheet has been filed and the driver has been held to be negligent, no further evidence is required to prove that offending vehicle was being driven negligently by its driver. Learned Tribunal has also appreciated the facts of the case and evidence on file in the correct perspective while coming to the conclusion that the accident had taken place due to rash and negligent driving on the part of respondent No.2 while driving the offending vehicle. There is thus no reason to take a contrary view and finding on issue No.1 is accordingly affirmed.

16. Coming to the issue of grant of compensation, as per version of claimant, his daughter Pooja, who died in the accident was 6 years of age and learned Tribunal awarded a sum of Rs.60,000/- as compensation besides a sum of Rs.2,000/- towards funeral expenses and total compensation of Rs.62,000/- was awarded. The compensation awarded by the Tribunal is not on higher side and rather, the same is on the lower side and since, the claimant has not filed any appeal or cross-objections, there is no ground to interfere in the same.



17. The Insurance Company has been exonerated on the ground that the driver did not possess a valid and effective driving licence on the date of accident. Insurance Company had examined RW1 Sunil Kumar Singh, licencing clerk, licencing Authority Agra, who produced the record relating to driving licence of Om Parkash bearing DL No.0689 dated 23.11.2001. He deposed that this licence remained valid upto 04.11.2000 and thereafter, it was renewed w.e.f. 23.11.2001 to 22.11.2004 and Ex.R1 is the true copy of licence register. He stated that driving licence Ex.R2 has been issued by their office on 23.11.2001. As such, from the evidence led by RW1, it is established that the licence of Om Parkash was valid upto 04.11.2000. The accident took place on 05.10.2001 and thereafter, the licence was got renewed on 23.11.2001. As such, the driving licence was never got renewed within 30 days of expiry of driving licence and it shall be deemed to have been renewed only w.e.f. 23.11.2001 onwards. Driver thus was not possessing a valid and effective driving licence on the date of accident and Insurance Company has thus been rightly exonerated of its liability to indemnify the insured and liability was fastened upon the owner and driver. However, Insurance Company was directed to deposit the compensation and to recover the same from the insured on account of violation of terms and conditions of the insurance policy.

18. The aforesaid findings of fact arrived at by the Tribunal do not suffer from any material illegality or infirmity and no interference in the same is called for. Resultantly, findings on issues No.2 and 5 are



affirmed.

- 19. Findings on remaining issues have not been assailed.
- 20. As a result of aforesaid discussion, the appeal in hand is ordered to be dismissed with costs.
- 21. Pending miscellaneous application(s), if any, shall also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

24.02.2026
Priyanka Thakur

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No