

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4591-2019 (O&M)

PARKASH AND ORS.

.....Appellants

Vs.

TINKU AND ORS.

.....Respondents

Reserved on : 15.01.2026

Pronounced on: 26.02.2026

Uploaded on: 06.03.2026

Whether only the operative part of the judgment is pronounced?

NO

Whether full judgment is pronounced?

YES

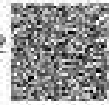
CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ekta Thakur, Advocate
for the appellants.

Mr. Varun Sharma, Advocate
for respondent No.3.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 02.03.2019 passed by Motor Accident Claims Tribunal, Chandigarh (in short 'Tribunal'), whereby, the claim petition filed by the appellants was dismissed on the ground that rash and negligent driving on the part of respondent No.1-Driver could not be proved by the appellants/claimants.

**BRIEF FACTS OF THE CASE**

2. Brief facts of the case are that on 25.01.2017 deceased was going from her home towards bank situated in Ram Darbar, Chandigarh as pillion rider upon Kinetic Scooter no. CH01-BK-7011 driven by respondent no.1 at a very high rash speed and in negligent manner. When at about 1.00 p.m. she reached near Gas Agency, Phase II, Ram Darbar, Chandigarh in the mean time respondent lost his control over the above said Kinetic Scooter as a result of which, fell down on the road. Due to this deceased suffered multiple injuries on vital organs of her body, which proved fatal for her.

3. Upon notice of the claim petition, respondents therein appeared and contested the claim petition by filing separate written statement denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

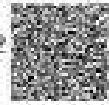
“1. Whether on 25.01.2017, respondent no.1 caused the death of Mrs. Mangla Devi by rashly and negligently driving the offending vehicle bearing no. CH01-BK-7011 ? OPP.

2. Whether the petitioners are entitled to compensation, if yes, how much and from whom? OPP.

3. Whether respondents no.1 was not holding an effective and valid driving licence at the time of accident ? OPR.

4. Relief.”

5. Thereafter, both the parties led their evidence in support of their respective pleadings.



6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

7. Learned counsel for the appellant contends that learned Tribunal has wrongly dismissed the claim petition filed by the appellant on the ground that appellants failed to prove that accident took place due to rash and negligent driving of respondent No.1. Further on the ground that no FIR was registered and no postmortem was conducted. She further contends that the documentary as well as oral evidence was not correctly appreciated by the learned Tribunal. She, therefore, prays that the present appeal be allowed and compensation be granted as per the settled law.

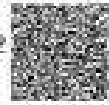
8. Per contra, learned counsel for respondent No.3 contends that learned Tribunal has rightly dismissed the claim petition filed by the appellant since no accident took place and number of vehicle was not mentioned in the DDR. He further contends that there is contradiction in the statement of witnesses as well. He, therefore, prays that the present appeal be dismissed.

9. I have heard learned counsel for the parties and perused the whole record of this case with their able assistance.

10. It would be apposite to reproduce the relevant portion of the award, which is reproduced as under:-

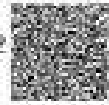
“ISSUE NO. 1:

11. It has been argued by learned counsel for claimant/petitioner that there is ample evidence on record to prove that accident had taken place and death of



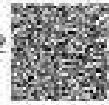
Mangla Devi had been caused by rash and negligent caused by rash driving of offending vehicle bearing no. CH01-BK-7011 driven by respondent No. 1. The learned The learned counsel for claimant relied upon judgments Radha Devi and others vs Parkash Sawami and others 2017(2) RCR(Civil) 440; Anbazhagan and others vs V. Shankar and another 2014 ACJ 469 in support of his plea that FIR and Post Mortem Report are not necessary to claim compensation in motor Accident Claim.

12. On the other hand, it has been argued by learned counsel for respondent no. 1,2 & 3 that claimants has failed to prove that accident had taken place and death of Mangla Devi had been caused due to driving of offending vehicle of respondent no.1. The learned counsel for respondent no.3 relied upon judgments Oriental Insurance Co. Ltd vs Premlata Shukla, 2007(3) RCR Civil 301(SC); Nishan Singh vs Oriental Insurance Co. Ltd 2018(2) RCR(Civil) 891; Parveen Kumar 13. Firstly, in the present case no FIR has been registered. DDR no. 051 (Ex.P-1) dated 25.01.2017 was registered on the basis of information received from the GMCH Sector 32, Chandigarh regarding admission of injured Mangla Devi wife of Ramji Lal resident of H.NO. 193, Phase II Ram Darbar, Chandigarh in an accidental case and vide DDR no. 003, the police reached GMCH Sector 32 and PGI where Doctor said patient was unfit for statement vide DDR no. 085 police received death ruqa of deceased Mangla and recorded statement U/s 175 Cr.P.C and proceedings for Post Mortem Report were initiated. Further, vide GD no. 045(Ex.P-4) the dead body was handed over to heirs of deceased without conducting Post Mortem as they made written request that to give dead



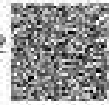
body without postmortem body without p and dead body of deceased was handed over to them. To prove the factum of negligent driving by respondent no. 1, claimant examined Lekhraj as PW-1, being an eye witness of the accident and in his affidavit Ex.PW1/A, deposed about the manner of accident took place on 25.01.2017 at 1.00 pm. He testified that on 25.1.2017 he was going plying his cycle towards Ram Darbar Phase II, Chandigarh. When at about 1.00p.m. he reached near Gas agency, Phase II, Ram Darbar, Chandigarh at that time, Tinku was driving his Kinetic Scooter no. CH01-BK 7011 upon which his mother Mangla Devi was pillion rider, at a very high rash speed and in negligent manner. Due to this Tinku/respondent no.1 lost his control over the above said Kinetic Scooter as a result of which both the riders of Kinetic Scooter fell down on the road alongwith Kinetic scooter and suffered injuries. His mother suffered multiple injuries on vital organs of her body. The accident took place due to rash and negligent driving of respondent no. 1. He further deposed that immediately after the accident his mother was taken to GMCH Sector 32, Chandigarh but her condition was serious, hence she was referred to PGI, Hospital, Chandigarh where she was admitted on the same day for the injuries suffered by her. In the PGI despite best treatment given to her she died on 28.01.2017. PW-1 during his cross examination has stated that he did not inform police and the people gathered there people informed police. He further admitted that vehicle number in DDR no.Ex.P-1 to Ex.P-4 is not found mentioned.

14. Though, it is well settled law that in a criminal case negligence is to be proved beyond reasonable doubt whereas in the civil case, negligence is to be proved on

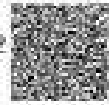


preponderance of probabilities. The Hon'ble Supreme Court in case 'Kusumlata Vs. Satbir, 2011(2) RCR(Civil) 379 has held that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal case. The Court must keep this distinction in mind. Observation made by Hon'ble Supreme Court in Bimla Devi and others V. Himachal Raod Transport Corporation and others 2009(3) R.C.R. (Civil) 805 are quoted in Kusumlata's case (supra) as " In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not be have been applied." It has been held by Hon'ble Punjab and Haryana High Court in case titled Girdhari Lal Vs. Radhey Shyam and others 1993(2) PLR 109 that where a person was facing trial for causing accident, it is to be presumed that the accident has taken place due to rash and negligent driving of the driver." Similar view has been taken by Hon'ble Punjab and Haryana High Court in Gurdeep Kaur Vs. Tarsem 2008(2) RCR (Civil) 774 at page 775.

However, in the present case claimants have failed to prove prima facie that accident has taken place due to rash and negligent driving of respondent no.1. Admittedly, no FIR was registered in the present case and also in the DDR Ex.P-1 to P-4 neither number of vehicle is found mentioned nor fact of negligent and rash driving is there. It is also considerable point that accident took

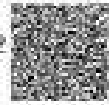


place on 25.1.2017 and deceased died on 28.1.2017. The testimony of PW-1 can not be relied upon as eye witness of the accident. PW-1 has stated to be an eye witness of the alleged accident but he has not lodged any FIR in this regard. It is very strange that why he had not given statement to police regarding rash and negligent driving by respondent no.1 at first instance and even after death of his mother. Respondent no.1 appeared as RW-1 and he has categorically deposed in his cross examination that accident took place due to sudden applying of brakes as child who was playing suddenly came in front of his scooter and deceased Mangla Devi fell down and suffered injuries. However, it is also important in the present case that no Post Mortem was conducted and PW-2 in his examination has also proved Ex.P-4 vide which dead body of deceased was handed over to heirs of deceased without post mortem on their request alongwith other DDRs. This witness also proved the statement of PW-1 Lekh Raj recorded U/s 175 Cr.P.C i.e. Ex.P-20 which is in total contradiction of his version as PW-1 given in the present claim case. As per statement Ex.P- 20 sent claim. case. As per th received information about the accident from his brother Lekh Raj received information about Neeraj on phone on 25.01.2017. He stated that due to sudden applying of brakes his mother fell down as she lost balance and they had no doubt on anybody and did not want any police action and and requested to give the dead body for last rites. In statement U/s 175 of Neeraj (claimant no.4) i.e. Ex.P-21 he has stated to himself as eye witness and stated that respondent no.1 was his maternal uncle's son and reason for accident is totally in corroboration of version of RW-1 and statement of Lekh Raj (claimant no.2) U/s 175 Cr.P.C. Further Ex.P-22



punchnama also establishes that accident did not take place due to rash and negligent driving of respondent no.1 and the same took place due to applying of sudden brakes as some children came in front of Activa and vehicle lost his balance and deceased fell down and during treatment deceased Mangla died after 4th day of accident. As Panchnama, the claimants have also stated that they would not make any claim. PW-2 also proved the application submitted by wherein claimants requested to the DSP South that they do not want the post mortem of Mangla Devi and requested to give the dead body without post mortem. He proved the application Ex.P-25 and order dated Ex.P-28 vide which Post mortem of deceased was waived of on the application of heir/claimants as no foul play was found. In view of the above discussion, claimant has failed to prove that accident has taken place due to rash and negligent driving of respondent no.1. The authorities in the facts and led by claimants are not applicable circumstances of present case being distinguishable. It is well settled that proof of rashness and negligence on the part of the driver of the vehicle is sin qua non for maintaining application U/s 166 of the Act. But claimants even failed to prove the same prima-facie. The evidence led by claimants is itself contradictory as discussed and leads nowhere. Hence, this issue is decided against the claimants and in favour of respondents.”

11. A perusal of the record shows that respondent No.1–Tinku, the driver of the offending vehicle, filed written statement wherein he stated that the deceased Mangla Devi was proceeding from her residence towards a bank at Ram Darbar as a pillion rider on a Kinetic scooter bearing

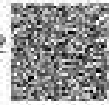


registration No. CH-01-BK-7011, which was being driven by him. According to the said respondent, the scooter was being driven on the correct left side of the road and at a normal speed when, all of a sudden, the deceased allegedly lost her balance and fell on the road, sustaining multiple injuries on vital parts of her body, which ultimately proved fatal. On the basis of this plea, respondent No.1 attempted to attribute the cause of the accident to the alleged fault of the deceased herself.

12. However, even while setting up the aforesaid defence, respondent No.1 unequivocally admitted the occurrence of the accident and the fact that the deceased was travelling as a pillion rider on the scooter driven by him. This material admission with regard to the factum of the accident appears to have been completely ignored by the learned Tribunal while adjudicating the claim petition.

13. Similarly, respondent No.3—Insurance Company also did not dispute the occurrence of the accident in its written statement. Its defence was confined to the plea that the driver of the vehicle was not holding a valid and effective driving licence and that the vehicle was being driven in violation of the terms and conditions of the insurance policy as well as the provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder. Thus, the stand taken by the Insurance Company also does not cast any doubt upon the occurrence of the accident itself.

14. The record further reveals that DDR (Ex.P-1) was registered on 25.01.2017 on the basis of information received from Government Medical College and Hospital, Sector-32, Chandigarh regarding the admission of injured Mangla Devi in an accident case. The registration of the said DDR

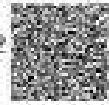


lends further support to the occurrence of the accident. It has also come on record that the police reached Government Medical College and Hospital, Sector-32, Chandigarh to record the statement of the injured; however, the attending doctor declared that the patient was unfit to make any statement at that time.

15. A perusal of statement made by PW-1 Lekh Raj, who was examined as PW-1 proves the factum of accident and further the reason for not getting done the postmortem.

16. The relevant extract of statement of PW-1 Lekh Raj is reproduced as under:-

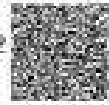
“Immediately after the accident my mother was taken to GMCH, Sector-32, Chandigarh but her condition was serious, hence, she was referred to PGI Hospital, Sector-12 Chandigarh where she was admitted on the same day for the injuries suffered by her. In the PGI Hospital despite best treatment given to her she died on 28.01.2017. A sum of Rs.40,000/- was spent upon her treatment but some of the bills could be retained, which Ex. are P-5 to Ex. P-16. 28.01.2017 being Saturday and there much rush for the postmortem of dead bodies, Whence, it was not get done on the same day. The next day being Sunday and on that day also the PMR was not possible in the PGI Hospital, in this situation the I.O. of the police advised and suggested the family member of the deceased that they can take the dead body without



postmortem done. In this situation claimants who were under much shock and stress opted for not getting the postmortem done of the deceased, however, death summary issued by the PGI authorities was issued regarding the death showing that victim deceased died due to the injuries suffered by her. The said summary is Ex. P-17.”

17. A perusal of the above testimony shows that the learned Tribunal has completely ignored the explanation furnished by PW-1 regarding the non-conduct of the postmortem examination. The learned Tribunal further failed to appreciate that PW-1 was not only an eye-witness to the occurrence but also the son of the deceased. His testimony was discarded merely on the ground that he had not lodged the FIR. Such an approach, in the considered opinion of this Court, is wholly erroneous. Immediately after the accident, the foremost concern of PW-1 was to ensure that his injured mother received prompt medical treatment so as to save her life. In such circumstances, it would be wholly unrealistic and unreasonable to expect that he should have prioritised the registration of an FIR instead of arranging immediate medical aid for the victim.

18. Further deposition of RW-1 i.e. driver of offending vehicle was totally ignored by learned Tribunal, who in his cross-examination stated that accident took place due to sudden applying of brakes and child, who was playing suddenly came in front of his scooter and Mangla Devi fell down and suffered injuries, which also proved the factum of accident.



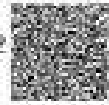
19. A bare reading of the award shows that the same is dismissed on the flimsy grounds without any application of mind.

20. The relevant extract of statement of RW-1 Tinku is reproduced as under:-

“It is correct that the accident took place due to sudden applying of brakes as children who were playing suddenly came in front of my scooter and the deceased Mangla Devi fell down and suffered injuries. It is correct that deceased Mangla Devi was pillion rider on my scooter at the time of accident. It is wrong to suggest that I was not driving my scooter in rash and negligent manner. I have driving licence which has been challenged under the traffic violation and copy of the said challan form is Ex. R-1.”

21. Be that as it may, failure to get First Information Report registered is not fatal to the claim petition. It is trite that registration of the offence and police investigation is not a condition precedent for awarding the claim under the Motor Vehicles Act. The Hon’ble Supreme Court has consistently held, in a catena of judgments, that merely because for one reason or another the police failed to register a criminal case, the claimant cannot be deprived of his right to seek compensation under the Motor Vehicles Act.

22. Even where the First Information Report in respect of a vehicular accident is not lodged with the police or is lodged belatedly, or



where the police neither register an offence nor conduct investigation, the same does not extinguish the right of the claimant to claim compensation. The claimants are entitled to compensation upon establishing, on the basis of admissible evidence, the facts and circumstances relating to the accident and the fatal injuries sustained by the deceased. Therefore, registration of an FIR or completion of police investigation is not always a condition precedent for awarding compensation. A claim petition can very well be allowed if the occurrence of the accident and the resultant injuries or death are proved on the touchstone of preponderance of probabilities. The claim case or the victim thereof cannot, in every situation, be left at the mercy of the police machinery. The Court is fully competent to examine and adjudicate the claim on the basis of the evidence available on record, even in cases where the police have neither registered an offence nor conducted any investigation.

23. In view of the above discussion, the findings recorded by the learned Tribunal cannot be sustained and are accordingly set aside. It is held that the claimants/appellants have successfully proved, on the touchstone of preponderance of probabilities, that the accident in question occurred due to the rash and negligent driving of the offending vehicle by respondent No.1, the driver thereof. Consequently, the appellants-claimants are held entitled to compensation in accordance with the settled principles of law.

CONCLUSION

24. Accordingly, the present appeal is allowed and the appellant is held entitled to the compensation.

25. Since, there is no decision on issue No.2 and 3 by learned Tribunal, the matter is remanded to learned Tribunal to decide issue No.2



and 3 after taking into consideration the evidence led by all the parties and after considering the settled law as laid down by the Hon’ble Supreme Court.

26. The parties through their counsel are directed to appear before learned Tribunal on 25.03.2026.

27. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

26.02.2026
Ayub

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No