



207

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**FAO-3688-2024 (O&M)****Date of Decision : 24.02.2026**

United India Insurance Co. Ltd.

... Appellant

Versus

Smt. Jinnt and Others

... Respondents

207-1**FAO-1454-2025 (O&M)**

Jinnt and Others

... Appellants

Versus

Kapoor Alam Khan and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lalit Garg, Advocate
for the appellant in FAO-3688-2024 and
for respondent No.3 in FAO-1454-2025.

Mr. Digvijay, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants in FAO-1454-2025 and
for respondent Nos.1 to 9 in FAO-3688-2024.

ALKA SARIN, J. (Oral)

1. This order shall dispose off the above-captioned two appeals.
The appeal being FAO-3688-2024 has been filed by the Insurance Company
and the appeal being FAO-1454-2025 has been filed by the claimants, both
aggrieved by the award dated 05.04.2024 passed by the Motor Accident
Claims Tribunal, Nuh (hereinafter referred to as 'Tribunal') on account of

death of Yasir (hereinafter referred to as the 'deceased'). The parties are being referred to as the claimants, Insurance Company and driver of the offending vehicle for the sake of clarity.

2. The brief facts relevant to the present *lis* are that on 03.09.2022 at about 07.00 pm, Imran alongwith the deceased went to Patan Udaipuri for purchasing vegetables. They were returning to their hotel on their motorcycles and when they reached midway of Doha Chowk and Patan Udaipuri, a motorcycle bearing registration No.HR-28H-4975 (hereinafter referred to as the 'offending vehicle') which was being driven by Kapoor Alam Khan (respondent No.1) herein in rash and negligent manner and at very high speed came from Doha Chowk side and directly hit the deceased. As a result of the accident, the deceased fell on the ground. Imran noted down the registration number of the offending vehicle. After the accident the driver of the offending vehicle fled away from the spot. The deceased was taken to Government Hospital Mandikhera from where he was referred at SHKM, Nalhar and further to SMS, Hospital, Jaipur, however, he succumbed to his injuries. The postmortem of the deceased was conducted in Government Hospital, Mandikhera. The matter was reported to the police and FIR No.327 dated 04.09.2022 was registered at Police Station Ferozepur Jhirka under Section 279 and 304-A of the Indian Penal Code, 1860 against the driver of the offending vehicle.

3. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the respondent No.1, caused accident in question on 03.09.2022, at about 07.000 PM, by driving offending vehicle Motorcycle, bearing registration

No.HR-28H-4975, in a rash and negligent manner resulting into causing death of Yasir son of Bhormal, as alleged ? OPP

2. If issue No.1, is proved, to what amount of compensation petitioners are entitled to and from whom ? OPP
3. Whether the respondents No.1 & 2 have violated the terms and conditions of the insurance policy, if so, to what effect ? OPR-3
4. Relief.

4. The Tribunal in the present case had awarded the following compensation holding the offending vehicle to have been rash and negligent while driving the same :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹10,243/-
2	Annual Income	₹1,22,916/- [₹10,243 x 12]
3	Future Prospects - 40%	₹1,72,083/- [₹1,22,916 + ₹49,167]
4	Deduction - 1/5 th	₹1,37,666/- [₹1,72,083 - ₹34,417]
5	Multiplier - 18	₹24,77,988/- [₹1,37,666 x 18]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium	₹48,000/-
9	Litigation charges	₹3,000/-
	Total Compensation	₹25,64,988/-
	Interest	7%

5. Learned counsel for the Insurance Company would contend that it has come in evidence that it was a case of a head-on collision and it was the deceased who himself was responsible for the accident. Learned counsel for the Insurance Company would further contend that both in the FIR and in the statement of Imran, who had appeared as PW2, it was stated that it was a

case of a head-on collision and therefore the deceased himself was negligent and, in the alternative, it is contended that it was a case of contributory negligence. Learned counsel for the Insurance Company has further contended that a deduction of 1/5th has wrongly been applied which ought to be 1/3rd as the deceased was survived by his father and his brothers would have been dependent on the father and not on the deceased.

6. Learned counsel appearing on behalf of the claimants would contend that it was a clear case of negligence on the part of the driver of the offending vehicle as stated by Imran, the eye-witness, who appeared as PW2. He narrated the entire facts qua the accident in his affidavit (Ex.PW2/A). He further deposed that he witnessed the accident in question and that the driver of the offending vehicle was driving the vehicle at a very high speed and in a rash and negligent manner. Learned counsel for the claimants has further pointed out that an FIR was also registered in this regard and the challan was presented against the driver of the offending vehicle. Learned counsel for the claimants has further contended that not an iota of evidence was led by the Insurance Company to even remotely suggest that it was the fault of the deceased or that it was a case of contributory negligence. It is further the contention that the claimants were dependent on the deceased hence deduction of 1/5th has rightly been applied by the Tribunal. It has further been contended that only a compensation of ₹48,000/- has been awarded under the head 'loss of consortium', which is not in consonance with the law laid down by Hon'ble Supreme Court in cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**, **N. Jayasree**

**& Ors. vs. Cholamandalam M.S General Insurance Company Ltd.
[2021(4) RCR (Civil) 642].**

7. Heard.

8. The arguments of learned counsel for the Insurance Company that negligence was on the part of the deceased and in the alternative it was a case of contributory negligence, deserve to be rejected. As is discernible from the impugned award, no issue as regards contributory negligence was framed before the Tribunal. Issue No.1 was framed as regards rash and negligent driving of the offending vehicle by its driver. The claimants examined PW2 Imran, who is the author of the FIR and an eye-witness of the accident. This witness has categorically deposed that he had witnessed the accident in question caused by respondent No.1 (driver) while driving the offending vehicle in a rash and negligent manner and proved on record FIR (Ex.P12) recorded on the basis of his statement (Ex.P2) under Sections 279 and 304-A IPC. He also proved on record report under Section 173 CrPC (Ex.P1) and other documents regarding investigation/police proceedings (Ex.P3 to Ex.P25) including the mechanical inspection report of the offending vehicle. This witness was cross-examined at length by the counsel for the respondents but nothing could be elicited to falsify the case of the claimants. Further, the driver did not step into the witness-box to depose regarding the negligence of the deceased or qua the contributory negligence. There is no evidence qua contributory negligence. Hon'ble Supreme Court in the case of **M. Nithya & Ors. vs. SBI General Insurance Company Limited [SLP(Civil) Nos.833-834 of 2023 decided on 03.01.2025]** held as under :

“7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained.”

9. Further, filing of the report/challan before the Illaqa Magistrate and framing of charges against the driver of the offending vehicle are *prima facie* proof of happening of the accident in question by the offending vehicle. In a recent judgment dated 02.01.2025, the Hon’ble Supreme Court

in the case of **ICICI Lombard General Insurance Co. Ltd. vs. Rajani Sahoo & Ors.** [(2025) 2 SCC 599] held as under :

“7. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, is concerned, this Court in the case of Mangla Ram v. Oriental Insurance Co. Ltd. and Ors. [(2018) 5 SCC 656] held in para 27, thus:

“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, 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)

10. Further, a perusal of the award reveals that the Tribunal has given weightage to the evidence recorded before it. It is well settled law that the Tribunal has to decide the claim petition on the basis of the evidence led before it and if any evidence before the Tribunal runs contrary to the contents in the FIR, the evidence recorded before the Tribunal has to be given weightage. Hon’ble Supreme Court in the case of **National Insurance Company Limited vs. Chamundeswari & Ors. [2021 (4) RCR (Civil) 494]** has held as under :

“8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal

evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the judgment, relied on by the appellant's counsel in the case of Oriental Insurance Company Limited v. Premlata Shukla and Others, 2007 (13) SCC 476, this Court has held that proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report. In the judgment in the case of Nishan Singh and Others v. Oriental Insurance Company Limited, 2018 (6) SCC 765, this Court has held, on facts, that the car of the appellant therein, which crashed into truck which was proceeding in front of the same, was driven negligently by not maintaining sufficient distance as contemplated under

Road Regulations, framed under Motor Vehicles Act, 1988. Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the appellant, would not render any assistance in support of his case.”

11. Further, the Hon’ble Supreme Court in the case of **Mathew Alexander vs. Mohammed Shafi & Anr. [(2023) 13 SCC 510]** has held as under :

“9....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 vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.”

12. In view of the above law, no fault can be found with the findings of the Tribunal on issue No.1 as regards rash and negligent driving

of the offending vehicle by its driver.

13. The argument of learned counsel for the Insurance Company that the deduction of 1/3rd ought to have been applied instead of 1/5th deserves to be accepted in view of law laid down by the Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited** (supra). The father of the deceased, namely, Bhur Mal was impleaded as one of the claimants and his age has been mentioned as 42 years. The siblings of the deceased would have been dependent on their father hence they cannot be treated as dependent on the deceased. Accordingly, a deduction of 1/3rd is applied as the mother of the deceased was alive at the time of the accident and he was also survived by his wife.

14. Since there is no challenge to the income, multiplier, future prospects and the compensation awarded under the conventional heads as applied by the Tribunal, the same are maintained. However, the argument of learned counsel for the claimants that the compensation awarded under the head ‘loss of consortium’ is not in consonance with the law laid down by Hon’ble Supreme Court deserves to be accepted. Hence, in view of the law laid down by Hon’ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimants would be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. The amount of ₹3,000/- awarded by the Tribunal towards litigation charges is maintained.

15. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹10,243/-
2	Annual Income	₹1,22,916/- [₹10,243 x 12]

3	Deduction - 1/3rd	₹81,944/- [₹1,22,916 - ₹40,972]
4	Future Prospects - 40%	₹1,14,722/- [₹81,944 + ₹32,778]
5	Multiplier - 18	₹20,64,996/- [₹1,14,722 x 18]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Filial [₹48,000/- x 7] (ii) Spousal	₹3,36,000/- ₹48,000/- (Total ₹3,84,000/-)
9	Litigation charges	₹3,000/-
	Total Compensation	₹24,87,996/-

16.. In view of the above discussion, the award passed by the Tribunal is modified and both the appeals - filed by the Insurance Company and the claimants - stand disposed off accordingly. Pending applications, if any, also stand disposed off.

24.02.2026
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO