**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-195-2016 (O&M)

TATA AIG Insurance Co. Ltd. ......Appellant

vs.

Vinod Kumar Asthana & ors. ......Respondents

Date of Reserve: 20.02.2026
Pronounced on: 24.03.2026
Uploaded on:- 06.04.2026

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: Mr. Sanjeev Kodan, Advocate
for the appellant.

Ms. Mehak Sawhney, Advocate
for respondent Nos. 1 and 2.

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SUDEEPTI SHARMA J.

1. The present appeal has been preferred by the appellant-Insurance Company against the award dated 13.08.2015 passed by the learned Motor Accident Claims Tribunal, Gurgaon in the claim petition filed under Section 166 and 140 of the Motor Vehicles Act, 1988 (for short, 'the Tribunal') on the ground that the liability to pay compensation to the tune of Rs. 28,91,000/- has been wrongly fixed upon the appellant-Insurance Company.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 21.11.2013, Anshuman (since deceased) was going towards Delhi from Gurgaon after finishing his official work on his Pulsar motorcycle bearing registration No.DL-7AS-6379. When he reached on MG Road near JMD Tower all of a sudden, an unknown dumper being driven by its driver in a rash and negligent manner hit the motorcycle from behind and

Anshuman (deceased) fell down on the road and the driver of the dumper ran away from the spot of accident. A pedestrian called the PCR on 100 number and PCR No.2 reached at spot of accident and brought Anshuman to Civil Hospital, Gurgaon where doctors declared him 'brought dead'.

3. Upon notice of the claim petition, respondents appeared and admitted the factum of compensation.

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

> *"1. Whether the accident took place due to rash and negligent driving of vehicle bearing No. HR-26-BQ-4059 by respondent no.1? OPP*
>
> *2. If issue no.1 is proved, whether petitioners are entitled to compensation on account of death of Anshuman Asthana in the accident and if so how much and from whom ?OPP.*
>
> *3. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident and has violated the terms and conditions of insurance policy? OPR(3).*
>
> *4. Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants/respondent Nos. 1 to 2 to the tune of Rs.28,91,000/-. However, the appellant-Insurance Company was held liable to pay the compensation. Hence, the present appeal.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES

6. Learned counsel appearing on behalf of the appellant–Insurance Company contends that the accident took place on 21.11.2013 and the FIR was

registered on the next day, wherein, the vehicle involved in the accident was stated to be dumper, subsequently changed to Swift car to extract the compensation.

7. He further contends that learned Tribunal has erred in granting 50% future prospects instead of 40% as per the settled law. He therefore prays that the present appeal be allowed.

8. Per contra learned counsel for respondents No.1 and 2 vehemently argues on the line of award. He further contends that learned Tribunal has rightly held that accident occurred due to sole rash and negligent driving of offending vehicle. He therefore prays that the present appeal be dismissed.

9. I have heard learned counsel for the parties and perused the whole records of the case.

10. Before proceeding further, it is apposite to reproduce the relevant portion of the award, which reads as under:-

> *"ISSUE NO. 1*
>
> *Onus to prove this issue was upon the petitioners. The petitioners have examined PW7 Kultaj Kataria who tendered his affidavit Ex.PW7/A stating therein that on 21.11.2013, at about 10.00 p.m., he was going to his home in Baleno car from MGF mall after shopping and when he reached near JMD Tower, MG Road, Gurgaon, he saw that a speeding Maruti Swift Car bearing registration No. HR-26-BQ-4059 coming from IFFCO chowk side driven by respondent no.1 in a rash and negligent manner and hit the motorcycle of the deceased from behind and the deceased fell down on the road. After the accident, the driver of the offending vehicle run away from the spot of accident with the vehicle. He has further stated that after the accident people gathered at the spot of accident and he had given his mobile number to one of the security guard standing there and told him that if somebody inquired about the accident, he can give his number. On 1.12.2013, he received a call from one Vinod Kumar Asthana and he told him that he is father of the deceased and he got his mobile number from the security guard roaming there.*

Thereafter, he alongwith Vinod Asthana visited the police station, where police recorded his statement. The petitioners have proved on record the copy of FIR Ex.P15 and Final Report U/s 173 Cr.P.C. Ex.P16.

PW2 Pardeep Kumar Criminal Ahlmad of the court of Ms. Manvika Banswal, JMIC, Gurgaon brought the summoned record of case titled 'State Vs. Jaswant' arising out of FIR No. 426 of 2013 U/ss 279/304-A IPC, PS DLF Phase-II, Gurgaon. He has specifically deposed that charges against accused Jaswant (respondent No.1) were framed on 31.3.2014 for offence punishable U/ss 279/304-A IPC. He had proved the copies of DL of Jaswant as Ex.P4 and copy of RC of vehicle No. HR-26-BQ-4059 as Ex.P5.

PW5 Constable Krishan has proved copy of FIR Ex.P15 and has stated that the challan was submitted against Jaswant Singh (respondent No.1). Post Mortem Report Ex.P7 proved on record by PW3 Dr. Yudhveer reveals that Anshuman Asthana (deceased) died on 21.11.2013 with alleged history of road traffic accident. The doctor has opined the cause of death as 'shock & hemorrhage' following ante mortem blunt force impact which is said to be consistent with the manner as alleged.

It is contended by learned counsel for the insurance company that PW7 Kultaj is an introduced witness and he did not witness the accident in question. The FIR at the first instance was registered against a dumper and not against the offending car. It has further been contended that it is unnatural that he would give the particulars of his mobile to someone on the road and would himself leave the place of occurrence. It has further been contended that as the car in question was not involved in the accident, the insurance company not liable to pay the compensation. The Insurance company has also submitted a complaint to the Commissioner of Police, copy of which has been marked as Mark-R1 on file.

Per contra, learned counsel for the petitioners has contended that at the first instance the FIR was not got registered on the statement of the eye witness. The police had visited the spot on 23.11.2013 and had recorded the statement of Subhash Kumar Yadav *which is available with the challan Ex.P16. He had specifically stated that the accident had occurred with the Swift car bearing No. HR-26. Thereafter Vinod Asthana father of the deceased came to Gurgaon from his native place. He got the mobile number of PW7 Kultaj Kataria and his statement was recorded on 1.12.2013. It has been consistent version that Vinod Asthana and Kultaj had together visited the police station.*

This court finds that there is no force in the contention of learned counsel for respondent No.3. Though, the FIR was registered against a dumper but it is true that it was not an eye witness account. On investigation, the police found that it was the offending car only driven by respondent No.1 and owned by respondent No.2 which was involved in the accident. The police had visited the spot and had recorded the statement of Subhash Kumar Yadav on 23.11.2013. It needs to be noted that his statement was recorded before recording the statement of PW7 Kultaj Kataria. Thus, the introduction of PW7 Kultaj as a witness lateron to implicate the offending car does not arise. The complaint Mark-R1 is dated 31.12.2014 i.e. after one year of the incident without any proof to the allegations on the said complaint. The claim petition was already filed on 10.3.2014. It appears that the same has been moved just to strengthen the case of the insurance company at later stage with assistance of legal mind.

It is pertinent to note that no evidence has been led by the respondents to deny the accident or that it was not occurred due to rash and negligent driving of respondent No.1. Challans in the criminal cases are filed after thorough investigation. Respondent no.1 did not make any complaint to any authority regarding his false implication by the police. It means that he was satisfied with the investigation. Further, respondents No.1 & 2 did not step into witness box to deny the allegations of rash and negligent driving by respondent no.1. Thus, adverse inference can be drawn against them for not stepping into the witness box in view of the judgment titled as New India Insurance Co. Ltd. Versus Swaran Kanta, 1997(3) RCR (Civil) 591 (P&H) (DB); United India Insurance Company Versus Sham Lal,2010(2) Law Herald, 1709. Moreover, respondent no.1 is *facing trial in FIR Ex.P15. Thus, it is safe to hold rash and negligent driving of respondent No.1 in view of the judgment in case titled Girdhari Lal vs. Radhey Shyam, 1993(2) PLR 101(P&H).*

In view of the above, this Tribunal finds that issue no.1 is proved against the respondents and in favour of the petitioners that accident in question was caused by respondent no.1 while driving the offending vehicle in a rash and negligent manner resulting into the death of Anshuman Asthana."

ANALYSIS OF RECORD

11. A careful perusal of the impugned award reveals that the learned Tribunal has appreciated the evidence on record in its correct perspective and has returned findings which are both legally sustainable and borne out from the material available on record.

12. The primary contention raised on behalf of the appellant–Insurance Company hinges upon the discrepancy in the FIR, which at the initial stage referred to the involvement of a dumper. However, it is not in dispute that the said FIR was not lodged on the basis of an eye-witness account. The evidentiary value of such an FIR, therefore, is limited and cannot override substantive evidence subsequently brought on record.

13. The record reflects that during investigation, the police recorded the statement of Subhash Kumar Yadav on 23.11.2013, wherein the involvement of the offending Swift car was specifically indicated. This statement precedes the statement of PW-7 Kultaj Kataria, thereby lending assurance to the claimant version that the identity of the offending vehicle was not a later embellishment. PW-7, who is an eye-witness, has given a clear, cogent, and consistent account of the occurrence and has unequivocally attributed rash and negligent driving to respondent No.1. Nothing material has been elicited in his cross-examination so as to discredit his testimony.

14. In such circumstances, the Tribunal has rightly placed reliance upon the ocular version of PW-7. It is a settled proposition as held by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Chamundeswari, 2021 INSC 592***, that where credible evidence is led before the Tribunal, the same deserves primacy over the contents of the FIR, particularly when the FIR is not based on direct knowledge of the occurrence. The approach adopted by the Tribunal is thus in consonance with settled legal principles governing adjudication of motor accident claims.

15. The plea of the Insurance Company that PW-7 is a planted or introduced witness has been rightly discarded. The sequence of investigation, as emerging from the record, does not support such an allegation. On the contrary, the delayed complaint (Mark-R1), filed after more than one year of the accident and subsequent to the institution of the claim petition, justifiably invites an adverse inference. The learned Tribunal has correctly observed that the said complaint appears to be an afterthought, devoid of any supporting material, and intended merely to create a defence at a belated stage.

16. Equally significant is the fact that the driver and owner of the offending vehicle chose not to enter the witness box to rebut the allegations of rash and negligent driving. In the absence of any rebuttal evidence, the Tribunal was justified in drawing an adverse inference against them. The filing of the challan against respondent No.3 herein after due investigation further fortifies the case of the claimants and lends corroboration to the findings recorded by the Tribunal.

17. It must also be borne in mind that proceedings before the Motor Accident Claims Tribunal are summary in nature and governed by the principle of preponderance of probabilities. The claimants are not required to establish their case beyond reasonable doubt. On an overall conspectus of the evidence, the

Tribunal has rightly concluded that the claimants have successfully discharged the onus cast upon them.

18. Adverting now to the contention raised by learned counsel for appellant-Insurance Company that learned Tribunal has erred in granting 50% future prospects instead of 40% as deceased was not in permanent jon, the same is bereft of merit. The Hon'ble the Supreme Court in ***New India Assurance Co. Ltd vs. Ashish Ravinder Kulkarni and others, 2023 ACJ 1997,*** has held that in case of a person who is in regular service, a percentage higher than the one stated in ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680],** can also be awarded. The relevant extract of the same is reproduced as under:-

> "*7. It is also his case that the future prospects as reckoned at 30% is not justified and the same should have been at 25% since the job of the deceased cannot be considered as permanent employment. Lastly, it is contended the interest as fixed by the High Court at 7.5% per annum is excessive and is without appropriate reason being assigned.*
>
> *8. The learned counsel for the respondents/claimants would however seek to sustain the judgment passed by the High Court. On all the aspects which have been urged by the learned counsel for the appellant, it is contended that the MACT as well as the High Court have looked into the evidence which was available before it and has thereafter arrived at its conclusion, which does not call for interference.*
>
> *9. In the light of the contentions put forth, insofar as the salary, we take note that by way of clarification, we had required the learned counsel for the respondents/claimants to point out that the amount paid was after deduction of the tax or proof for payment of tax, since the learned counsel for the appellant had contended that the same has not been done. Alongwith an application, in addition to the documents that were relied on before the MACT, the notice of assessment of the Inland Revenue*

Authority of Singapore is produced. From the same, it would indicate that from the salary paid to the deceased, tax has been assessed in Singapore. Hence, there is no scope for double taxation on the same income. Therefore, deducting any amount towards tax once over again would not arise. Hence, his salary as reckoned by the High Court is justified and the same does not call for interference.

10. On the aspect relating to the future prospects, having noted the salary that was being drawn by the deceased, we have also taken into consideration that the deceased was employed in TATA Precision Industries. Another employee who was working as the Assistant Manager in Human Resources had been examined as PW-2 before the MACT to prove the same. In that regard, taking note of the evidence tendered by PW-2 to indicate the nature of employment of the deceased as also his prospects, ***we are of the opinion that*** *the future prospects as reckoned in the instant case is also justified. This is for the reason that though the learned counsel for the appellant seeks to point to the portion of the cross-examination of the said witness to indicate that he had earlier been terminated from TATA Holset Private Limited and had thereafter been appointed in TATA Precision Industries, it would not lead to a conclusion that the job was not of permanent nature. In fact, even if the employment letter indicated that the job could be terminated with 30 days notice as insisted by the learned counsel, that cannot be the basis in as much as the said provision for termination notice would be available to both the parties, namely the employer and the employee and that by itself cannot indicate that the employment was of a temporary nature. Right of the employer to terminate does not suggest it is temporary employment. Such right if exercised has to be in terms of law. Further, from the cross-examination, the suggestion put to PW-2, would only indicate that the deceased who was earlier employed in TATA Holset Private Limited was thereafter taken in another sister concern of the same group providing him better prospects.*

Therefore even if that aspect of the matter is kept in view, the future prospects as reckoned by the High Court is justified."

19. Consequently, in view of the law laid down by Hon'ble the Supreme Court in ***Ashish Ravinder Kulkarni's case (supra)***, 50% addition is made under the head of future prospect is hereby affirmed.

20. In view of the aforesaid analysis, this Court does not find any perversity, illegality, or material irregularity in the findings recorded by the learned Tribunal. The conclusions drawn are based on a proper appreciation of evidence and settled principles of law.

21. Accordingly, the appeal, being devoid of merit, is ***dismissed***.

22. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

24.03.2026
Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes