



FAO-7978-2016 (O&M)

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

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Kamal

.....Appellant

Vs.

Ramesh Kumar and others

.....Respondents

Date of Reserve: 13.02.2026

Date of Pronouncement: 24.03.2026

Uploaded on:- 27.03.2026

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: Mr. Maneet Kaushik, Advocate, for the appellants.

Mr. Satpal Dhamija, Advocate,
for respondent No. 3-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 21.07.2016 passed in the claim petition filed under Section 166/140 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal'), vide which the claim petition filed by the appellant/claimant was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 06.10.2015, he alongwith Sucha Singh son of Manohar Singh was going from village Polar on motorcycle No. HR-08T-5848 Make TVS being driven by Sucha Singh. Sucha Singh was driving motorcycle on correct left hand side at a moderate speed. When they reached near Haddi Roda in area of village Siwan at about 7.30 a.m. a motorcycle No. HR-31D-2712 being driven by respondent no.1 in a rash and

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negligent manner came from opposite side at a very fast speed and hit their motorcycle. They both fell down and sustained multiple injuries. This accident was result of rash and negligent driving of respondent no.1. FIR No.162 dated 8.10.2015 under Sections 279,337,338 of Indian Penal Code was registered against respondent no.1.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

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

- 1. Whether the claimant Kamal sustained injuries in a motor vehicular accident which allegedly taken place on 06.10.2015 at about 7.30 a.m. in the area of police station, Siwan District Kaithal on account of rash and negligent driving of respondent no.1 while driving the offending vehicle bearing registration No. HR-31-D-2712 ?OPP*
- 2. If issue No.1 is proved in affirmative, what amount of compensation, the claimant is entitled to and from whom? OPP*
- 3. Whether the petition is not maintainable in the present form ?OPR*
- 4. Whether the claimant has no locus standi to file the present petition ?OPR*
- 5. Whether the claimant has no cause of action to file the present petition ?OPR*
- 6. Whether this tribunal has no jurisdiction to entertain and try the present petition ?OPR*
- 7. Whether the petition is bad for mis-joinder and non-joinder of necessary parties ?OPR*
- 8. Whether the respondent no.1 was driving the offending vehicle in breach of policy condition ?OPR*
- 9. Relief.*



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

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant-claimant contends that the impugned award is legally unsustainable, as the learned Tribunal has erroneously dismissed the claim petition on the ground that negligence of respondent No.1 was not proved. He further submits that undue weight has been given to a mere 2 delay in lodging the FIR and to the non-examination of eye-witness, both of which are not fatal in motor accident claims decided on the touchstone of preponderance of probabilities. Therefore, he prays that the present appeal be allowed and compensation be awarded as per settled law.

7. Per contra, learned counsel for the Insurance Company contends that the learned Tribunal after appreciating the fact, has rightly dismissed the claim petition of the claimant-appellant. Therefore, he prays that the present appeal be dismissed.

8. I have heard learned counsel for the parties and perused the whole record of this case.

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

“Issue No. 1 and 3

13. It is submitted by learned counsel for petitioner that on that day i.e. 06.10.2015 he was going from village Polar to Kaithal on motorcycle No. HR-08T-5848 being driven by Sucha Singh. He was driving motorcycle on correct left hand side of road at a moderate

speed. When they reached in area of Siwan at about 7.30 a.m.

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respondent no.1 came there driving motorcycle No. HR-31-D-2712 in a rash and negligent manner and hit their motorcycle. They fell on ground and sustained injuries. He was rushed to hospital at Siwan then to Sarvodaya Hospital, Hisar as is clear from Ex.P6. Rukka in this regard is Mark-B. Local police was informed and FIR Ex.P2 was registered against respondent no.1. He submits that claimant himself appeared as PW1 and clearly proved that respondent No.1 was rash and negligent.

14. He submits that respondents are claiming that it is not an accident. But that is not correct. What has been written in MLR has been done by doctor. He was not aware of truth. Claimant was not in proper So he cannot give correct description. Moreover, FIR was registered by police after due verification of facts. Respondent no.1 has not appeared to deny his rash and negligent driving. He has been facing trial.

15, It has been objected by respondent no.3. He submits that this is a bogus case. FIR is result of collusion between claimant and local police. Respondents no.1 and 2 are acting in collusion with claimant. They have therefore deliberately not appeared in witness box to deny it. As per MLR Mark A tendered by petitioner himself, he had fallen from bike and sustained injuries. He submits that it is surprising that Sucha Singh who had been driving motorcycle on which claimant was pillion rider had not sustained any injury and even failed to appear before court.

As per his own version, petitioner was conscious so FIR could have been registered on his statement instead of recording it two days later

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on a statement of Sucha Singh. He says these two day's time was utilized by them to find out vehicle. In these circumstances, he says respondent no.1 could not be held responsible.

16. It is case of claimant that on 06.10.2015 he was going to Kaithal on a motorcycle being driven by Sucha Singh when they reached in area of village Siwan a motorcycle no. HR-31-D-2712 being driven by respondent No.1 came from opposite side and hit their motorcycle. He sustained injuries and shifted to Chutani Hospital, Siwan wherefrom he was shifted to Sarvodaya Hospital, Hisar. Rukka sent by Sarvodaya Hospital, Hisar is Mark B. It says claimant was fit to make statement. Even his MLR was prepared on 07.10.2015. It shows that at the time of examination, he was conscious. Same has been admitted by petitioner himself. Still FIR was not recorded immediately. It creates a doubt about his claim

As per history given by doctor, claimant sustained injuries due to fall from his bike as bike suddenly imbalanced. First he was taken to hospital, Siwan, then to Arora orthopaedic hospital, Hisar. No report from these hospitals had come so as to find out truth. It is averred that he sustained injuries in accident. But it is not true. As per MLR of Sarvodaya Hospital, Hisar he had sustained two injuries; (i) complaint of pain in chest and (ii) complaint of B/L shoulders. It does not suggest that he had sustained any injury in spinal cord. Moreover, he was conscious. In this backdrop of doubtful situation testimony of eye witness acquired significance. But said eye witness Sucha Singh has not appeared to support claimant's version. In such situation, it cannot be held that accident occurred due to rash and negligent

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driving of motorcycle No. HR-31-D-2712 by respondent no.1. So petition is not maintainable. Accordingly, issue no.1 is decided against claimant and issue no.3 is decided in favour of respondents.”

Analysis of the Record

10. A perusal of the impugned award reveals that the learned Tribunal has fallen into a patent error in dismissing the claim petition on the premise that the claimant/appellant failed to establish that the accident occurred due to the rash and negligent driving of respondent No.1. The approach adopted by the learned Tribunal is contrary to the settled principles governing adjudication of claims under the Motor Vehicles Act.

11. It is evident from the record that the claimant/appellant himself stepped into the witness box as PW-1 and furnished a cogent and consistent account of the manner in which the accident occurred. He categorically deposed that the offending motorcycle, driven by respondent No.1, came from the opposite direction in a rash and negligent manner and struck the motorcycle on which he was travelling. Despite being subjected to lengthy cross-examination, nothing material could be elicited to discredit his testimony. The learned Tribunal, however, failed to assign due weight to this unimpeached ocular evidence.

12. The principle ground which weighed with the learned Tribunal was the delay of 2 days in lodging the FIR. Such reasoning cannot be sustained in law. It is a settled proposition that delay in registration of FIR in motor accident cases is not fatal, particularly when the delay stands reasonably explained. In the present case, the explanation finds mention in the FIR as well as in the police report, wherein it is recorded that the statement could not be promptly registered due to the non-availability of the concerned Investigating Officer. The learned

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Tribunal, therefore, erred in discarding the claim on this hyper-technical ground, ignoring the practical realities attending accident cases.

13. Equally untenable is the adverse inference drawn by the learned Tribunal on account of non-examination of Sucha Singh, eye-witness. The law is well settled that proceedings before the Motor Accident Claims Tribunal are to be decided on the touchstone of preponderance of probabilities and not on the strict standard of proof required in criminal trials. Mere non-examination of a witness cannot, by itself, be a ground to reject an otherwise credible and trustworthy version of the claimant. In this regard, reference may be made to the judgment of the *Hon'ble Supreme Court in Anita Sharma and others vs. The New India Assurance Co.Ltd and another 2019 (4) Law Herald 2953* wherein it has been held that strict rules of evidence are not applicable and an adverse inference ought not to be readily drawn in such circumstances.

14. Furthermore, it is noteworthy that respondent No.1, the driver of the offending vehicle, chose not to step into the witness box to controvert the allegations of rash and negligent driving. No effort was made by him to challenge his implication in the FIR before any competent authority. This omission assumes significance and lends corroboration to the claimant's version. The Tribunal failed to consider this material aspect while returning its findings.

15. In view of the aforesaid discussion, this Court is satisfied that the claimant has successfully established, on the standard of preponderance of probabilities, that the accident in question occurred due to the rash and negligent driving of respondent No.1. The findings recorded by the learned Tribunal on Issue No.1 are thus unsustainable and are hereby set aside.

16. Consequently, the appeal is allowed. The claimant/appellant is held entitled to compensation in accordance with law.

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17. Accordingly, Issue No.1 is decided in favour of the appellant and against the respondents. Since this matter pertains to the year 2016 and no finding is given by the learned Tribunal on Issues No.2 and 4 to 9, therefore, the matter is remanded to the learned Tribunal to decide the claim petition on Issues No.2 and 4 to 9 on day to day basis within a period of three months from the date of receipt of certified copy of this order.

18. Further, respondent No. 3-Insurance Company is directed to disburse the current scheduled fees to Mr. Satpal Dhamija, Advocate engaged by this Court for assisting in this case, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

19. The parties are directed to appear before the Tribunal on 09.04.2026.

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

(SUDEEPTI SHARMA)
JUDGE

24.03.2026
Gaurav Arora

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