

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****202****FAO-3431-2017(O&M)****Date of decision: 09.03.2026****United India Insurance Co. Ltd.****...Appellant(s)****Vs.****Babita Rani & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Gopal Mittal, Advocate
for the appellant.

Mr. Vivek Suri, Advocate
Mr. Dushyant Godara, Advocate
for the respondents No.1 to 4/claimants.

*********NIDHI GUPTA, J.**

Present appeal has been filed by the Insurance Company against the Award dated 22.11.2016 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter 'the learned Tribunal') whereby Claim Petition No.27 dated 10.03.2016 filed by the claimants/respondents No.1 to 4 herein under Section 166 of the Motor Vehicles Act (hereinafter "the Act"), has been allowed and claimants have been awarded compensation of Rs.26,00,000/- along with interest @ 7% per annum.

2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that deceased Suresh Kumar had died due to the injuries



suffered by him in a motor vehicular accident that took place on 24.01.2016 due to the rash and negligent driving of Activa Scooter bearing registration No.PB-23-L-7339 (hereinafter “the offending vehicle”) being driven by respondent No.5, and insured by the appellant.

3. It is submitted by learned counsel for the appellant that on 24.01.2016, the deceased was pillion riding behind respondent No.5 on the alleged offending Activa when a stray buffalo had suddenly came on to the road as a result of which respondent No.5 could allegedly not control the Activa by applying brakes due to which deceased fell down on the road; and in the meantime, the unknown truck had hit into the deceased which was also being driven in a rash and negligent manner, thereby causing him multiple grievous injuries as a result of which he died.

4. It is inter alia submitted by learned counsel for the appellant that the learned Tribunal was in error in casting liability to pay the impugned compensation upon the appellant-Insurance Company as it failed to appreciate that the accident in question had not been caused by rash and negligent driving of the offending vehicle. It is submitted that it is the own pleaded and admitted case of the claimants that the accident had been caused due to the stray buffalo that had came on to the road and due to the rash and negligent driving of the truck which was being driven rashly and negligently. It is submitted that there is nothing on record to indicate



that respondent No.5 was driving the offending Activa Scooter in a rash and negligent manner.

5. Learned counsel points out that pursuant to the accident, FIR No.14 dated 24.01.2016 had been registered at Police Station Gobindgarh on the statement made by respondent No.5. The said FIR has been registered against unknown driver and unknown truck. Contents of the FIR have also been corroborated by ASI Narender Singh, who was the Investigating Officer in the case. The Investigating Officer while appearing as RW2 has specifically deposed that despite complete investigation, Police were unable to trace the truck in question. It is contended that therefore, it is a case of hit-and-run; and there is nothing whatsoever on record to indicate that the accident has been caused due to the rash and negligent driving of the offending Activa by the respondent No.5. Even as per the FIR, there is no negligence on part of the driver of the Activa. However, the learned Tribunal has totally ignored this part of the evidence.

6. It is submitted that therefore, in the above noted facts, learned Tribunal has grossly erred while relying upon the statement of CW2 Kulwinder Singh who claimed himself to be the eyewitness of the occurrence. However, neither his name figured in the FIR nor in the claim petition. Thus, it is abundantly proved that this witness was a procured witness and was examined only to strengthen the case of the claimants and to cause wrongful losses to the company.



7. In support of his contentions, learned counsel relies upon judgment of Hon'ble Supreme Court in **Sithara N.S. v. Sai Ram General Insurance Company Limited, (SC) : Law Finder Doc ID # 2821397**, wherein it is held that:-

"19. We are deeply conscious of the tragic loss suffered by the families of the deceased. The pain of losing young lives in their prime is immeasurable. However, the principles of law cannot be set aside on the grounds of sympathy alone. Liability under the Motor Vehicles Act must be established through credible evidence. The Courts below have found, after scrutinizing the evidence, that the appellants failed to prove the involvement of the offending vehicle driven by respondent No.1. We find no perversity in the appreciation of evidence, nor exceptional circumstances warranting interference with these concurrent findings."

8. Learned counsel further relies upon judgment of Hon'ble Supreme Court in **Rajamma v. M/s Reliance General Insurance Co. Ltd., (SC) : Law Finder Doc ID # 2784588**, wherein it is held that:-

"6. It is on preponderance of probabilities that the proof of accident is looked at in a motor accidents claim. An FIR registered as against the driver of the offending vehicle can be relied on to find the accident having been caused by the driver of the offending vehicle, that too by his rash and negligent driving as reported at the first instance. However, the preponderance of probabilities that arise from such an FIR registered would not have the same probity if there is a valid



suspicion raised on the registration of the FIR and the falsity of the claim being clearly discernible from the evidence led itself.”

9. As regards quantum of compensation, learned counsel submits that admittedly all the three children(claimants) are the major sons of the deceased and cannot be construed as fully dependent on the deceased Suresh Kumar. Thus, instead of cut of 1/4th, the cut of 1/3rd should have been applied by the Tribunal.

10. It is further contended that the findings of the Id. Tribunal on issues no. 2 and 5 are also incorrect. It is submitted that it had not been proved by the claimants that after the death of the deceased Suresh Kumar the jewelry shop had been closed. As such the claimants are only entitled to the loss equated to the loss of managerial capacity, whereas the Id. Tribunal assessed the dependency while taking the gross income of the deceased. It is also pertinent to point out here that the Claimant no.1 Babita Rani candidly admitted in her cross-examination that her sons are working in the shop after the death of my husband.

11. It is further submitted that the Id. Tribunal committed gross error while misreading the judgment of the Hon'ble Apex Court titled **Khenyei vs. New India Assurance Co. Ltd. And others**. In the concluding para of this judgment the Hon'ble Apex Court laid down that if the joint tortfeasor is not impleaded as a party then in such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in



independent proceedings after pass of the decree or award. However, in the instant case no observations of this nature had been made by the Id. Tribunal while passing the Award.

12. It is accordingly prayed that the impugned Award be set aside.

13. Per contra, learned counsel for the claimants/respondents No.1 to 4 herein vehemently opposes the submissions advanced on behalf of the appellant and submits that the learned Tribunal has given the categorical finding that it has been proved on record that the accident had been caused due to the rash and negligent driving of the offending Activa by the respondent No.5. In this regard, learned counsel refers to the evidence of CW2 eyewitness namely Kulwinder Singh, who had tendered into evidence his duly sworn affidavit (Ex.CW2/A). Learned counsel points out that CW2 has categorically stated that when the stray buffalo came running on the road; due to his rash and negligent driving of the Activa Scooter by respondent No.5, he could not apply brakes and could not control the Activa Scooter. As a result of which, the deceased Suresh Kumar fell down on the road from the scooter. CW2 has further stated that in the meantime, the unknown truck which was also being driven in a rash and negligent manner hit against Suresh Kumar due to which he sustained grievous injuries and ultimately succumbed to his injuries. CW2 has further stated that the driver of the truck ran away from the spot due to which registration number of the truck could not be noted. It is submitted that therefore, the accident had taken place due to the



composite negligent on part of unknown truck as well as offending Aactiva Scooter. It is contended that therefore, there is no infirmity in the finding in respect of issue No.1 as given by the learned Tribunal.

14. As regards quantum of compensation, learned counsel submits that claimant No.1 while appearing as CW1 has produced Income Tax Returns of the deceased which proved his income. It is submitted that there is nothing on record to show that the claimants were carrying on the jewellery business left behind by the deceased. In fact, nothing has been awarded by way of future prospects. It is accordingly prayed that the impugned Award suffers from no infirmity and the present appeal deserves to be dismissed.

15. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail.

16. The pleaded case of the claimants before the learned Tribunal as contained in Para 2 of the impugned Award is that: -

"2. Brief facts of the claim petition are that on 24.1.2016 Suresh Kumar alongwith Avtar Mohd. were going on Aactiva Scooter No.PB- 23L-7339, which was being driven by Avtar Singh and Suresh Kumar was pillion rider from his village towards Khanna for attending the marriage and at about 10.00 a.m. when they reached village Shahpur, near Gata Factory, then a stray buffalo came on the road in running condition and Avtar Mohd. driven the said scooter at a high speed and on account of rash and negligent driving, he could not control the said scooter even by applying brakes, due to which Suresh Kumar fell down on the



road and in the mean time, a Truck was coming from Khanna side, which was being driven by its driver in a rash and negligent manner, hit Suresh Kumar, due to which Suresh Kumar sustained multiple injuries. It is further averred that the driver of the truck ran away from the spot and Suresh Kumar was got shifted to Civil Hospital, Amluh, but said Suresh Kumar succumbed to his injuries and his post mortem examination was conducted there and that the said accident had taken place due to composite negligence on the part of both the vehicles i.e. Activa Scooter No.PB-23L-7339 and said Truck and the claimants are entitled to file the claim petition against any of the tortfeasor and as such, the present claim petition has been filed against driver-cum-owner and insurer of the said Activa scooter and FIR No.14 dated 24.1.2016 under Sections 279/304A IPC was registered at P.S. Gobindgarh regarding the said occurrence. It is further averred that deceased was 49 years of age and was hale and hearty and was running a Jewellery shop under the name and style of S.S.Jewellers now M/s Gogna Jewellers at village Salana Dulla Singh Wala, earning Rs.35,000/- per month and the claimants were dependent upon the income of the deceased and now the claimants have no source of income and that more than Rs.80,000/- were spent on the transportation of dead body, funeral and last rites of the deceased and due to untimely death of Suresh Kumar, the claimants being widow and children lost the love and affection of the deceased. The claimants claimed compensation from the respondents jointly and severally being driver, owner and insurer of said Activa Scooter No.PB-23L-7339. Hence, the present claim petition.”



17. To prove the accident, the claimants had examined alleged eyewitness CW2 Kulwinder Singh, who had deposed in respect of the rash and negligent driving of the offending vehicle by respondent No.5. However, it is to be noted that the testimony of CW2 is utterly unreliable as CW2 has admitted during his cross-examination that despite being eyewitness to the accident, he had not lodged the FIR and had not given any statement to the Police. It is also admitted by CW2 that his name is not mentioned in the FIR. In fact, CW2 has stated that he did not even know if the FIR was lodged against respondent No.5. No explanation whatsoever is forthcoming from learned counsel for the claimants or from the record as to why, if eyewitness CW2 was present at the spot, why FIR was not registered by him. It is also to be seen that CW2 is not a summoned witness but had come at the asking of the claimants. Even further, CW2 is not mentioned in the FIR nor in the claim petition. Thus, any statement made by CW2 cannot be relied upon.

18. Furthermore, FIR was registered on the statement made by respondent No.5 against an unknown vehicle and unknown driver. There is no mention in the FIR that the accident had been witnessed by CW2 Kulwinder Singh alleged eyewitness. Even in the FIR, there is no allegation that the accident had been caused due to any rashness and negligent on part of respondent No.5. Furthermore, claimants have failed to produce respondent No.5, who being allegedly involved in the accident in question, would have been the best witness for the claimants.



19. Despite the above-said clear facts, the learned Tribunal has held that the accident had taken place due to the rash and negligent driving of the Activa Scooter by the respondent No.5 on the following reasoning: -

“16. It is specifically mentioned in the FIR that respondent No.1 had applied the brakes, as a result of which the deceased had fallen on the road and in the mean time, an unknown truck driver had struck into Suresh Kumar, resulting in his suffering multiple injuries and resultant death in the Hospital. The counsels for respondent No.1 and 2 claim that there is no negligence on the part of respondent no.1 as the FIR was registered against unknown truck driver and not against respondent No.1. However, I do not feel convinced with this argument because in the present case, the respondent No.1 is also one of the joint tortfeasor, there being specific evidence that he being driver of Activa on which the deceased was pillion rider, had applied the brakes, as a result of which, the deceased had fallen on road and thereafter, a truck hitting him.”

(Emphasis added)

20. A reading of the above shows that the whole thing hinges on whether the respondent No.5 had applied brakes or not. In holding that the respondent No.5 was driving at a high speed and had suddenly applied brakes, the Tribunal has relied upon evidence of CW2 Kulwinder Singh, alleged eyewitness. However, as noted above, evidence of CW2 is unreliable for the reasons already mentioned hereinabove. Thus, there is nothing on record to support the finding of the learned Tribunal that the accident had been caused due to the rash and negligent driving by respondent No.5.



21. A perusal of the entire record of the case shows that there is no evidence whatsoever to show that respondent No.5 had applied brakes; especially because the complainant i.e. Avtar Singh respondent No.5 driver of the offending vehicle, has not stepped into the witness box and has only made a statement in the FIR that he had applied brakes. It is also to be noted that the driver and owner of the offending truck have not been impleaded as party respondents herein. Moreover, as already noted above, evidence of CW2 is not reliable. There is no mention of CW2 in the FIR or even in the Claim Petition. Admittedly, he is not a summoned witness, and he has come only at the asking of the claimants. Clearly therefore, CW2 is a procured witness. CW2 has even not given statement to the Police and has only made a statement before the learned Tribunal. It would, therefore, appear that CW2 has been produced only to cause wrongful loss to the appellant. Therefore, negligence of respondent No.5 has not been proved. Accordingly, findings in respect of issue No.1 rendered by the Tribunal are set aside.

22. Reliance of learned Tribunal in the judgment of Hon'ble Supreme Court in **Khenyei v. New India Assurance Co. Ltd. (SC) : Law Finder Doc ID # 669171**, is misplaced in the facts and circumstances of the present case as there is no dispute with regard to the fact that in cases of composite negligence, claimants are had liberty to seek compensation from either of the tortfeasors. However, given the fact that in the present case, it is not



proved on record that respondent No.5 was negligent in driving the offending Activa, he could not have been taken to be a tortfeasor.

23. As regards quantum of compensation, the four claimants are the 47-year-old widow, 22-year-old daughter, 20-year-old son, and 18-year-old son of deceased Suresh Kumar, who was 51 years old at the time of accident. As noted above, it was the case of the claimants that prior to the accident, the deceased was running a jewellery shop under the name and style of SS Jewellers now M/s Gogna Jewellers. It was further alleged by the claimants that deceased was earning Rs.35,000/- per month from the said business. To prove their said claim, the claimants had produced Income Tax Returns of the deceased (Ex.C3 to Ex.C6). To prove the said Income Tax Returns, the claimants had examined RW1 Rohit Kumar, Tax Assistant, Income Tax Department, who had proved the returns (Ex.C4 to Ex.C5) which were filed by the deceased as proprietor of M/s SS Jewellers on 05.08.2013 and 26.03.2015, from which it was gathered that income of the deceased was about Rs.3 lakh per annum. RW1 had deposed that although Returns (Ex.C4 and Ex.C5) had been filed by deceased on 05.08.2013 and 26.03.2015 respectively, however, there was no record available in the Computer System regarding the Returns (Ex.C3 and Ex.C6). RW1 had further admitted that he had not checked the physical record regarding the Returns (Ex.C3 and Ex.C6). From the above, learned Tribunal had inferred that income of the deceased was about Rs.3 lakh per annum. Accordingly, learned Tribunal had taken



dependency of the claimants to be Rs.2,25,000/- per annum by making a deduction of 1/4th towards personal expenses. Further, age of the deceased was determined to be 51 years on the date of accident on the basis of his PAN Card (Ex.C1), wherein his date of birth is mentioned as 23.12.1965. Accordingly, the learned Tribunal had correctly applied multiplier of 11. Under the conventional heads, the Tribunal has awarded an amount of Rs.25,000/- towards funeral expenses; Rs.1 lakh to claimant No.1 towards loss of consortium; thereby granting total compensation of Rs.26,00,000/-.

24. Keeping in view the above discussion, and the fact that the Act is a beneficial legislation, it is the considered view of this Court that the ends of Justice will be served, if the present claim petition filed u/s 166 of the Act is converted into a claim petition under section 164 of the Act as permitted by the Hon'ble Supreme Court in **Ram Murti v. Punjab State Electricity Board, (SC) : Law Finder Doc Id # 2091451.**

25. Consequentially, the present appeal is **disposed of** with a direction that the Claimants shall be entitled to a total amount of ₹5 lakhs/- by way of compensation.

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

09.03.2026

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No