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

**FAO-6499-2017 (O&M)
Reserved on : 30.01.2026
Date of Pronouncement : 25.02.2026
Uploaded on : 05.03.2026**

Dhanpat ......Appellant

Vs.

The Oriental Insurance Company Ltd. and others ......Respondents

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. Anuj Balian, Advocate
for the appellant.

Mr. Sahej Mahajan, Advocate, for
Mr. R.K.Bishamboo, Advocate,
for respondent No 1-Insurance Company.

Mr. Satyam Khichi, Advocate, for
Mr. P.K.Ganga, Advocate, for
respondent No.2 to 6.

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SUDEEPTI SHARMA J.

1. The present appeal has been preferred by appellant-Dhanpat (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770) against the award dated 12.05.2017 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal'), wherein the claimants/respondents No.2 to 6 were held entitled for compensation to the tune of Rs.8,00,000/- along with interest at the rate of 9% per annum, on account of death of

Jarnail Singh in a Motor Vehicular Accident, occurred on 19.08.2015 and liability was fastened upon the appellant (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770) and respondent No.1-Insurance Company to pay the compensation to the claimants/respondents jointly and severally and respondent No.1-Insurance Company was directed to pay the compensation at the first instance and recovery right was given to respondent No.1-Insurance Company to recover the same from the appellant (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770).

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 19.08.2015, Jarnail Singh (since deceased), along with one Ram Partap of his village, had gone to Mandi Bhattu to sell mustard (*sarson*) crop on an Eicher tractor bearing registration No. HR-24H-2715. After selling the crop, they were returning to their village on the said vehicle, which was being driven by Ram Partap, while Jarnail Singh was sitting on the mudguard of the said vehicle. At about 10:00 p.m., when they reached near Brach Model School situated between villages Nathusari Chopta and Makhosheorani, Tehsil and District Sirsa, a Mahindra Bolero Pick-up bearing registration No.RJ-49-GA-0770, which was being driven by respondent No.1 in a rash, negligent and careless manner and in violation of traffic rules, came from the opposite side and struck against the Eicher tractor bearing registration No.HR-24H-2715. As a result of the impact, Jarnail Singh succumbed to his injuries at the spot whereas, Ram Partap sustained injuries. The Eicher tractor bearing

registration No. HR-24H-2715 was also badly damaged. The matter was reported to the police and in this regard, FIR No. 159 dated 20.08.2015 under Sections 279, 337, 427 and 304-A IPC was got registered at Police Station Nathusari Chopta.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

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

> *"1. Whether the accident in question resulting into death of Jarnail Singh had taken place on 19.08.2015 at about 10:00 PM in the area of Police Station Nathusari Chopta, District Sirsa on account of rash and negligent driving of vehicle Mahindra Bolero Pick Up bearing registration No.RJ-49GA-0770 by respondent no.1. If so its effect? OPP*
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> *2. If issue No.1 is proved, to what amount of compensation petitioners are entitled to get and from whom? OPP*
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> *3. Whether the petition deserves dismissal on the grounds mentioned in the preliminary objections taken in written statements? OPRs*
>
> *4. Relief."*

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

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to claimants/

respondents No.2 to 6 to the tune of Rs.8,00,000/- along with interest at the rate of 9% per annum, on account of death of Jarnail Singh in a Motor Vehicular Accident and learned Tribunal held respondent No.1-Insurance Company liable to pay compensation at the first instance and recovery rights were granted to respondent No.1-Insurance Company to recover it from the appellant (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770). Hence, the present appeal.

<u>SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES</u>

7. Learned counsel for the appellant contends:-

i. that recovery rights have been granted by learned Tribunal on the ground that deceased-Jarnail Singh was sitting on the mud guard of Eicher tractor bearing registration No.HR-24H-2715, whereas, the appellant is the owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770.

ii. that once the vehicle is insured and there is no breach of insurance policy, he should not have been held liable to pay compensation and no recovery rights should have been granted to respondent No.1-Insurance Company.

iii. that the deceased-Jarnail Singh was sitting on the mud guard of Eicher tractor bearing registration No.HR-24H-2715 and owner of the said tractor was at fault and the appellant is owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770, therefore, he should not have been held liable to pay the compensation.

iv. that driving license and insurance policy have been proved, still the appellant (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770) has been made liable to pay the compensation.

v. that owner and driver of Eicher tractor bearing registration No.HR-24H-2715 are not made party in the claim petition.

Therefore, he prays that the present appeal be allowed and the recovery rights granted by the learned Tribunal be set aside and liability be fixed on respondent No.1-Insurance Company.

8. *Per contra*, learned counsel for respondent No.1-Insurance Company contends that the liability to pay the compensation has rightly been fixed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

9. Learned counsel for respondents No.2 to 6 contends that appeal filed by them i.e. FAO-8295-2017 for enhancement of compensation was decided on 12.09.2025 by this Court and if the appeal filed by the appellant (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770) is allowed, the same requires to be modified accordingly.

10. I have heard learned counsel for the parties and carefully perused the record of this Court with their able assistance.

11. Before proceeding further, it is apposite to reproduce Issue No.1 of the award dated 12.05.2017 passed by learned Tribunal and decision on the liability to pay compensation:-

> *"**ISSUE NO.1:***
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> *10. In order to prove the rash and negligent driving on the part of respondent No.1, the claimants examined eye witness of the accident in question PW1 Ram Partap, who tendered his affidavit Ex.PW1/A in the form of his examination-in-chief. According to him, -*
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>> *"on 19.08.2015, he alongwith Jarnail Singh (since deceased) had gone to Mandi Bhattu to sell the sarso crops on an Eicher tractor bearing registration No.HR-24H-2715. After selling the crop, they were returning to their village Randhawa on the ill-fated vehicle which was being driven by him. Around 10:00 PM, when they reached near Brach Model School situated in between villages Nathusari Chopta and Makhosheorani, Tehsil and District Sirsa, a Mahindra Bolero Pick Up bearing registration No.RJ-49GA-0770, which was being driven by respondent no.1 in a rash, negligent and careless manner and in violation of traffic rules, came from the opposite side and hit the ill-fated vehicle. As a result of that impact, deceased Jarnail Singh sustained serious and grievous injuries on his person and succumbed to those injuries at the spot. He also sustained injuries on his person and*

the ill-fated vehicle was badly damaged. A case bearing FIR No.159 dated 20.08.2015 under Sections 279, 337, 304- A, 427 IPC was registered against respondent no.1 Vinod Kumar, who is facing trial in Court at Sirsa."

In cross-examination, he admitted that he had not got the name of driver of the offending vehicle recorded in his statement Ex.R1. He further admitted that he and deceased belonged to the same village and the deceased was his nephew being co-villager.

11. Claimant Bimla Kanwar (PW2), widow of deceased Jarnail Singh, also tendered her affidavit Ex.PW2/A as her examination-in-chief stating that her husband died due to injuries received by him in a roadside accident.

In cross-examination, she admitted that she was not an eye witness to the accident.

12. Claimants have also produced on record certified copies of statement of Ram Partap Ex.P1, FIR Ex.P2, report under Section 173 Cr.P.C. Ex.P3, site plan Ex.P4, charge-sheet Ex.P5 and post-mortem report Ex.P6.

13. On the other hand, respondents No.1 & 2 have denied the accident in question and involvement of the offending vehicle in it. However, they have contended that if the claimants were found entitled to any compensation, then respondent No.3 being insurer of the offending vehicle would be liable to pay the same.

14. Respondent no.3-Insurance Company has set up the plea that as per the pleadings of the claimants themselves, deceased Jarnail Singh was seating on the mudguard of the ill-fated vehicle (tractor) in violation of the rules and regulations of the Motor Vehicles Act and *thus the petition is not maintainable. The Insurance Company has also examined respondent no.1 Vinod Kumar as RW2. As per his statement :-*

> *"vehicle no.RJ-49GA-0770 was sold by him and it was in the name of Dhanpat. On 19.08.2015, that vehicle went on the side of Bhattu and it was driven by him. He was carrying honey on behalf of registered owner. Dhanpat has only one vehicle. Dhanpat has sold his vehicle to his co-villager, but he did not know when and on which date, month or year Dhanpat had sold his vehicle. He was not driving this vehicle since October, 2015. When he was driver of the vehicle, no accident had ever taken with the vehicle."*

His cross-examination revealed that :-

> *"he admitted that he was facing trial with regard to this accident at Criminal Court, Sirsa. He also admitted that the criminal case which was being faced by him was relating to accident with tractor No.HR-24H-2715. He was driving the vehicle no.RJ-49GA-0770 from July, 2015 to October, 2015."*

15. There is a statement of eye witness Ram Partap (PW1) on the file. He has categorically deposed that the accident in question took place due to rash and negligent driving of the offending vehicle by respondent No.1. FIR Ex.P2 was lodged on the statement of PW1 Ram Partap, which finds mention of registration number of the offending vehicle. The police after thorough investigation submitted challan against respondent No.1, who is facing trial before the Illaqa Magistrate without any objection. This fact has also been admitted *respondent no.1 Vinod Kumar when he appeared in the witness box as RW2 that he is facing trial with regard to the accident in question in Criminal Court at Sirsa. Moreover, he has stated that he was driving the offending vehicle from July, 2015 to October, 2015. Respondents No.1 & 2 in their written statement have simply denied happening of the impugned accident and alleged that a false case was registered against respondent no.1, but they have not stated even a single word regarding the manner of accident and false implication of respondent no.1.*

Respondent no.3-Insurance Company has led no evidence in rebuttal.

*16. It may also be noticed that a criminal case is pending against respondent no.1 for rash and negligent driving. It was observed in **Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACC 504**, that when the driver of the offending vehicle is facing criminal trial, prima facie, it can be presumed that he was responsible for the accident.*

Though the pendency of a criminal case may not be a concluding factor to prove the negligence yet it proves one fact that investigating agency was also of the view that respondent no.1 was the tort feasor.

*17. Thus, it is always safe to hold that the person facing criminal case is responsible for causing accident by rash and negligent driving. Reliance in this regard may be placed on the observations held in **Bikram Singh and another Versus Sarwan Singh, 2010(2) RCR (Civil) 364**.*

18. Hence, it can safely be held that deceased Jarnail Singh died of accidental injuries on account of rash and *negligent driving of the offending vehicle bearing registration No.RJ-49GA-0770 by respondent No.1. Accordingly, this issue is answered in favour of the claimants and against the respondents.*

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33. Now the question arises as to who shall pay the compensation.

34. The impugned accident took place on 19.08.2015. The insurance policy Ex.R4/Ex.R8 indicates that the offending vehicle bearing registration No.RJ-49GA-0770 was insured with respondent No.3-Insurance Company w.e.f. 19.02.2015 to 18.02.2016 and it was registered in the name of respondent no.2 Dhanpat vide registration certificate Ex.R3. Therefore, it has to be held that on the date of accident in question, offending vehicle was having a valid insurance cover.

35. It has also come in evidence that respondent No.1-Vinod Kumar was holding driving license Ex.R2 which was issued on 06.12.2007 and was valid w.e.f. 06.12.2007 to 05.12.2027 to drive non-transport vehicles and further was valid w.e.f. 27.04.2012 to 26.04.2018 to drive transport vehicles. Moreover, the extract of driving license Ex.R5 produced by the Insurance Company also indicates similar contents. Therefore, it is held that respondent No.1 was holding a valid and effective driving license at the time of accident in question.

36. Learned counsel for the Insurance Company disputed the liability of the Insurance Company on the ground that the tractor being a vehicle with one seat nobody else apart from the driver thereof could travel on the tractor. The tractor is not meant for passengers and *passenger sitting on the mudguard of tractor is authorised passenger and is not covered under the policy. The Insurance Company is not liable to pay the compensation. Reference was made to the judgment **HDFC ERGO General Insurance Co. Ltd. Versus Rahila and others, 2016 ACJ 34 (P&H)**.*

*Learned counsel for Insurance Company further placed reliance upon the judgment **Susheelabai and others Versus Basavaraj and anr., 2012 AIR Supreme Court (Civil) 115**, wherein similar view was taken.*

*Learned counsel for Insurance Company further relied upon the judgment **Oriental Insurance Co. Ltd. Versus Anil Kumar, 2012(4) PLR 304**, wherein it has been held that for a death and injury to a passenger on a tractor, the insurance company cannot be made liable, for, there exists no obligation under section 147 of MV Act to cover the risk for a person who was travelling in a vehicle which was not fit to carry passengers.*

*Learned counsel for Insurance Company further argued that the person sitting on the mudguard of the tractor was an unauthorised passenger and his claim was not covered by the requirements of compulsory insurance under Section 147(1), as such, principle of pay and recovery under Section 149(4) or 149(5) is not applicable. The claim is maintainable against the driver and owner but not against the insurance company. See observations made in **United India Insurance Co. Ltd. Versus Ramji Lal, 2012 ACJ 640 (P&H)**.*

Thus, the insurance company is not liable for payment of claim on account of death of a person who was sitting on the mudguard of the tractor fell down and died.

> *37. Learned counsel for the claimants argued that the deceased died due to rash and negligent driving of the offending vehicle and it was insured with respondent no.3-Insurance Company. Therefore, their claim cannot be denied.*
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> *38. Considering the totality of the facts that the deceased was travelling while sitting on the mudguard of ill-fated vehicle (tractor) and the offending Bolero vehicle was insured with respondent no.3-Insurance Company, victims are entitled to compensation. Thus, respondent no.3- Insurance Company shall first satisfy the claim of the claimants and then recover the same from respondents no.1 & 2 who are jointly and severally liable to pay the same. Hence, this issue stands disposed of accordingly."*

12. A perusal of the record shows that in the claim petition Vinod Kumar (driver of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770), Dhanpat (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770) and the Oriental Insurance Company Ltd. are impleaded as respondent No.1 to 3, respectively. Driver and owner of Eicher tractor bearing registration No.HR-24H-2715 are not made party in the claim petition. Furthermore, as per the facts, deceased-Jarnail Singh was sitting on the mud guard of Eicher tractor bearing registration No.HR-24H-2715. Neither driver and owner of Eicher tractor bearing registration No.HR-24H-2715 are impleaded as respondent party nor Insurance Company has raised any arguments for their impleadment before the learned Tribunal. Moreso,

no issue has been framed regarding negligence on the part of driver of Eicher tractor bearing registration No.HR-24H-2715.

13. A bare perusal of the findings recorded by the learned Tribunal on Issue No.1 clearly demonstrates that death of Jarnail Singh occurred on account of the rash and negligent driving of Vinod Kumar, driver of the offending vehicle, namely Mahindra Bolero Pick Up bearing registration No. RJ-49-GA-0770. Learned Tribunal has not returned any finding, nor is there any material on record, to suggest contributory negligence or any actionable fault on the part of the driver of Eicher tractor bearing registration No. HR-24H-2715. However, while adjudicating upon the issue of liability, the learned Tribunal fell into manifest error. A bare reading of its own observations reveals that the offending vehicle was duly insured with the respondent–Insurance Company for the period commencing from 19.02.2015 to 18.02.2016. The vehicle stood registered in the name of the appellant-Dhanpat (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770), as per Registration Certificate (Exhibit R-3), and the insurance policy covering the said vehicle was valid and subsisting on the date of the accident.

14. It is further borne out from the record that Vinod Kumar, driver of the offending vehicle, was holding a valid and effective driving licence (Exhibit R-2), issued on 06.12.2007, authorising him to drive non-transport vehicles for the period 06.12.2007 to 05.12.2027 and transport vehicles for the period 27.04.2012 to 26.04.2018. The learned Tribunal has itself

categorically recorded a finding that the driver possessed a valid and effective driving licence at the time of the accident.

15. In the face of these undisputed findings, fastening liability upon the appellant-Dhanpat (owner of the offending vehicle i.e. Mahindra Bolero Pick Up bearing registration No.RJ-49-GA-0770) on the premise that the deceased was allegedly sitting on the mudguard of the Eicher tractor bearing registration No. HR-24H-2715 is wholly unsustainable in law.

16. Admittedly, the appellant was neither the owner nor the driver of the said tractor. The owner and driver of the Eicher tractor were not even impleaded as parties before the Tribunal. In the absence of any finding of the negligence against them and in the absence of their participation in the proceedings, the learned Tribunal could not have attributed liability on the appellant for an alleged act or omission attributable to third parties.

17. Therefore, the impugned award suffers from a patent misdirection in law insofar as it pertains to the determination of liability. Once it stood conclusively established that the accident occurred due to the rash and negligent driving of Vinod Kumar. Further that the offending vehicle was duly insured on the date of accident, and the driver was holding a valid and effective driving licence, the liability to satisfy the award squarely fell upon the insurer i.e. Insurance Company, as in accordance with the terms and conditions of the policy of insurance and with the mandate of the Motor Vehicles Act.

18. Consequently, the present appeal deserves to be **allowed**. The award dated 12.05.2017 is modified to the extent that respondent No.1-Insurance Company is held solely liable to satisfy the entire award amount in favour of the claimants/respondents No.2 to 6. The question of liability stands determined in the aforesaid terms.

19. Since **FAO-8295-2017** titled as '**Smt. Bimla Kanwar and others Vs. Vinod Kumar and others'** has already been decided by this Court vide judgment dated 12.09.2025, the liability in the same is also modified to the extent of making respondent-Insurance Company solely liable to pay the compensation.

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

(SUDEEPTI SHARMA)
JUDGE

25.02.2026
Virender

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