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

S.No.107

**I.**

**Date of decision : 15.5.2025**
**FAO-948-1995 (O&M)**

Oriental Insurance Company Limited

... Appellants

VERSUS

Asha Rani and others

... Respondents

II.

**FAO-611-1995 (O&M)**

Asha Rani and others

... Appellants

VERSUS

Guru Nanak Dev University and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Vinod Chaudhri, Advocate,
for the appellant in FAO-948-1995.

Ms. Neha Jain, Legal Aid Counsel,
for the appellant in FAO-611-1995.

Mr. Ishan Kaushal, AAG, Punjab.

Mr. M.K.Dogra, Advocate,
for respondents No.1 and 2.

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**PANKAJ JAIN, J. (Oral)**

These are cross appeals. FAO-948-1995 is at the behest of the insurance company disputing its liability. FAO-611-1995 is at the behest of the claimants.

2. Petition under Section 110-A read with Section 92-A of Motor Vehicles Act was filed by the claimants seeking compensation on account of death of Makaru Ram aged 40 years. As per claimants, Makaru Ram was travelling in three wheeler on 30.05.1988. When the three wheeler reached Bhandari bridge, a bus owned by GNDU, driven by respondent No.2-Chain Singh came at a high speed and hit the three wheeler from back. Makaru Ram died at the spot. FIR Ex.PA was registered against the driver of the bus.

3. The driver and owner of the bus filed written statement disputing involvement of the bus in question. They claimed that Makaru Ram died after falling from the three wheeler owing to his own negligence & rash and negligent driving on the part of the driver of the three wheeler. The Tribunal framed the following issues : -

1. *Whether the accident took place due to rash and negligent driving of the bus by the respondent No.2? OPP*
2. *Whether the application is not maintainable as the owner and driver of three wheeler No.PCM 9867 has not been made a party? OPR.*
3. *Whether respondent No.2 was having a valid driving licence. If not to what effect? OPP*
4. *What is the extent of liability of respondent No.3 OPR*
5. *Whether respondent NO.2 was driving the bus at the time of alleged accident in the service of respondent No.17 OPP.*
6. *To what compensation the claimants are entitled and from whom? OPP.*

6A. *Whether the applicants/petitioners are the legal heirs of alleged deceased Makaru Ram? OPA*

7. *Relief."*

4. The claimants in order to prove the accident and death of Makaru Ram in the motor vehicular accident, produced copy of FIR No.65 dated 30.05.1988 Ex.PA, death certificate of Makaru Ram Ex.AX and copy of post mortem report as Ex.AY. AW3-Kuldip Singh was examined as eye

witness to the accident. He testified that he saw the accident and proved that the bus owned by Guru Nanak Dev University hit the three wheeler from its back. An old man was thrown out of the three wheeler and died at the spot. He testified that the cause of the accident was rash and negligent driving of the bus driver. He proved photographs Ex.1 to Ex.5 and their negatives Ex.6 to Ex.10. The Tribunal disbelieved the testimony of Kuldip Singh holding that he could not tell as to how many passengers were travelling in the three wheeler at the time of the accident. He has been further disbelieved for the reason that he is not one of the cited witnesses in the trial related to the accident.

5. Counsel for the claimants has assailed the findings recorded by the Tribunal on issue No.1 and submit that the accident stood proved. In terms of Ex.PA, FIR version of the accident has come on record. FIR was registered on the statement made by the driver of the three wheeler in which Makaru Ram was travelling. It is not denied that on the basis of the FIR, police report was filed and Chain Singh, driver of the offending bus faced trial. It has been proved on record that Kuldip Singh had his shop near the spot of the accident under the name and style of Kuldip Photo Studio, Copper Road, Amritsar. Testimony of the eye witness has been discarded merely for the reason that he was not a cited witness in the trial. Counsel for the claimants relied upon the ratio of law laid down by the Supreme Court in **Meera Bai and others** v. **ICICI Lombard General Insurance Company Limited and another**; **2025 (2) RCR (Civil) 747**. Counsel for the claimant further submits that the findings on issue No.1 need to be reversed and the claimants need to be awarded compensation applying the multiplier method.

6. Mr. Chaudhri counsel for the insurance company submits that the findings recorded by the Criminal Courts are not binding upon the findings recorded by the Tribunal. He submits that where evidence is produced before the Tribunal and that runs contrary to the contents of the FIR, evidence recorded before the Tribunal has to be given precedence over the contents of the FIR. He relies upon the ratio of law laid down by Supreme Court in **National Insurance Company Limited** v. **Chamundeswari and others; 2021 ACJ 2558.**

7. I have considered the counsel for the parties and have carefully gone through the record of the case.

8. The material issue in the present case relates to the findings recorded by the Tribunal regarding issue No.1. The lodging of FIR and the trial faced by the driver of the offending bus is not in dispute. Kuldip Singh eye witness to the accident appeared before the Tribunal and testified implicating the driver of the bus to be negligent and having hit the three wheeler from behind. The Tribunal disbelieved his statement primarily for being not a cited witness in the criminal trial. In the considered opinion of this Court, the Tribunal erred in discarding the testimony of AW3-Kuldip Singh. The fact of him having not been cited in the criminal trial could have been fatal to the case of the claimants, had there been any evidence suggestive of questioning his presence on the spot. Kuldip Singh proved on record that he was running a shop under the name and style of Kuldip Photo Studio and the accident took place just adjacent to his shop. This fact has gone unrebutted. Thus, presence of Kuldip Singh on the spot is neither unnatural nor has been disproved.

9. Apart from the testimony of Kuldip Singh, it has come on record that FIR was lodged qua the accident in which the driver of the offending vehicle faced trial. The effect of FIR and the police report on the petition under Motor Vehicles Act, 1988 was discussed by the Supreme Court in **ICICI Lombard General Insurance Company Limited** v. **Rajani Sahoo; 2025 (2) SCC 599** observing as under : -

> "7. The core contention of the appellant is that the Tribunal as also the High Court relied on the fraudulent chargesheet prepared by the respondents in connivance with the police. In short, the contention of the appellant is that the High Court erred in relying on the chargesheet to arrive at the conclusion that the accident in question in which Udayanath Sahoo lost his life had occurred due to the rash and negligent driving of the truck insured with the appellant. Though respondent Nos.1 and 2 did not file any counter affidavit, the learned counsel appearing for them would submit that there is absolutely no illegality in relying on such documents consisting of FIR and the final report prepared in relation to the accident in question by the police, for the purpose of considering the question of negligence in a motor vehicle accident case. That apart, it is contended that the appellant despite attributing connivance of the respondents with the police, the appellant failed to prove the same. In short, it is submitted that the appeal is devoid of merit and the same is liable to be dismissed.
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> 8. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of Mangla Ram v. Oriental Insurance Co. Ltd. [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819 : 2018 INSC 311], held in para No.27, thus : (SCC p.672):

> "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 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13], 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)

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending

truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi [Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510 : 2023 INSC 621], this Court held thus : (SCC p. 514, para 12)

> "12….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 v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]."

11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.

> 12. It is also a fact that the appellant had attributed that the respondent claimants connived with police and fraudulently prepared the chargesheet. The contention is that the vehicle insured with the appellant was not involved in the accident and the accident had occurred solely due to the rash and negligence on the part of the deceased. But the evidence on record would reveal that pursuant to the filing of the final report, cognizance was taken for rash and negligent driving which resulted in the death of Udayanath Sahoo."

10. Same view has been reiterated by the Supreme Court in case of **Meera Bai and others (supra)** wherein it was observed as under : -

> "3.……The FIR was lodged against the owner driver of the vehicle for the offence of rash and negligent driving. A charge sheet was filed against the owner driver. The owner driver filed a written statement before the Tribunal denying the rash and negligent driving on his part, however he did not mount the box to depose that it was not due to his fault that the accident occurred.
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> 4. As far as examining the eye witnesses, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established."

11. Reliance of Mr. Chaudhri on the ratio of law laid down in the case of **Chamundeshwari and others (supra)** is misplaced. In the present case, there is no evidence brought on record by the respondents to dislodge the version recorded in the FIR. In view of above, the findings recorded by the Tribunal on issue No.1 cannot be sustained and are hereby ordered to be

reversed. The accident is held to be caused by rash and negligent driving of respondent No.9-Chain Singh.

12. The Tribunal awarded compensation for no fault liability to the claimants. The same also need to be reversed. Under issue No.6, the claimants are held entitled to compensation applying the multiplier method. As per the claimants, deceased Makaru Ram was earning ₹ 2500 to ₹ 3000/- per month working as a carrier lifting goods from transport for various parties. His monthly salary is taken at ₹ 2500/-. Keeping his age of 42 years, 25% of future prospects need to be added. He is survived by a widow and six children. Deduction of 1/5$^{th}$ need to be applied. Keeping his age of 42 years, multiplier of 14 will be applicable. ₹ 15,000/- are awarded for loss of estate and ₹ 15,000/- for funeral expenses. On account of loss of consortium, each of the claimants is entitled for an amount of ₹ 40,000/-. The claimants are entitled to total amount of compensation of **₹ 7,30,000/-**.

13. As a sequel of discussion held hereinabove, the appeal filed by the insurance company i.e. FAO-948-1995 is ordered to be dismissed. FAO-611-1995 preferred by the claimants is allowed.

**( PANKAJ JAIN )**
**JUDGE**

May 15, 2025
**Paritosh Kumar**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No