



FAO-167-2006 (O&M)

-1-

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

**FAO-167-2006 (O&M)
Date of Decision: 06.03.2025**

Kamlesh

.....Appellant

Vs.

Amit Kumar alias Raju and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kulwant Singh Dhanora, Advocate,
for the appellant.

Mr. B.S.Mamli, Advocate, for
Mr. R.S.Mamli, Advocate,
for respondent No.1.

Mr. Suman Jain, Advocate,
for respondent No.4-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred for setting aside the award dated 29.07.2005 passed in the claim petition filed under Sections 166, 140 and 141 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal'), whereby claim petition filed by the appellant/claimant, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 14.12.2002, at around 7:30 p.m., Baslu Ram and Kamlesh, along with their son, Sukhwinder Singh (since deceased), were traveling from Shastri Market to Braham Sarovar, Kurukshetra. In the meantime, respondent No.1 arrived there on a motorcycle bearing registration No.HYW-9191. Since the appellant/



FAO-167-2006 (O&M)

claimant was already familiar with him, Kamlesh and Sukhwinder Singh sat on the motorcycle, while Baslu Ram followed them on his bicycle. When the motorcycle reached Maharana Pratap Chowk, near Birla Mandir, Thanesar, Sukhwinder Singh, who was sitting on the petrol tank, fell on the road due to rash and negligent driving of respondent No.1. As a result thereof, he lost consciousness and later passed away. The appellant/claimant argue that the accident was caused by the rash and negligent driving of respondent No.1.

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 death of Sukhwinder Singh and injuries to Kamlesh was caused due to rash and negligent driving of motorcycle No.HYW-9191 by its driver, respondent No.1, as alleged? OPP

2) If issue No.1 is proved to what amount of compensation, the petitioners are entitled to and from whom? OPP

3) Whether respondent no.1 was not holding a valid and effective driving licence on the alleged date of accident? OPD.

4) Relief.”

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

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES**

6. Learned counsel for the appellant/claimant contends that the learned Tribunal dismissed the claim petition only on the ground that there was a delay of 01 day in lodging the FIR and the appellant/claimant failed to prove that the accident was caused by rash and negligent driving of respondent No.1-Amit Kumar alias Raju.

7. *Per contra*, learned counsel for respondents No.1 and 4, however, vehemently argue on the lines of the award dated 29.07.2005 and submit that the award has rightly been dismissed by the learned Tribunal. Therefore, they pray for dismissal of the present appeal.

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

9. The relevant portion of the award reads as under:-

“ISSUE NO.1:

To begin with, it has been argued by learned counsel for the claimants that on 14.12.2002 at about 7.30 p.m., claimant Smt.Kamlesh alongwith Sukhwinder Singh deceased, her son and Baslu Ram husband of Smt-Kamlesh, were coming from Shashtri market and were going to see Geeta Jayanti festival at Braham Sarover, Kurukshetra. In the meantime respondent no.1 Amit alias Raju who was acquainted with the claimants previously also suddenly came on the motorcycle Hero Honda. Baslu Ram claimant no.1 told his wife claimant no.2 to sit on the motorcycle of respondent no.1 alongwith Sukhwinder Singh. This way Smt. Kamlesh claimant no.2, alongwith her son Sukhwinder Singh deceased sat on the motorcycle. Claimant no.1 followed



them on his bicycle. Respondent no.1 Amit started driving the motorcycle at a very high speed rashly and negligently and in a zig-zag manner. Smt. Kamlesh objected his rash driving and asked respondent no.1 to drive slowly. Respondent no.1 did not pay any heed to the request of claimant. no.2 and kept on driving the motorcycle rashly and negligently. Sukhwinder Singh deceased was sitting on the petrol tank of the motorcycle, When the motorcycle reached near Maharana Partap chowk, Birla Mandir, Sukhwinder Singh fell on the road due to high speed of the motorcycle and rash and negligent driving of respondent no.1. His head struck with the road and he started bleeding from the head. He became unconscious and died. The claimant no.2 Smt Kamlesh had also fell on the road and suffered grievous injuries including fracture. The accident was witnessed by Basly Ram, husband of Smt.Kamlesh. Sukhwinder Singh was taken to Apna Hospital where he was declared dead. the post-mortem examination of Sukhwinder Singh was conducted at L.N.J.P. Hospital, Kurukshetra. It has been argued by learned counsel for the claimants that the accident had taken place due to rash and negligent driving of respondent no.1. Compensation to the tune of Rs.3.25 lac be awarded in case of death of Sukhwinder Singh deceased to both the claimants i.e. father and mother of deceased and also compensation to the tune of Rs.1 lac for injuries suffered by Smt. Kamlesh in the said accident.

9. To rebut the arguments, of learned counsel for petitioners, it has been argued by learned counsel for the respondents that no accident had taken place due to rash and negligent driving of respondent no.1. In fact a false



FAO-167-2006 (O&M)

FIR got registered against respondent no.1 involving motorcycle No.HYW-9191 owned by Dharamvir respondent no.2. The FIR was registered on the next day of the alleged accident and there is no explanation for delay in lodging the F.I.R. There is no evidence on the record as to how Sukhwinder Singh had fallen down from the motorcycle. There is also no evidence on the record as to when Kamlesh mother of deceased had also fell down from the motorcycle. The M.L.R. Ex.P1 was prepared by the doctor on 15.12.2002 at 4.35 p.m., whereas the accident had taken place on 14.12.2002 at 7.30 p.m. There is nothing on the record to show as to whether the claimants alongwith their child Sukhwinder Singh had gone to Apna Hospital for treatment. There are number of contradictions in the statement of petitioner Smt.Kamlesh and her statement made before the police which falsifies the averments of the petitioners. The learned counsel for the respondents have prayed for dismissal of both the claim petitions.

10. The arguments advanced by learned counsel for the petitioners and respondents have been carefully heard alongwith meticulous examination of the record of the case, oral as well as documentary evidence.

11. The date of alleged accident has been mentioned as 14.12.2002 at 7.30 p.m. The allegations of the petitioners are that they were going to see Geeta Jayanti festival at Braham Sarover. Baslu Ram claimant no.1 was on his bicycle alongwith his wife Smt. Kamlesh and child Sukhwinder Singh. In the meantime one motorcycle bearing no.HYW-9191 came which was being driven by Amit alias Raju respondent no.1. Since Amit alias Raju was known to the claimants, Baslu Ram claimant no.1



FAO-167-2006 (O&M)

told his wife to sit on the motorcycle alongwith the child. As such Smt.Kamlesh claimant no.2 and also injured sat on the motorcycle of Amit alias Raju as pillion rider and Sukhwinder Singh her child was made to sit on the petrol tank of the motorcycle. Inspite of objection raised by Smt. Kamlesh, respondent no.1 kept on driving his motorcycle in rash, negligent and zig zag manner, as result of which Sukhwinder, Singh fell down from the motorcycle, his head was struck against the road and he died on the spot. Smt-Kamlesh also fell down from the motorcycle and received injuries on her body.

12. The story unfolded by the petitioners has to be scrutinized with evidence, oral as well as documentary, led by both the parties.

13. First of all taking the point of time taking in lodging the F.I.R. As per allegations of the petitioners, the accident had taken place on 14.12.2002 at 7.30 p.m. near Maharana Partap chowk, Kurukshetra and the FIR was lodged on 15.12.2002 at 7.15 a.m. on the statement of Smt.Kamlesh injured. It is pertinent to mention here that when the statement of Smt-Kamlesh injured was recorded by the police, she had not narrated the number of motorcycle. It was stated by her that one motorcycle without number driven by Amit alias Raju came. It appears that the number of motorcycle was not mentioned intentionally to insert the number of another insured motorcycle. There is nothing on the record as to how the number of motorcycle came to the knowledge of Smt.Kamlesh claimant. By way of additional evidence the learned counsel for the petitioners has placed on record copy of recovery memo dated 20.12.2002 in which the number of motorcycle has been shown as HYW-9191. It



FAO-167-2006 (O&M)

has been argued by learned counsel for the petitioners that the number of motorcycle came into picture on the arrest of Amit alias Raju respondent no.1 on 20.12.2002 and he had produced the motorcycle alongwith its papers. From 14.12.2002, the time when the accident had taken place till 20.12.2002 there was enough time with the claimants to insert the number of any other insured motorcycle.

14. Statement of Smt-Kamlesh in Ex.P2 copy of FIR, shows that she has nowhere stated that as a result of rash and negligent driving of respondent no.1, she had also fell down from the motorcycle. It has only been stated that her son Sukhwinder Singh had fallen down from the motorcycle. On 15.12.2002 at 4.35 p.m, she had gone to L.N.J.P. Hospital, Kurukshetra for treatment of the injuries suffered by her in the alleged accident on 14.12.2002 at 7.30. The copy of M.L.R. shows that she had visited L.N.J.P. Hospital at 4.35 p.m. on 15.12.2002 and it was also mentioned in the said M.L.R. that she had not taken any treatment before any doctor before her visit to the said hospital. It becomes suspicious that when her statement was recorded on 15.12.2002 at 7.15 a.m. on the basis of which FIR was registered, she had not stated that she had also fallen down. On the same evening she goes to the hospital and narrated that she had also received injuries in the accident which had taken place due to rash and negligent driving of respondent no.1 while driving motorcycle no.HYW-9191 on 14.12.2002 at 7.30 p.m. while appearing as PW1 she has improved her version and has tried to justify injuries on her person as having been suffered in the said accident. When Sukhwinder Singh son of Smt. Kamlesh had allegedly



fallen down from the motorcycle, he was taken to Apna Hospital, Kurukshetra and then to L.N.J.P. Hospital, Kurukshetra. It appears some what unbelievable that when child was taken to hospital, she did not show her injuries to any doctor either at Apna Hospital or at L.N.J.P. Hospital. It seems after thought to insert her injuries also in the alleged accident. Dr. S.C.Grover, Medical Officer, L.N.J.P. Hospital, Kurukshetra stepped into the witness box as PW2 has stated in his cross-examination that the injured Smt.Kamlesh and attendant had explained that due to death of her son they reached late in the hospital but has also admitted that there is no where mention in the said M.L.R. If it was not mentioned in the M.L.R. how the doctor remembers the said oral statement, particularly when his statement was recorded on 11.1.2002 and the accident had taken place more than two years prior to his statement. On 15.12.2002 the doctor. has advised X-ray which was conducted on 16.12.2002 and fracture was found. Had specific statement been made by Smt.Kamlesh that she had also fallen down from the motorcycle and received injuries the position would had been different.

15. *With regard to place where Sukhwinder Singh deceased was sitting at the time of accident. When the statement of Smt.Kamlesh was recorded on 15.12.2002 at 7.15 a.m., she had specifically stated that her son - Sukhwinder Singh was sitting on the tank of the petrol. When her statement has been recorded in the court, in cross examination she has stated that her child was sitting on her back. Respondent no. while filing reply, it has been stated by him that the child was sitting on the petrol tank of his motorcycle. The evidence adduced by*



the petitioners is not in consonance with the oral statement made by them before the police and also the evidence becomes beyond pleadings.

16. *Now coming to the speed at which the respondent no.1 was allegedly driving the motorcycle. PW1 Smt. Kamlesh has stated that the motorcycle was being driven by respondent no.1 at the speed of 100 km. per hour. In the cross-examination she has admitted that the said road is single and there are shops on both sides. It has been further admitted by her that the road was crowded due to function of Geeta Jayanti and it could not be possible to ply the vehicle at high speed during those days due to festival. In whole of the petition and in oral statement the petitioner has. stated that one motorcycle was drivne by respondent no.1 at high speed i.e. at 100 k.m. per hour. The allegation of the petitioner is falsified by her own statement, admitting that due to rash at the road as there was festival, it was not possible to ply the motorcycle at speed of 100 k.m. per hour. The learned counsel for the petitioners has failed to substantiate the allegations that Sukhwinder Singh had fallen down from the motorcycle due to rash and negligent driving of respondent no.1. At this stage, the ratio in authority 1991 A.C.J. 278 titled as Secretary Communication Ministry, Government: of India, Department of PAT, New Delhi and Others Vs. Ramrao alias Ramdas and others relied upon by learned counsel for the insurance company is applicable to the facts of the present case. It was observed by the Hon'ble High Court of Bombay that claimant must stand on his own legs to establish the case of negligent of the respondent and he could not stand to gain by showing the weakness in the defence.*



17. The learned counsel for the respondent has also placed reliance on 1991(2) P.L.R. 233 titled as *Shingara Singh Vs. Ajit Singh and another* in which it was observed by Hon'ble Punjab & Haryana High Court that the claimant cannot take the advantage of the statement of the driver as onus to prove that the accident took place due to the negligence of the driver is on the claimant.

18. Reliance has also been further placed on 1997(3) RCR (Civil) 575 titled as *Smt. Rita Sharma Vs. Pan Chand* and 2001(3) RCR (Civil) 582 titled as *Ram Karan Vs. Zile Singh*. In both these authorities it was observed that mere the FIR framing of charge and even judgment of conviction or acquittal of criminal court is not binding on the Tribunal. The onus of proving negligence is always on the claimants and they have to discharge it before the Tribunal.

19. From the oral as well as documentary evidence on the record and applying the ratio of the authorities cited by learned counsel for the insurance company, it is hereby observed that learned counsel for petitioners has failed to prove tht the accident had taken place due to rash and negligent driving of respondent no.1. This issue is decided against the petitioners and in favour of the respondents.

XXX XXX XXX XXX XXX

ISSUE NO.3:

21. The onus to prove this issue was placed upon the respondents and it was to be proved that respondent no.1 was holding a valid and effective driving licence on the alleged date of accident. Perusal of driving licence Ex.R4 of respondent no.1 shows that respondent no.1 was



FAO-167-2006 (O&M)

holding a driving licence on the date of accident. No objection with regard to validity of driving licence has been raised by learned counsel for the insurance company during the course of arguments. Therefore, this issue is decided against the insurance company and in favour of claimants.”

ANALYSIS OF RECORD

10. A perusal of the record shows that FIR was got registered on 14.12.2002 i.e. on the very next day of the alleged accident, on the statement of Smt. Kamlesh (injured and eye-witness). The MLR is also on record as Ex.P1. Learned Tribunal has observed that there is one day delay in lodging the FIR and there is no explanation to the same, whereas, Hon’ble the Supreme Court has consistently held that procedural delays, particularly in cases where the victim is undergoing medical treatment, must be viewed pragmatically rather than technically. Reference at this stage can be made to the case of **Ravi Vs. Badrinarayan and others, 2011(4) SCC 693**, wherein Hon’ble the Apex Court has conclusively held that delay in lodging the FIR cannot be deemed fatal to motor claim proceedings, provided the claimant satisfactorily explain the delay with cogent and reasonable grounds. The relevant extracts of the ***Ravi Vs. Badrinarayan’s*** case (supra) is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such



an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”



FAO-167-2006 (O&M)

11. Further, the learned Tribunal has observed that there is no evidence on record as to how Sukhwinder Singh (deceased) had fallen down from the motorcycle, whereas, the factum of accident as narrated in the FIR shows that because of rash and negligent driving of respondent No.1, Sukhwinder Singh (deceased) fell down from the motorcycle on the road, started bleeding from his head, became unconscious and died. Baslu Ram, husband of claimant-Kamlesh, who was also an eye witness, also witnessed the accident since as per the factum of accident, he was following the motorcycle on his bicycle.

12. Learned Tribunal further observed that there is no evidence on record to show as to when Kamlesh, mother of the deceased also fell down from the motorcycle and if she also along with her child (Sukhwinder Singh) had gone to Apna Hospital for treatment.

13. The learned Tribunal failed to appreciate the very fact that if the child (Sukhwinder Singh) was so serious and died due to the accident, no mother would be worried about her own health or injuries. A perusal of the record further shows that respondent No.1 was arrested and had produced the motorcycle along with its papers. Still, learned Tribunal insisted that Smt. Kamlesh (injured) did not narrate the number of motorcycle without appreciating the very fact that these are minor discrepancies for which the appellants/claimants cannot be denied compensation and as per the record, respondent No.1 was arrested and he produced the motorcycle along with its papers as well. Further the learned Tribunal observed that copy of the MLR shows that Smt. Kamlesh visited the LNJP Hospital, Kurukshetra, at about



FAO-167-2006 (O&M)

-14-

04:35 P.M. on 15.12.2002 and it was also mentioned in the said MLR that she had not taken any treatment from any doctor before her visit to the said hospital. Learned Tribunal failed to appreciate the state of mind of the mother, whose son died in the accident and was expected that the mother should have stated about her injuries etc. in the FIR. Repeatedly, learned Tribunal has observed it to be unbelievable that when child was taken to hospital, Smt. Kamlesh, mother of the deceased-son, did not show her injuries to any doctor either at Apna Hospital or at LNJP Hospital, which rather cannot be a ground for dismissing the claim petition, as observed above.

14. Dr. S.C Grover, Medical Officer, LNJP Hospital, Kurukshetra, stepped into the witness box as PW2, who proved MLR and death of son of Smt. Kamlesh (claimant No.2) due to accident. Smt. Kamlesh (claimant No.2) was also examined as PW1, who stated the factum of accident and was cross-examined at length. She further stated that she never got recorded in her claim petition that Sukhwinder Singh (deceased) was sitting on the petrol tank of the motorcycle. She further stated that her husband was following them at a distance of 100 feet. She further stated that she got mentioned number of offending vehicle in her statement made to the police. She stated the whole factum of accident as well as the injuries suffered by her and lodging of FIR by her. She further stated her mental state because of which she did not care about her injuries because of the death of her son.

15. In view of the above, findings of the learned Tribunal, while dismissing the claim petition filed by the appellants/claimants on the ground



of delay in lodging of FIR and that the appellants failed to prove that the accident took place due to rash and negligent driving of respondent No.1, are not acceptable to this Court.

16. In sequel of the above, the award rendered by learned Tribunal is set aside and the appellant/claimant is held entitled to the compensation.

17. With respect to determination of compensation, a perusal of the impugned award reveals that the appellant/claimant, Smt. Kamlesh, has failed to establish that she sustained any injuries as a result of the alleged accident. The record indicates that the FIR (Ex. P2), lodged on the basis of her statement, does not contain any assertion that she suffered injuries in the accident. It merely states that her son, Sukhwinder Singh (since deceased), had fallen from the motorcycle.

18. However, while deposing as PW1, the appellant/claimant sought to improve upon her earlier version by asserting that she too had suffered injuries in the accident caused by the rash and negligent driving of respondent no. 1. This improvement in her testimony raises serious doubts about its veracity. The medical record (MLR) further casts suspicion on her claim. Although appellant/claimant visited L.N.J.P. Hospital on 15.12.2002 at 4:35 P.M, the MLR categorically states that she had not sought treatment from any doctor before this visit.

19. Significantly, when her son, Sukhwinder Singh (since deceased), was immediately taken to Apna Hospital and subsequently referred to L.N.J.P. Hospital following the alleged accident, the appellant/claimant did not report any injuries to the attending medical



FAO-167-2006 (O&M)

-16-

professionals at either facility. The omission of any mention of her injuries at this stage renders her subsequent assertion highly improbable and lends credence to the inference that her claim was an afterthought, manufactured to strengthen her case.

20. In view of the contradictions and inconsistencies between the FIR, the MLR, and the testimony of PW1, the appellant/claimant has failed to establish, by any cogent or reliable evidence, that she suffered injuries due to the accident in question.

21. Consequently, the present appeal is dismissed being devoid of any merit.

22. Respondent No.4-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Suman Jain, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

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

(SUDEEPTI SHARMA)
JUDGE

06.03.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No