FAO-784-1997 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.784 of 1997
Reserved on : 28.04.2025
Date of Decision : 21.07.2025

Jagpal

… Appellant

Versus

Kamla Devi

…Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Argued by: Mr. Varun Baanth, Advocate,
for the appellant.

Mr. Ashish Grewal, Advocate and
Mr. Jonti Phogat, Advocate
for the respondent.

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PANKAJ JAIN, J. (Oral)

The owner is in appeal aggrieved of the award passed by Motor Accident Claims Tribunal, Ambala. The claimant approached MACT, Ambala under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Mukandi Lal in a motor vehicular accident on 14.10.1993. As per the claimant, Mukandi Lal deceased was riding a cycle when he was hit by motorcycle driven by respondent No.1. The claimant claimed that respondent No.1 was driving the motorcycle in a rash and negligent manner. Deceased-Mukandi Lal suffered injuries and was taken to Civil Hospital, Narnaul from where he was referred to PGIMER, Chandigarh where he succumbed to his injuries. Mukandi Lal was working

as a mason and was earning ₹ 4000/- per month beside cultivating the land and earning ₹ 2,000/- per month. The claimant accordingly prayed for compensation of ₹ 5 lakh.

2. None appeared on behalf of the respondent and was proceeded against *ex parte.*

3. FIR pertaining to the accident was tendered in evidence as Ex.P1. Post mortem report was tendered as Ex.P2. FIR was lodged on the statement made by Rishi Pal. However, Rishi Pal resiled from his statement. Gulab Singh (Sarwan Kumar) appeared as PW3 and claimed that he accompanied Rishi Pal to the Police Station at the time of registration of FIR. The Tribunal allowed the claim petition and held the claimant entitled to compensation of ₹ 96,000/-. *Ex parte* award was set aside and the matter was re-adjudicated. The Tribunal held the appellant guilty of rash and negligent driving and found the claimant entitled to receive compensation of ₹ 2,88,000/-.

4. Counsel appearing for the appellant submits that there is no evidence on record to prove that the appellant is owner of the offending motorcycle No.UHR 856. He further submits that the evidence with regard to the appellant driving the motorcycle in the shape of FIR has also come under cloud as author of FIR i.e. Rishi Pal appeared as PW2 and resiled from his statement. He, thus, submits that the findings recorded by the Tribunal on issue No.1 holding the appellant guilty of rash and negligent driving is without any basis and deserves to be reversed. He, thus, prays for dismissal of the claim petition.

5. Per contra, counsel for the respondent-claimants submits that the accident stands fully proved from the testimony of PW2-Gulab Singh who happens to be eye witness of the incident. He explicitly testified before the Tribunal that it is Jagpal Singh appellant who has driven the motorcycle and caused the accident which led to the death of the deceased. He further submits that the fact that Rishi Pal author of FIR has resiled from his statement would not make any difference as the reason behind Rishi Pal resiling from his stand is evident. Rishi Pal, being co-villager of the appellant, made the statement to save the appellant from liability. He further submits that it has come on record that it is the appellant who was booked in FIR and faced criminal trial after the police filed challan against him. Thus, there being overwhelming evidence on record, testimony of Rishi Pal cannot be of any aid to the appellant.

6. I have heard counsel for the parties and have carefully gone through the record of the case.

7. Law regarding standard of proof in the claim petition arising under Motor Vehicles Act is well settled and has been elaborately discussed by the Supreme Court in **Dulcina Fernandes** v. Joaquim Xavier Cruz reported as **(2013) 10 SCC 646**. Reiterating the ratio of law laid down by Supreme Court in the case of **Dulcina Fernandes** *ibid*, Supreme Court in **ICICI Lombard General Insurance Company Limited** v. **Rajani Sahoo** reported as **(2025) 2 SCC 599** observed as under : -

> *"xx xx xx*
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> *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.

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."

8. Applying the aforesaid parameters to the present case, this Court finds that Tribunal has rightly taken a holistic view of the matter in hand taking into consideration the entire evidence on record.

9. Counsel for the appellant is not in a position to dispute that after registration of FIR, the police conducted investigation and charge sheeted the appellant. In view thereof, this Court does not find any reason to interfere in the findings recorded by the Tribunal on issue No.1. The appellant having been booked and chargesheeted for offence punishable under Section 304A IPC qua the same accident, the Tribunal rightly held him liable to pay compensation.

10. So far as the plea regarding ownership is concerned, once there is overwhelming evidence to prove that the appellant was driving the motorcycle on the fateful day at the time of the accident, it was for the appellant to prove on record owner of the vehicle in case he disputed his own ownership. In matters relating to MACT, once the claimant successfully proves that the accident is caused due to rash and negligent driving of the offender-respondent, the fact that the respondent was himself owner or not, has no bearing on the claim raised by the claimant.

11. In view thereof, finding no merit in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

July 21, 2025
Paritosh Kumar

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