IN THE HIGH COUR T OF PUNJAB AND HARYANA AT CHANDIGARH

118 **FAO-1433-2024 (O&M)**
Date of Decision : 07.05.2025

United India Insurance Co. Ltd. ....Appellant

VERSUS

Somvir and Another ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Ritu Punj, Advocate for the appellant.

Mr. Mohit, Advocate for
Mr. Pavitra, Advocate for respondent No.1.

Mr. Surender Kumar Sharma, Advocate for
Mr. Amit Choudhary, Advocate for respondent No.2.

ALKA SARIN, J. (Oral)

CM-7436-CII-2025

1. The present application under Order XLI Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 has been filed for staying the award dated 29.11.2023 passed by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as the 'Tribunal').

2. Mr. Mohit, Advocate proxy counsel for Mr. Pavitra, Advocate has put in appearance on behalf of respondent No.1-claimant while Mr. Surender Kumar Shamra, Advocate proxy counsel for Mr. Amit Choudhary, Advocate has put in appearance on behalf of respondent No.2 i.e. driver and owner of the tractor bearing registration No.HR-20Q-6082 (hereinafter referred to as the 'offending vehicle') and have filed the memo of appearance,

which is taken on record. Learned counsel for the parties are *ad idem* that instead of hearing the application, the main appeal itself be heard.

3. With the consent of learned counsel for the parties, the main appeal is taken on Board today itself.

CM-5664-CII-2024

4. For the reasons stated in the application, the same is allowed. The delay of 13 days in filing the present appeal is condoned.

FAO-1433-2024 (O&M)

5. Present appeal has been filed by the Insurance Company aggrieved by the award dated 29.11.2023 passed by the Tribunal.

6. The brief facts relevant to the present *lis* are that on 07.05.2018, respondent No.1 (injured-claimant) had gone to Fatehabad for some work on his motorcycle bearing registration No.HR-20AK-3606. The father of the injured-claimant had also accompanied him on his separate motorcycle bearing registration No.HR-20AL-3429. When they were returning at about 07.00 pm on their respective motorcycles from Fatehabad and were crossing the cut of Khasa Mahajan Road a little ahead of Bus Stand of Khara Kheri, the offending vehicle, which was being driven by Deepak Kumar (respondent No.2 herein) at a high speed and rashly and negligently came from Hisar side and struck into the motorcycle of the injured-claimant as a result of which the injured-claimant, alongwith the motorcycle, fell on the road. The offending vehicle went over the injured-claimant as a result of which he sustained multiple grievous and serious injuries on his chest, hip, leg and other parts of the body. The injured-claimant was rushed to Maharaja Agrasen Medical

College and Hospital, Agroha, District Fatehabad where he was given first aid and then was later referred to a higher institute and was admitted to CMC Hospital where he was medico-legally examined on 07.05.2018 and was treated as an indoor patient from 07.05.2018 to 12.06.2018. During the said period he underwent surgeries. The injured-claimant is stated to be still under treatment when the claim petition was filed.

7. On notice, respondent No.2 i.e. driver and owner of the offending vehicle filed his written statement raising various preliminary objections of suppression of facts and not approaching the Tribunal with clean hands. It was further averred that the offending vehicle was being driven at a moderate speed, carefully and by following all the traffic rules and that the injured-claimant riding his motorcycle at a high speed and rashly came in front of the offending vehicle. When the driver of the offending vehicle tried to apply the brakes, the motorcyclist struck his motorcycle into the offending vehicle. It was further averred that the accident took place due to negligence of the motorcyclist (injured-claimant). It was further averred that a false case had been registered.

8. The Insurance Company (appellant herein) filed a separate written statement raising grounds of collusion and also sought to raise all available grounds permissible to the insurer. The objection was also raised regarding the driver not having a valid and effective driving licence and that the insurance policy was not produced. The objection was also raised qua not approaching the Tribunal with clean hands. The factum of the accident was also denied. It was further the stand taken that a false FIR was lodged after

one day of the accident against an unknown driver and unknown tractor and later the name of the driver and registration number of the tractor were falsely involved.

9. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the accident dated 07.05.2018 resulting in injuries to the petitioner occurred on account of rash and negligent driving of vehicle No.HR-20Q/6082 by respondent No.1 ? OPP

2. Whether the petitioner is entitled to compensation as prayed, if so, to what extent and from whom ? OPP

3. Whether the driver of offending vehicle was not holding a valid and effective driving license on the date of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy ? OPR.

4. Relief.

10. The Tribunal on issue No.1 held that the accident had taken place due to the rash and negligent driving of the tractor and further awarded the following compensation holding the Insurance Company (appellant herein) and driver and owner of the offending vehicle jointly and severally liable to pay the amount of compensation :

Sr. No.	**Heads**	**Compensation Awarded**
1	Medical bills	₹11,07,913/-
2	Pain and suffering	₹1,20,000/-

3	Hospitalization	₹80,000/-
	Total Compensation	**₹13,07,913/-**
	Interest	**6% per annum**

11. Aggrieved by the same, the present appeal has been preferred by the Insurance Company.

12. Firstly, learned counsel for the appellant would contend that initially the FIR was lodged against an unknown person and unknown vehicle and even in the criminal case the driver of the offending vehicle has been acquitted.

13. Secondly, learned counsel for the appellant would contend that in this case the FIR was got recorded by PW1 Govind Singh, father of the injured-claimant, and the contents of the FIR are different from what has been deposed by this witness before the Tribunal. It has further been contended that PW1 Govind Singh was not present at the spot and that as per statement of the doctor, the brother of the injured-claimant had brought the injured-claimant to the hospital. It has further been contended that the application given by the complainant on behalf of the father of the injured-claimant whereby the name and registration number of the offending vehicle were added does not state as to from where he got the information qua the name of the driver and registration number of the offending vehicle.

14. *Per contra* learned counsel for respondent No.1 (injured-claimant) would contend that in the present case the claimant himself had stepped into the witness-box as PW2 and that his father had stepped into the witness-box as PW1. It is further the contention that in the criminal case though driver of the offending vehicle was acquitted, however, the claimant

and his father had both appeared as prosecution witnesses and had fully supported the case.

15. Heard.

16. Coming to the first contention of learned counsel for the appellant that the FIR was registered against an unknown person and unknown vehicle and that the driver of the offending vehicle has been acquitted, Hon'ble Supreme Court observed in case of **N.K.V. Bros (P) Ltd. Vs. M. Karumai Ammal [1980(3) SCC 457]** that the case set up was that since the criminal case in relation to the accident had ended in acquittal, hence, the claim under the Motor Vehicles Act, 1988 should also be rejected. The Supreme Court negated the said argument and held as under :

> *"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising*

this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

Further in the case of **Krishan Vs. Tarawati [2011(3) PLR 29]** it was held as under :

> *"It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court."*

Further, in the case of **Harjinder Kaur & Ors. Vs. Pushpinder Kumar & Ors. [2017(4) ACC 395]** this Court held that *"It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal"*. Therefore the argument of the appellant deserves to be rejected.

17. So far as the second argument of learned counsel for the appellant that PW1 Govind Singh, author of the FIR, has deposed a different

version from what has been stated by him in the FIR is concerned, Hon'ble Supreme Court in the case of **National Insurance Company Limited V/s Chamundeswari & Ors. [2021 ACJ 2558 (SC)]** while holding that weightage has to be given to the evidence recorded before the Tribunal over the contents of the FIR, held as under :

> *"8. It is clear from the evidence on record of PW-1 as well as PW-3 that the Eicher van which was going in front of the car, has taken a sudden right turn without giving any signal or indicator. The evidence of PW-1 & PW-3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the judgment, relied on by the appellant's counsel in the case of Oriental Insurance Company Limited v. Premlata Shukla and Others, 2007*

(13) SCC 476, this Court has held that proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report. In the judgment in the case of Nishan Singh and Others v. Oriental Insurance Company Limited, 2018 (6) SCC 765, this Court has held, on facts, that the car of the appellant therein, which crashed into truck which was proceeding in front of the same, was driven negligently by not maintaining sufficient distance as contemplated under Road Regulations, framed under Motor Vehicles Act, 1988. Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record. Having regard to evidence in the present case on hand, we are of the view that both the judgments relied on by the learned counsel for the appellant, would not render any assistance in support of his case."

Similar view was taken in the case of **Halappa V/s Malik Sab [2018 (1) RCR (Civil) 279]** which reads as under :

'……..The High Court has proceeded to reverse the finding of the Tribunal purely on the basis that

> *the FIR which was lodged on the complaint of the appellant contained a version which was at variance with the evidence which emerged before the Tribunal. The Tribunal had noted the admission of RW1 in the course of his cross-examination that the insurer had maintained a separate file in respect of the accident. The insurer did not produce either the file or the report of the investigator in the case. Moreover, no independent witness was produced by the insurer to displace the version of the incident as deposed to by the appellant and by PW3. The cogent analysis of the evidence by the Tribunal has been displaced by the High Court without considering material aspects of the evidence on the record. The High Court was not justified in holding that the Tribunal had arrived at a finding of fact without applying its mind to the documents produced by the claimant or that it had casually entered a finding of fact. On the contrary, we find that the reversal of the finding by the High Court was without considering the material aspects of the evidence which justifiably weighed with the Tribunal. We are, therefore, of the view that the finding of the High Court is manifestly erroneous and that the finding of fact by the Tribunal was correct'.*

Further, in the case of **Ramamurthy V/s National Insurance Co. Limited [Civil Appeal No.4612-2017 decided on 30.03.2017]** it was held as under :

> *"9. The High Court, in appeal, took into account the F.I.R. filed by the injured pedestrian (Ramesh), on which reliance was placed by the claimant to prove the accident. While relying on the said F.I.R., the High Court took the view that as the appellant-claimant himself has relied on the F.I.R., the entire version of the F.I.R. must be accepted. Inasmuch as in the F.I.R. filed by the injured pedestrian (Ramesh) rash and negligent driving was alleged against the appellant-claimant, the High Court took the view that the appellant-claimant had admitted the contents of the F.I.R., including the allegation of rash and negligent driving contained therein.*
>
> *10. We fail to see as to how the High Court could come to the aforesaid conclusion and/or placed reliance on the F.I.R. as a substantive piece of evidence. The facts discussed by the learned Tribunal in coming to its conclusion, as noted above, were also not adverted to by the High Court in the impugned order'.*

18. Further still, PW1 Govind Singh as well as the injured-claimant himself had stepped into the witness-box as PW2 and had deposed regarding the factum of the accident. They both were subjected to the lengthy cross-examinations however nothing could be elicited to even remotely suggest that PW1 Govind Singh was not present at the time of the accident. It is a matter of record that the driver of the offending vehicle also faced criminal trial

though he was later acquitted, however, it is not a case where the injured-claimant or his father did not support the prosecution case. Both of them stepped into the witness-box and had fully supported the case of the prosecution.

19. In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

07.05.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO