



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

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**FAO-251-2006 (O&M)  
Date of Decision: May 20, 2025**

**Niranjan Gaur and another**

**.....Appellants**

**Vs.**

**Rajinder Kumar and others**

**.....Respondents**

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr.Sukhandeep Singh, Advocate  
for the appellant.

Mr. Bhisham Kumar Majoka, Advocate and  
Ms. Mansi, Advocate for respondent No.1.

Mr. Gopal Mittal, Advocate for respondent No.3

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**SUDEEPTI SHARMA J. (ORAL)**

The present appeal has been preferred against the award dated 13.10.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the Learned Motor Accident Claims Tribunal, Gurgaon (for short 'The Tribunal') vide which the claim petition filed by the appellants/claimants for grant of compensation, was dismissed.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case as mentioned in the claim petition are that on 02.07.2001, a young boy (since deceased) aged 17 years who was a



student of C.A. Ist year of the Institute of Chartered Accountants of India, Delhi, was travelling by bus bearing registration No. HR-38-2008 which he boarded from Gurgaon for Delhi. Rajinder Kumar-respondent No.1 was driving the bus at a very fast speed and in a rash and negligent manner. When the bus reached near Sector III, Gurgaon, there was a speed breaker on the road. Respondent No.1 did not bother about that speed breaker and got over it at a speed. On account of the jump which the bus had taken, the rear door of the bus got flung open and the deceased fell off from the vehicle on the road and sustained serious and severe injuries which ultimately caused his death.

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

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

*1) Whether the impugned accident was caused by respondent No.1 by driving vehicle No. HR-38-2008 rashly and/or negligently?*

*OPP.*

*(2) Whether the petitioners are entitled to any amount of compensation. If so, how much and from whom? OPP.*

*(3) Whether the respondent No.3 is exonerated from the liability, for the reasons indicated in the preliminary objections? OPR (3).*

*(4) Relief*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence, the claimants/appellants filed the present appeal for grant of compensation.



**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES**

6. Learned counsel for the claimants-appellants contends that the claim petition is wrongly dismissed on the ground that Ram Dev who was eye witness of accident was examined as PW-4, whose statement did not corroborate with the version as set up in the claim petition. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants/claimants.

7. *Per contra* learned counsel for the respondents contends that there are too many contradictions in the version and cross version of the witnesses. 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. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

*“Issue No.1:*

*13. The learned counsel for the petitioners argued that the respondent No. 1 is facing a prosecution on a charge of having caused the impugned accident by rash and negligent driving and thus, that record-based evidence is fully supportive of the ocular version presented at the trial by PW4 Ram Dev who is the first Informant and who detailed, in the course of his testimony on oath, the manner in which the impugned accident had been caused by respondent No.1.*

*14. The learned counsel for the respondents argued that the testimony of PW4 Ram Dev, first informant, is completely at variance with the contents of FIR (copy Ex.P1) and also the averments in the petition and, thus, the petitioner cannot be*



*held to have been able to prove that respondent No.1 had caused the impugned accident by rash and negligent driving of the offending vehicle.*

*15. I have given my careful thought to the point in controversy. The plea on behalf of the petitioners is untenable.*

*16. It may be indicated, at the very outset, that there is no law which provides that the mere pendency of a prosecution against the offender (on a charge of having caused the impugned accident by driving the offending vehicle rashly and negligently) is sufficient to record a finding in favour of the alleging party. The petitioner in a cause has to adduce supportive substantive evidence as well at the trial. In this case, PW4 Ram Dev (first informant) did not at all testify that he had lodged the FIR. Ex.P1, copy of the FIR, was proved by PW2 HC Bijender Singh of Police Station, City, Gurgaon on the basis of the FIR register. As would be evident from a perusal of Ex.P1, the averments in the course thereof are in accord with those made in the petition (as quoted in para No.2 of the present award). As against 1, PW4 Ram Dev testified at the trial that the deceased was standing on the kacha portion of the road which was at a distance of three feet from the metalled road when this witness spotted him for the first time from a distance of 50/60 yards. It is also in his testimony that he spotted the bus from a distance of about 50/60 yards. It is in his statement that the Roadways Bus aforesaid which came from the side of Bus Stand, Gurgaon, and which was proceeding to Delhi side, hit the boy who was standing on the road side whom he (PW4 Ram Dev) lifted and transported to Kalyani Hospital, Gurgaon.*



17. It is one thing to allege that the deceased was traveling by the offending vehicle and that the deceased fell off the vehicle when the rashly and negligently driven bus was passing over a speed breaker at a high speed. It is quite another thing to aver that the deceased was standing by the road side on the kacha portion of the road and that the bus hit him. As PW4 Ram Dev is first informant, it was for him to have testified that he had lodged the FIR. Obviously, he would have been cross-examined by the respondents in the light of the totally contradictory presentation made by him in the course of his testimony on oath. It may be that he initially refrained from touching the aspect of his being first informant, for fear of facing a volley or questions which could have put him on the wrong side of the law. If the petitioners felt that PW4 Ram Dev was going the wrong way and was making statement which was different from the version presented by him to the police (copy Ex.P1), it was for them to have declared him hostile and to have cross-examined him to bring out the truth. The petitioners did not declare him hostile. It follows therefrom that they own up his testimony. That being so, the learned counsel for the petitioner would find it difficult to reconcile it with the averments made in the petition and also in the FIR.

18. It is held, accordingly, that the petitioners have not been able to prove this issue which shall stand disposed of against them and in favour of the respondents.”

10. Upon a careful perusal of the impugned award, it is evident that the learned Tribunal has rightly appreciated the evidence on record and dismissed the claim petition for want of cogent and reliable proof establishing the involvement of the alleged offending vehicle in the accident.



11. The testimony of PW-4 Ram Dev, who was projected as an eyewitness to the alleged accident, forms the crux of the instant case. While PW-4 Ram Dev did narrate an account of the accident during his examination-in-chief, his cross-examination severely undermines the reliability of his testimony. There are glaring contradictions between his oral deposition before the learned Tribunal and the version recorded in the FIR (Ex. P1), which he purportedly lodged. Most notably, he failed to even acknowledge having lodged the FIR, thereby raising serious doubt regarding the veracity of his testimony and prosecution case.

12. Further, testimony of PW-4 (Ram Dev) diverges materially from the allegations made in the claim petition. In the FIR, it is suggested that the deceased was a passenger in the offending bus and fell off due to rash and negligent driving of bus crossing speed breaker. Contrastingly, in his oral testimony, PW-4 (Ram Dev) stated that the deceased was standing on the *kacha* portion of the road, approximately three feet away from the metalled surface and was hit by the bus while standing there. These contradictions are not a mere discrepancy but a material contradictions going to the root of the matter. It casts serious doubt on the core allegation of the mode and manner of the accident.

13. More significantly, PW-4 (Ram Dev) failed to even acknowledge having lodged the FIR, although he is named therein as the first informant. The FIR was formally proved by PW-2 HC Bijender Singh, but not through the author himself. The failure of PW-4 (Ram Dev) to affirm his role in lodging of



the FIR undermines its evidentiary value, especially as regards its contents being reflective of his personal knowledge.

14. Further, no other eyewitness or corroborative material was brought on record to substantiate the claim regarding the identity of the offending vehicle or the manner of the accident. The burden of proof in a Motor Vehicle Claims case lies on the claimants and they must discharge it on the touchstone of a preponderance of probabilities. In the absence of consistent oral testimony or reliable documentary evidence, the claim fails to meet this standard.

15. Further mere filing of a charge sheet against the respondent-driver cannot, in itself, form the basis of a finding of negligence or liability. It is a settled proposition of law that the findings of a criminal court do not bind the Motor Accidents Claims Tribunal (MACT), which is required to arrive at its own independent conclusion based on the civil standard of preponderance of probabilities.

16. Reference in this regard may be made to this judgment passed by this Court in FAO No. 84 of 2007 titled as ***National Insurance Company Limited Vs. Gurnam Kaur and others***, wherein it was held that findings of criminal courts are neither conclusive nor binding upon MACT proceedings. The relevant portion of the same is reproduced as under:-

*“11. So far as the issue whether judgments of Criminal Courts are binding on Civil Courts or Motor Accident Claims Tribunals is no longer res integra, as it has been conclusively settled by various High Courts and the Hon’ble Supreme Court. Reference in this regard may be made to the judgment rendered by the Division Bench of the Madras High Court in C.M.A. No.1369 of 2017 titled as ‘TNSTC v. P. Shanthi*



**and Others'** dated 28.04.2017. In this case, after a detailed examination of relevant decisions, the Madras High Court held as under:-

*“Mere acquittal in a criminal case does not automatically lead to the inference that there was no negligence on the part of the driver (RW1) of the bus. The standard of proof required in criminal proceedings is distinct from that in claims before the Motor Accident Claims Tribunal. In such claims, the test is based on the preponderance of probabilities rather than proof beyond reasonable doubt.”*

12. In **Vinobai and Others v. K.S.R.T.C. and Another (1979 ACJ 282)**, the High Court of Karnataka, addressing this issue, observed as under:-

*“When a driver is convicted in a criminal trial, such conviction becomes admissible in civil proceedings and constitutes prima facie evidence of culpable negligence. Conversely, the acquittal of the driver in a criminal case does not necessarily establish, even prima facie, that the driver was not negligent, as the threshold for establishing criminal culpability is significantly higher than that required for civil liability.”*

13. In **N.K.V. Bros. (P.) Ltd. v. M. Karumai Ammal and Others (AIR 1980 SC 1354)**, the Hon'ble Supreme Court dealt with a case where a bus hit an overhanging high-tension wire, resulting in multiple fatalities. Although the driver was acquitted in the criminal trial on the premise that the incident was an act of God, the court rejected the plea that the acquittal should influence the civil proceedings, held as under:-

*“The standard for proving culpable rashness under Section 304A, IPC, is far more stringent than the negligence required to establish liability under tort law. The Tribunal rightly held the driver liable, as the facts demonstrated negligence on his part, notwithstanding the criminal court's acquittal.”*



14. *In Himachal Road Transport Corporation v. Jarnail Singh and Others (2009 ACJ 2807), the Himachal Pradesh High Court reiterated the principle by holding that:-*

*“The acquittal of the driver in a criminal trial does not have a binding effect on the findings of the Motor Accident Claims Tribunal regarding negligence. The Tribunal is required to independently determine negligence based on the principle of preponderance of probabilities.”*

15. *From the above referred to decisions, it is clear that the acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of the driver / rider of the vehicle. Further, the acquittal of the driver in the criminal case will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal.”*

17. In light of the foregoing analysis, the findings recorded by the learned Tribunal are based on a sound appreciation of the evidence and established legal principles. There is no perversity or illegality warranting interference by this Court.

18. Accordingly, this Court finds no legal infirmity in the impugned award dated 13.10.2005 and the same is hereby upheld. Consequently, the present appeal is **dismissed** being devoid of any merit.

19. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Gopal Mittal, Advocate within a period of 20 days from the date of receipt of the copy of this order, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.



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

May 20, 2025  
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**(SUDEEPTI SHARMA)**  
**JUDGE**

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