AFR
Neutral Citation No.
2025:AHC:180168

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2342 of 2025

United India Insurance Company Limited

…..Appellant(s)

Versus

Ishani and another

…..Respondent(s)

Counsel for Appellant(s) : Arun Kumar Shukla
Counsel for Respondent(s) :

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the insurer of vehicle Mahindra Tractor No. UP-11-BJ-5905 against the impugned judgment and award dated 27.06.2025 passed by the Motor Accident Claims Tribunal, Saharanpur, whereby compensation of Rs.66,282/- alongwith interest @ 7% per annum has been awarded in favour of minor claimant (Ishani) for the injuries suffered by her in an accident which occurred on 27.02.2021.

2. Factual matrix is that the injured was travelling with her minor brother Rocky aged about 7 years and parents on a motorcycle No. UP-11-BV-0260 on 27.02.2021 at about 3:00 p.m., a Mahindra Tractor No. UP-11-BJ-5905, which was being driven in a rash and negligent manner, came from behind and hit the above motorcycle, resulting in injuries to the minor children, father and death of the claimant's mother. In this accident, the claimant's left leg was fractured and she sustained injuries on other parts of her body. Besides this, the claimant's minor brother was seriously injured and her mother Smt. Shabnam was grievously injured, who succumbed to her injuries and died on 13.03.2021.

3. An F.I.R. was registered on 03.03.2021 at 19:33 hours being Case Crime No.81 of 2021 at PS-Sarsawa, District Saharanpur, against the driver Anil Saini of the above tractor No. UP-11-BJ-5905 in which after investigation, a charge sheet has been submitted against the above driver.

4. The owner of the tractor appeared before the Tribunal and denied the accident but also pleaded that the accident took place due to the sole negligence of the above motorcycle driver. The Insurance Company also submitted its written statement, in which it denied the accident. Before the Tribunal, the claimant's father Sanjay Kumar examined himself as PW-1 and the owner-cum-driver of the offending tractor Anil Kumar examined himself as DW-1. No oral and documentary evidence was adduced by the Insurance Company before the Tribunal.

5. In these circumstances, the Tribunal concluded that the accident occurred due to the sole negligence of the above tractor driver and as such, for the injuries sustained in the accident, the claimant was awarded compensation of Rs.66,282/- along with interest @7% per annum, which was ordered to be indemnified by the insurer of the above tractor.

6. Learned counsel for the appellant, who is the insurer of the above offending tractor, submitted that on the date of the alleged accident, the claimant was travelling along with her minor brother and parents on the motorcycle. Learned counsel submitted that four persons were travelling on the motorcycle, the accident occurred because the motorcycle driver failed to balance the motorcycle resulting in the collision. Learned counsel also submitted that the tractor was insured for agricultural purposes but was used for commercial purposes, as such, there was breach of policy conditions and in such situation, the Insurance Company was not liable to indemnify the claimant.

7. I have heard the learned counsel for the appellant and perused the record.

8. The Apex Court in the case of ***Mohammed Siddique & Another vs. National Insurance Company Limited & Others (2020) 3 SCC 57*** held as under:-

"12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most, it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C, inserted by Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. ***But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a casual connection between the violation and the accident or a casual connection between the violation and the impact of the accident upon the victim.*** *It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimised, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance.*

13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

(emphasis supplied)

9. The Apex Court in the case of ***Anjana Narayan Kamle vs. Branch Manager, Reliance Insurance Company Limited, 2023 ACJ 346*** has held that **contributory negligence cannot be presumed merely on account of triple riding on a motor cycle or failure to wear a helmet; there must be evidence of a casual connection between the violation and the accident or its's impact**.

(emphasis supplied)

10. The Apex Court in the case of ***ICICI Lombard General Insurance Company Limited vs. Rajani Sahoo and Others (2025) 2 SCC 599***, has held as under:-

"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 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 27, thus : (SCC p. 672)

"*27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 and 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."*

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 [(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 [(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 charge-sheet. 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."

(emphasis supplied)

11. The Apex Court in the case of ***Ranjeet and another vs. Abdul Kayam Neb and another 2025 SCC OnLine Sc 497,*** has held as under:-

*"4. **It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.**"*

(emphasis supplied)

12. It is true that on the date of the alleged accident, the claimant along with her minor brother and parents was travelling on the motorcycle, which was being driven by her father Sanjay Kumar (PW-1), who has appeared before the Tribunal and has proved that the accident occurred due to the sole negligence of the tractor driver. PW-1 has deposed that the tractor was being driven in a rash and negligent manner, which came from behind and hit the above motorcycle resulting in injuries to the claimant(Ishani), her minor brother as well as to her mother, who subsequently succumbed to her injuries and died on 13.03.2021 and after investigation, a charge sheet has been submitted against the owner-cum-driver of the offending tractor.

13. Learned counsel for the appellant has submitted that on the date of the alleged accident, the tractor was being driven in breach of the policy conditions. It is evident that the Tribunal has dealt with this issue elaborately and recorded a finding that at the time of the accident, the trolley of the tractor was empty and as such, it cannot be presumed that it was being used for transporting goods for freight. Learned counsel for the appellant has also admitted during the course of arguments that at the time of the accident the trolley was empty. In view of this, no case of breach of policy conditions is made out. It is apparent that the tractor was comprehensively insured under package policy on the date of the accident by the appellant insurance company.

14. It is apparent that only on the basis that four persons (two minor children and two major) were travelling on the motorcycle on the date of the accident, it cannot be presumed that the accident took place due to the imbalance of the motorcycle. There is no evidence on record to prove that if four persons were not seated on the motorcycle then the accident would not have occurred. The insurance company failed to prove the casual connection between the persons travelling on the motorcycle and the cause of accident.

15. No other plea was raised by the learned counsel.

16. There is no perversity in the above findings recorded by the Tribunal, as such, the Tribunal has not erred in concluding that the accident occurred due to the sole negligence of the above tractor's driver, which was being driven in a rash and negligent manner and further, there was no breach of the policy conditions.

17. Accordingly, this appeal has got no merit and is liable to be dismissed at the admission stage.

18. The appeal is ***dismissed*** at the admission stage.

19. The impugned judgment and award of the Tribunal is affirmed.

20. Office is directed to remit back the statutory deposit made by the Insurance Company to the Tribunal concerned, forthwith.

(Sandeep Jain,J.)

October 09, 2025
Jitendra

Digitally signed by :-
JITENDRA KUMAR PATEL
High Court of Judicature at Allahabad