**THE HIGH COURT OF MADHYA PRADESH**
**Writ Petition No.9266/2012**
**Anshul Mandil Vs. Smt. Sushila Kohli (dead) through LRs. and others**

**Gwalior, Dated :14/02/2019**

Shri P.C. Chandil, Advocate for petitioner.

Smt. Meena Singhal, Advocate for Lrs. of respondent no.1.

Shri S.S. Bansal, Advocate for respondent no.3.

This petition under Article 227 of the Constitution of India has been filed against the order dated 31/7/2012 passed by Second Additional Motor Accident Claims Tribunal to the Court of First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.28/2009, by which the application filed by the petitioner under Section 157 (should have been 155) of the Evidence Act read with Section 151 CPC for confronting the witness with his former statement has been rejected.

It is submitted by the counsel for the petitioner that respondent no.1 has filed a claim petition under Section 166 read with Section 140 of the Motor Vehicle Act, 1988. When the cross-examination of Dr. Rajesh Gajwani was going on, the petitioner had filed an application under Section 157 of Evidence Act read with Section 151 CPC seeking permission to confront the witness with his former statement made in a criminal case to show that in fact no accident had taken place. By referring to the evidence of Dr. Rajesh Gajwani recorded in the criminal case, it is submitted by the counsel for the

petitioner that this witness in the said case had admitted that as the injured had not informed about the accident, therefore, he did not inform the police. It is submitted that now this witness has stated that the injured had sustained injuries in an accident and, therefore, under Section 155 of the Evidence Act the petitioner is well within his rights to contradict the witness with his former statement.

*Per contra,* it is submitted by the counsel for the respondents that it is well established principle of law that the claim petition is to be decided on the principle of preponderance of probabilities. The provisions of Evidence Act are not applicable in their strict sense. It is well established principle of law that even the findings given in the criminal case are not binding on the claim petition. Even if the author of the FIR had resiled in a criminal case would not be sufficient to discard the claim case, because the statement given in a criminal case cannot be considered and thus, the Claims Tribunal has rightly rejected the prayer made by the petitioner.

Heard learned counsel for the parties.

The Supreme Court in the case of **Sunita and others Vs. Rajasthan State Road Transport Corporation by judgment dated 14/2/2019 passed in SLP (Civil) No.33757/2018** has held that the standard of proof to be adopted in claim cases must be preponderance

of probabilities and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

The Punjab & Haryana High Court in the case of **Oriental Insurance Company Limited Vs. Balinder Pal @ Varinder Singh & Ors.** reported in **MACD 2018 (3) (P&H) 1171** has held that the Claims Tribunal is expected to make an independent enquiry to reach a conclusion that whether the negligence on the part of a driver of the offending vehicle has been proved on the touchstone of preponderance of probabilities or not.

Under these circumstances, where the evidence led by the parties in a criminal case is not relevant for the Claims Tribunal to adjudicate the *lis* pending before it, this Court is of the considered opinion that the Claims Tribunal did not commit any mistake in rejecting the application filed by the petitioner under Section 157 (should have been 155) of the Evidence Act.

Accordingly, the order dated 31/7/2012 passed by Second Additional Motor Accident Claims Tribunal to the Court of First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.28/2009, by which the application filed by the petitioner under Section 157 of the Evidence Act read with Section 151 CPC for confronting the witness with his previous statement has been

rejected, is affirmed.

The petition fails and is hereby **dismissed.**

**(G.S. Ahluwalia)**
**Judge**

**Arun***