IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 3rd OF DECEMBER, 2025

MISC. APPEAL No. 5965 of 2019

DEVENDRA JOSHI UNSOUND MIND THROUGH MOTHER SMT. JAYSHREE

Versus

CHOLAMANDALAM M.S. GENERAL INSURANCE CO. LTD. AND OTHERS

Appearance:

S*hri Pravin Kumar Bhatt, Advocate with Shri Anshul Shrivastava, learned counsel for the appellant.*

Shri Manoj Jain, learned counsel for the respondent / Insurance Company.

WITH

MISC. APPEAL No. 5967 of 2019

SMT. ANITA AND OTHERS

Versus

CHOLAMANDALAM M.S. GENERAL INSURANCE CO. LTD. AND OTHERS

Appearance:

Shri Pravin Kumar Bhatt, Advocate with Shri Anshul Shrivastava, learned counsel for the appellants.

Shri Manoj Jain, learned counsel for the respondent / Insurance Company.

ORDER

Both these Misc. Appeals have been filed under Section 173 of Motor Vehicles Act, 1988 being aggrieved by the common award dated 06.02.2019 passed by the 12th Additional District Judge, Indore (M.P.) in Claim Case

Nos.163/2016 and 430/2016.

1.1 M.A. No.5965/2019 has been filed by Devendra through his mother as he is in coma and M.A. No.5967/2019 has been filed by the legal heirs of Ashutosh.

1.2 The appeals call into question the findings of the Claims Tribunal, which held that the involvement of the offending insured vehicle in the accident resulting in the death of Ashutosh Pathak and injuries leading to Devendra's coma was not proved.

2. The facts relevant to the present case are that on 14.05.2010 at around 11:30 PM, Ashutosh and Devendra were going on a motorcycle bearing registration number MP-13-JF-3351 on Nanak Nagar, Ring Road on their way to a Dhaba for dinner. When they reached near Nanak Nagar, a tractor-tanker bearing registration number MP-09-HF-5208 was found standing on the wrong side of the road without any signage or indicators. As a result, the motorcycle on which Ashutosh and Devendra were riding rammed into the stationary vehicle, causing grievous injuries to both of them. Ashutosh was admitted to the Civil Hospital, Ujjain and Devendra was rushed to Bombay Hospital, Indore. Ashutosh succumbed to the injuries sustained by him and Devendra despite prolonged treatment, could not fully recover. The death of Ashutosh occurred on 30.06.2010. Devendra received treatment at Choithram Hosptial from 14.05.2010 to 05.06.2010 at Bombay Hospital from 05.06.2010 to 05.07.2010 and again from 29.08.2010 to 30.08.2010 under the care of Dr.Sachin Adhikari, Dr.Atul Tapadia and Dr.Rajnish Neuro Surgeon. Devendra's treatment may continue in future as

well as he has sustained permanent disability due to the accident.

2.1 At the time of the accident, the deceased Ashutosh was 21 years of age and was giving tuition to students. He had completed the first semester of MBA. Devendra was 28 years of age had completed BCA and was preparing for MBA. He had also cleared the MET examination.

2.2 Devendra through next friend his mother and the legal representatives of Ashutosh, filed separate claim petitions as stated above under Section 166 of the Motor Vehicles Act claiming compensation for the death of Ashutosh and the permanent disability caused to Devendra in the said accident.

2.3 The Claims Tribunal after recording the evidence, considered the question of the involvement of the insured vehicle in the accident. Upon discussing the evidence on record, the Claims Tribunal concluded in para 15 that the testimony of the eye witness Abhishek Chaddha (AW-4) did not inspire confidence in view of the responses elicited from him during cross examination. Consequently, the Claims Tribunal having disbelieved the claim that the insured vehicle was involved in the accident, rejected both claim petitions. It is also noteworthy that while rejecting the claim on the ground of lack of proof regarding the involvement of the insured vehicle, the Claims Tribunal did not quantify the compensation in either case.

3. Challenging this finding of the Claims Tribunal, learned counsel for the appellants in both appeals submitted that the facts relied upon by the Claims Tribunal were that the FIR was lodged on 11.08.2010, although the accident occurred on 14.05.2010. On this basis, the Claims Tribunal was of

the view that the delay in the registration of FIR created suspicion regarding the claimant's version that the accident was caused by the insured vehicle. Learned counsel pointed out that this conclusion was based on an incorrect assumption namely that before 11.08.2010 no information regarding the accident had been given which is contrary to the material available on record before the Claims Tribunal. He highlighted that Ex. P-5, the MLC sent by Choithram Hospital to Police Station Bhawarkua on 15.05.2010 i.e. immediately after the accident (which occurred during the night of 14.05.2010), was very much on record.

3.1 He points out that in the said MLC, it is clearly mentioned that the accident occurred with a standing vehicle at Nanak Nagar Road. He further submits that the cross-examination of the eye witness Abhishek Chaddha shows that there was nothing to discredit his testimony. He submits that the said witness, in his examination-in-chief clearly stated that the deceased Ashutosh and Devendra were riding a separate motorcycle and that he was accompanying them on another motorcycle. He also stated that the insured vehicle was standing without any signage because of which the motorcycle of Ashutosh and Devendra rammed into it. In cross examination, nothing emerged that could shake the version of the eye witness. He remained firm and in fact stated in para 3 of his cross-examination that when the police came to the hospital the next day, he informed them of the vehicle number. He further stated that in para 5 of his cross examination that he inquired about the status of the police investigation from the parents of Ashutosh, who informed him that they had approached the police and were told that the

investigation was ongoing.

3.2 Thus, it is his submission that his cross examination far from weakening his testimony, actually supports the statements made in his examination-in-chief. He further submits that although the Claims Tribunal recorded a finding that the involvement of the insured vehicle was not proved, it nevertheless held the occurrence of the accident to be established as reflected in para 22 of the impugned award. Therefore, he submits that the Tribunal has selectively believed certain parts of the deposition and contents of the FIR, while disbelieving other parts, which is impermissible in law. He accordingly submits that the impugned award be set aside and the compensation be quantified in both the appeals.

4. *Per contra*, learned counsel for the Insurance Company submits that in Ex. P-5, the MLC sent by Choithram Hospital, the term “standing truck” has been used, whereas the insured vehicle is a tanker and not a truck, which creates suspicion regarding the involvement of the insured vehicle. He further points out that in Exs. P-5 and P-14, the doctor has recorded that the deceased was under the influence of alcohol. According to him, the real cause of the accident was that the rider of the motorcycle Ashutosh was intoxicated and this intoxication led to the accident. He further submits that none of the documents mentioned the vehicle number until the registration of the FIR even though the eye-witness was present in the hospital and, as per the testimony of PW-4 had met the police on the next day itself. He therefore submits that the conclusions drawn by the Claims Tribunal are correct.

5. Heard learned counsel for the respective parties and perused the

record.

6. A perusal of the Ex. P-5, the MLC shows the following endorsement: *"While going on motorcycle at Nanak Nagar, Khandwa Road, hit with standing truck at about 11:30 p.m. in the midnight."* This report was sent by Choithram Hospital to Police Station Bhawarkua on 15.05.2010, whereas the accident had occurred on the night of 14.05.2010. Thus, it is clear that prompt intimation of the accident was given, and the description therein matches the version given by the eye-witness, Abhishek Chaddha, inasmuch as it refers to a *standing vehicle*. The contention of the learned counsel for the Insurance Company that the MLC mentions a "truck" and not a "tanker" does not hold much substance, considering the fact that, as per the claimants' version, the vehicle was standing with its front portion on the road and its rear portion off the road, which would give the impression of a truck when viewed only from the front.

7. Considering the prompt information and the statement of the eye-witness particularly paras 3 and 5 of his cross-examination, it is evident that he informed the police about the vehicle on the very next day i.e. 15.05.2010. He clearly stated in para 3 of his cross-examination that he told the police vehicle number when they came to the hospital the next day. In para 5, he further stated that he inquired about the progress of the investigation from the parents of Ashutosh, who informed him that they had contacted the police and were told that the investigation was underway. It is thus evident that both the eye-witness and the parents of the deceased Ashutosh were actively pursuing the matter and the information about the vehicle number was

promptly provided. It was for the Insurance Company to produce the investigating officer as a witness and have him cross-examined to controvert the statements of the eye-witness and of AW-1, the father of the deceased. This, however, was not done. It must be borne in mind that the degree of proof required in motor accident claims under the Motor Vehicles Act, 1988, is the preponderance of probability and not proof beyond reasonable doubt.

8. This Court while considering this issue in M.A. No.6776/2023 discussed various decisions in detail in para 6, which reads as under :

> *"6. Before adverting to the facts of the present case, it would be profitable to refer the law regarding the degree of proof required in a claim case. The Division Bench of this court in the case of* ***Mohd. Nasir vs. Angad Prasad*** *reported in* ***2003 (4) MPLJ 95 (D.B.)*** *has held in para 3 as under :*
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> *"3. Through this appeal, findings of the Claims Tribunal have been challenged. Substance of evidence clearly points out that the claimant was travelling by tourist bus No. MP 09-S/0125 from Sagar to Bhopal. The Claimant states that it was being driven rashly and negligently, therefore, caused accident. He is corroborated by Mahendra Kumar (AW 2), co-passenger in this bus, sitting by side of the driver. Read carefully, he states that the bus was being driven rashly and negligently at a speed of 60/70 kms. per hour. He further says that there was collision between two vehicles. He also states that the truck was being driven as a normal speed. Therefore, it can be understood clearly from the evidence what he intends to say is that the bus was being driven rashly and negligently at a high speed of 60/70 kms. per hour and the accident took place, otherwise the truck was moving at a normal speed. The truck driven, who could say otherwise, has not appeared in evidence. Therefore, it can be concluded that he had no defence against the allegation of rash and negligent driving of the bus. Two FIRs were lodged by the drivers against each other, namely, 78/93 (Criminal Case No. 221/93) and 79/93 (Criminal Case No. 224/93). The Claims Tribunal has not analysed and appreciated the evidence in correct perspectives. It seems to be under erroneous belief that the case has to be proved beyond reasonable doubt, principle applicable in criminal trials forgetting that claim cases are to be proved and decided on preponderance of probabilities and strict rules of evidence are not applicable to trial of claim cases. Therefore, finding is set aside and it is*

held that driver of bus No. MP 09-S/0125 was responsible for committing the accident." (Emphasis supplied)

6.1 Again another Division Bench of this Court in the case of ***Manful vs. Mehmood*** *reported in* ***2003 (4) MPLJ 174 (D.B.)*** *held in para 19 as under :*

"19. As has already been held by long catena of cases that in the case of motor accident strict rule of evidence is not applicable. It is to be established prima facie that accident had taken place with a motor vehicle and out of the use of said motor vehicle, either injury has been caused, or, it had resulted into death of a victim. If this much is established by the claimants, then, nothing more is required to be proved. The underlying purpose of this is, that innocent victims of road accidents should not suffer for want of strict proof of accident and drivers and owners do not go scot-free on account of this. If some doubt or obscurity is there, then, benefit should accrue to the victims. In the case in hand, it has been quite successfully established that it was aforesaid Tanker only, which, had caused the accident on account of its rash and negligent driving, thus, cutting short life of a young Army Officer. Thus, it would be fairly reasonable to infer the culpability by the driver, in the sequence of events mentioned above."

6.2 The Hon'ble Supreme Court while considering the dispute regarding proof of evidence in an accident in the case of ***N.K.V. Bros (P) Ltd. vs. M. Karumai Ammal and Others*** *reported in* ***(1980) 3 SCC 457*** *has held in para 3 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 emphasizing 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."

6.3 Again while considering the question of delay in lodging the FIR, the Hon'ble Apex Court in the case of ***Ravi vs Badrinarayan and Others*** *reported in* ***(2011) 4 SCC 693*** *has held in para 17 to 19 as under : -*

"17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18 . In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.

19. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in

genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

6.4 The Hon'ble Apex Court in the case of ***Asha Devi and Others vs. Assistant Director, State Insurance and Provident Fund Department and Others*** *reported in* ***2021 ACJ 2679*** *has held in para 4 as under :*

"4. The deceased - Ummed Singh was an employee of the Municipal Council. As per the appellant, the accident occurred due to the negligent driving of the Tractor. However, the driver of the tractor namely, Hariprakash was not produced as a witness. He was the witness who could depose in respect of the manner of accident and to prove that he was not negligent in driving tractor. The doctrine of res ipsa loquitur will come into play as the respondents have failed to discharge onus on them to prove that the accident was not on account of any negligent driving of the Tractor. This Court in Shyam Sunder v. State of Rajasthan, (1974) 1 SCC 690 held that the maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant."

6.5 Recently the Honble Apex Court in the case of ***Geeta Dubey & Ors. vs. United India Insurance Co. Ltd. & Ors.*** *reported in* ***I (2025) ACC 74 (SC)*** *in para 19 to 23 has held as under :*

"19. Except for a bare assertion that the vehicle has been wrongly involved, the insurance company which has setup a plea of collusion has done nothing to make good its case. We find that the judgment of the High Court is wholly untenable. We say so for the following reasons.

20. Firstly, it is well settled that in claim cases, in case the accident is disputed or the involvement of the vehicle concerned is put in issue, the claimant is only expected to prove the same on a preponderance of probability and not beyond reasonable doubt. [See Sajeena Ikhbal and Others, V. Mini Babu George and Others, (2024) SCC OnLine SC 2883]. We also deem it appropriate to extract the following paragraphs from the judgment of this Court in Bimla Devi & Ors. V. Himachal Road Transport Corporation & Ors., (2009) 13 SCC 530. Repelling similar contentions raised challenging the accident and the involvement of the vehicle

in question, this Court held as follows: (Emphasis supplied)

> *"14. Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.*

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties. (Emphasis supplied)

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose."

21. Secondly, applying the test of preponderance of probability, we find that the claimants have established their case that it was the truck bearing registration no. MP-19-HA-1197 which was involved in the accident with car bearing no. MP-19-CB-5879 wherein the deceased was travelling. We say so for the following reasons:-

> *a. The accident occurred on 18.06.2018 and the FIR was lodged on 21.06.2018 clearly giving the date, time and the place where the accident happened. It was also mentioned that it was an unknown truck which came from behind in high speed and hit the car as at that point the claimants were unaware of the number of the truck. It referred to the injuries suffered by the deceased.*
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> *b. It is also beyond dispute that the husband of the claimant no. 1, the deceased Chakradhar Dubey was treated at Nagpur Arneja Institute of Cardiology Private*

Limited and he died on 28.06.2018.

c. The claimants have explained the delay by clearly stating that after the death, they took time to regroup themselves and set about investigating and collecting information about the accident.

d. No sooner they obtained information, the claimant no. 1 submitted an application to the Superintendent of Police giving the list of persons including the name of PW-2 Sonu Shukla who had witnessed the accident.

e. Based on the application, the investigation which was originally closed was taken up again as per the order of S.D.O.P., Maihar and after recording the statements of witnesses, a charge-sheet was filed for offences under Sections 279, 337, 338 & 304A, and the case is still pending against respondent no. 2- the driver.

f. It is also on record that after the application was given by claimant no. 1, a notice under Section 133 of the Motor Vehicles Act was issued to the owner and the vehicle was seized under Exh.P-16 by the police. It has also come on record that the truck was thereafter given on supurdnama by the court to the owner.

g. Sonu Shukla was examined as PW-2 and he has clearly deposed that on 18.06.2018, when he was going from Sarlanagar to Maihar with his colleague Kapil Pandey when respondent no. 2, who was driving the truck bearing registration no. MP-19-HA-1197 in a rash and negligent manner, at around 08:15 PM hit the car bearing registration no. MP-19-CB-5879 in which the deceased was travelling. No doubt, the witness states that he gave the information to claimant no. 1. The witness also states that he had taken Chakradhar Dubey to Civil Hospital, Maihar and on the same day informed the claimant's family about the incident. However, he states that he did not inform the police and went back home. The witness admits that his statement was recorded only on 20.04.2019. The witness, however, does not mention that he mentioned the truck number to the family when he conveyed the news of the accident. The witness was cross-examined but he stood by his statement. The witness also stated that on a specific question in cross that the front part of the vehicle bearing registration no. MP-19-HA-1197 was of white colour and the body was of red colour and the vehicle was of 12 wheels. The witness also stated that the truck belonged to Sanjeev Kumar Vyasi and denied that the said owner was his relative.

h. The insurance company examined Op.W.-1 Raj Kumar Kachhwah who admitted that till the date of his deposition, no information or complaint was given to the senior police officers stating that an attempt is being made by the claimants and the owner and driver of the vehicle to wrongly include the vehicle bearing No. MP-19-HA-1197 in the case. The witness also admitted that no steps to cancel the investigation of the police has been taken and no enquiry has been done into the veracity of the claim.

i. The MACT, on appreciation of the overall conspectus, particularly impressed by the fact that the insurance company did not lodge any complaint of collusion and about the involvement of the truck in an illegal manner concluded that it was truck bearing registration no. MP-19-HA-1197 which hit the car bearing no. MP-19-CB-5879 from behind.

22. Thirdly, the claimants having discharged the initial onus, if the insurance company had a case that there was collusion between the driver/owner of the truck and the claimants, it ought to discharge that burden. It is candidly admitted by the witness Raj Kumar Kachhwah that they had taken no steps in this regard. (Emphasis supplied)

23. As held in Sajeena Ikhbal (supra) and Bimla Devi (supra), we are convinced that on the principle of preponderance of probability, the claimants have established the involvement of vehicle bearing registration no. MP-19-HA-1197. The insurance company having set up a specific plea of collusion has not established the same. As was held in Bimla Devi (supra), here too, we feel that there was no reason for the police to falsely implicate the vehicle concerned in the matter and launch prosecution against the driver. If the insurance company had suspected collusion, they would have taken steps to file appropriate complaints including moving the higher police authorities or the court to order an investigation into the alleged wrongful involvement of the vehicle. There is no case for the insurance company that the police officer also colluded. The investigation by the police has resulted in charge-sheet being filed."

9. Returning back to the facts of the present case in the back drop of above position of law. A perusal of Exs. P-5 and P-14, however, shows that the testimony of the witness Abhishek Chaddha not only proves the

involvement of the insured vehicle in the accident, but also establishes that the rider of the motorcycle, the deceased Ashutosh was under the influence of liquor. As such, this is clearly a case of contributory negligence. In Ex.P-5, the doctor opined that the deceased was under the influence of alcohol and this finding is supported by the information furnished by the eye witness Abhishek Chaddha which is recorded in Ex. P-14. It is, therefore, held that the deceased Ashutosh was also a contributory negligent party in the accident. Consequently, it is held that the insured vehicle i.e. the tanker bearing registration number MP-09-HF-5208 was involved in the accident, though the deceased Ashutosh also contributed to its occurrence.

10. Considering the fact that the Claims Tribunal while rejecting the claim did not quantify the amount of compensation, the matter is required to be remanded to the Claims Tribunal particularly since this Court has held that the involvement of the insured vehicle is proved. Accordingly, the matter is remanded back to the Claims Tribunal for determining the following issues :

"(i) The quantum of compensation in the case of Ashutosh, keeping in mind that he was a contributory negligent party to the accident.

(ii) The quantum of compensation payable to Devendra, who was the pillion rider and against whom no contributory negligence is attributable.

(iii) The interest on the amount that may be quantified by the Claims Tribunal shall be payable up to the date of this order i.e. 03.12.2025.

(iv) The entire exercise shall be completed by the Claims Tribunal within an outer limit of three months from the date of appearance, keeping in

view that the matter relates to the year of 2010."

11. The parties shall appear before the Claims Tribunal on **07.01.2026** and on such subsequent dates as may be fixed by the Claims Tribunal.

12. In above terms, both the appeals are disposed of.

Certified copy as per rules.

(PAVAN KUMAR DWIVEDI)
JUDGE

Anushree