IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 13th OF AUGUST, 2025

MISC. APPEAL No. 6776 of 2023

THE NEW INDIA ASSURANCE CO. LTD.

Versus

SMT SEEMA AND OTHERS

Appearance:

Shri Monesh Jindal, learned counsel for the appellant / Insurance Company.

Shri Romil Malpani, learned counsel for respondent No.2.

ORDER

The appellant / Insurance Company has filed this Misc. Appeal under Section 173(1) of the Motor Vehicles Act, 1988 against the award dated 15.03.2023 passed by the Additional Member, Motor Accident Claims Tribunal, Dharampuri, District Dhar (M.P.) in MACC No.13/2020 on the ground of false implication of the vehicle.

2. The facts giving rise to the case are that on 29.10.2019 at around 9:30 PM, the deceased Sunil was going on his motorcycle bearing registration number MP-09-NL-3935 to Indore via Manpur, when he reached near Bhondiya Talab, an Eicher vehicle bearing registration number MP-09-GE-9694, which was being driven by respondent No.5 in a rash and negligent manner, collided with the motorcycle of the Sunil. The driver of the Eicher dismounted from the vehicle and examining Sunil but when

bystanders began approaching, he fled the scene towards Pithampur. Thereafter, eyewitnesses to the accident informed the police.

2.1 The respondents No.1 to 4 / claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Sunil. The Claims Tribunal, after considering the evidence on record, concluded that the insured offending vehicle was being driven in a rash and negligent manner, which caused the accident and resulted in Sunil's death. Consequently, a total compensation of Rs.20,15,152/- was awarded to respondents No.1 to 4 / claimants along with interest at the rate of 6% per *annum*.

3. Learned counsel for the appellant / Insurance Company submits that the present case involves false implication of the insured vehicle, with the sole objective of extracting unwarranted compensation from the Insurance Company. He refers to Exh.P-2 (FIR), which was registered on 03.11.2019 for an accident that occurred on 29.10.2019 and points out that the FIR mentions that the accident was caused by an unknown vehicle.

3.1 He further submits that the FIR refers to the statement of one Deepak, who was claimed to be an eyewitness to the incident. Referring to Exh. P-4 (the seizure memo), he states that the vehicle in question was seized only on 26.11.2019, i.e., after 28 days of the accident.

3.2 He then refers to the statement of Abhilash Verma (DW-1), an Officer of the Insurance Company and submits that DW-1 explained the falsity of the claim and the false implication of the vehicle during his deposition.

3.3 The learned counsel also refers to the testimony of Seema (PW-1) and submits that in paras 10 to 12 of her cross-examination, she yielded under the scrutiny of the Insurance Company and contradictions emerged in her statement. She admitted that the FIR does not mention any specific vehicle including the Eicher vehicle. As such, her statement itself demonstrates that the vehicle in question was not involved in the accident.

3.4 He then refers to the testimony of the so-called eye witness Sabur (PW-2) and by referring to para 1 submits that although PW-2 stated he informed the police, he was not the person, who lodged the FIR. In para 2 of his statement, he falsely claimed that the Police called him 2-3 times and that he provided them with the registration number of the offending vehicle. However, there is no record with the Police to show that such interaction occurred.

3.5 By referring to paras 6 to 8 of the said witness's statement, learned counsel submits that PW-2 made false statements before the Claims Tribunal.

3.6 In view of the above, learned counsel submits that the conclusion drawn by the Claims Tribunal regarding the involvement of the insured vehicle is erroneous and solely on this ground, he prays for the award to be set aside.

3.7 In support of his submissions, learned counsel for the appellant / Insurance Company relied on the following cases :

(i) ***Shriram General Insurance Co. Ltd. vs. Smt. Shahbano*** and ***Others.*** decided in ***M.A. No.22/2023*** by this Court.

(ii) ***National Insurance Company Ltd. vs. Setubai*** reported in ***2008 0 ILR (MP) 2367***.

4. *Per contra*, learned counsel for respondents No.1 to 4 / claimants supports the findings of the award. By relying on the observations recorded in para 19 of the award, he points out that the learned Claims Tribunal has duly considered all relevant aspects of the matter.

4.1 He submits that the accident occurred on 29.10.2019 at around 9:30 PM, and the *Merg* intimation report was lodged the very next day, i.e., on 30.10.2019 as *Merg* No.62/2019 under Section 174 of the Cr.P.C. Therefore, there was no delay in reporting the incident to the police.

4.2 As regards the eye witness Sabur (PW-2), learned counsel submits that he is not only a witness in the present claim case but also an eyewitness in the criminal prosecution against the driver of the vehicle in the criminal case regarding the same accident.

4.3 He submits that the Insurance Company did not call the Investigating Officer as a witness to support their claim that the insured vehicle was not involved in the accident. Moreover, neither the owner nor the driver of the alleged offending vehicle was examined before the Claims Tribunal, even though their testimony could have clarified whether the said vehicle was involved in the accident.

4.4 In rebuttal, learned counsel for the appellant / Insurance Company submits that even the *Merg* intimation does not mention the registration number of the offending vehicle. He further submits that there was collusion between the owner, driver and the claimants; therefore, there was no point in

examining them as witnesses.

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

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 :

> *"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.*
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> *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)*
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> > *"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.

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.

7. In view of the above stated position of law, it is preponderance of probabilities that has to be kept in mind while considering the respective stories set forth by the claimnt as well as the respondent Insurance Company.

7.1 Now returing back to the facts of this case, the accident occured on 29.10.2019 at around 9.30 in the night, the *Merg* intimation report was lodged on the very next day on 30.10.2019 at *Merg* No. 62/2019 in terms of the provisions of Section 174 of the Cr.P.C. The police after the investigation of the case registed the FIR on 03.11.2019 and unltimately siezed vehicle on 26.11.2019. First of all, as far as the reporting of the incident is concerned the same was done promptly and there was no delay in the same. Secondly, had there been any intention of involving any vehicle falsely then the same

could have been done at the stage of registration of FIR itself. The police after due investigation of *Merg* intimation found the case of accident thus registered FIR and after further investigation found involvement of the vehicle nubmer MP-09-GE-9894 thus charge sheet was filed agaisnt it. It is not the case of the Insurace Company that the investigation officer also colluded with the claimants. In fact, in the circumstances of the present case the seizure of the vehicle after 28 days rather fortifies the story of the claimants, as the vehilce has fled from the spot of accident, had there been collusion then it could have been provided earlier also.

7.2 It is seen from the statement of Sabur (PW-2) that he clearly stated he and his friend Akash were walking on the road after having food at Rajput Dhaba. He further stated that an Eicher vehicle bearing registration number MP-09-GE-9894 came and collided with the motorcycle of the deceased, who died on the spot. He also mentioned that he took the purse from the pocket of the deceased and informed the deceased's family members. He additionally stated that the "गाड़ीवाला" (meaning the driver) had dismounted from the vehicle and went down the road and when they attempted to catch him, he fled away with the Eicher vehicle towards Pithampur. This version of Sabur (PW-2) clearly proves the involvement of the vehicle.

7.3 As regards the difference between the contents of the FIR and the deposition of (PW-2), it is to be seen that the FIR was lodged by one Shweta. Therefore, the absence of the vehicle registration number in the FIR cannot be a ground to discard the testimony of PW-2. As regards the

contention of the learned counsel of the appellant that Sabur stated in his deposition that he called the police but he is not the person who lodged the FIR, it is not necessary that each and every person who called after an accident shall be named in the FIR as the informent. As stated earlier, initially *Merg* intimation was registered and then FIR was lodged. As regards the contention of the counsel of the appellant that he stated in his deposition that police called him two/three times and he gave the registration number of the offending vehicle but there is no record of the same, it was for the Insurance Company to call the police personnel in the witness box and question about the same but nothing of this sort was done by the appellant company.

8. Furthermore, even the Investigating Officer in the criminal case was not examined by the Insurance Company, though he could have provided material infromation about the facts contained in the FIR as well as the charge sheet filed by the police.

9. The Counsel of the appellant company placed heavy reliance of the testimony of Abhilash Verma (DW-1), an Officer of the Insurance Company, but the fact remains that even the report of the investigator appointed by the Insurance Company was not produced before the Claims Tribunal. Thus the testimony of DW-1 lost all of its sheen and cannot be relied upon.

10. It was the burden of the Insurance Company to prove that the insured vehicle was not involved in the accident. Once the statements of PW-1 and PW-2 were recorded, it was incumbent upon the Insurance Company to bring the driver and owner of the vehicle into the witness

box. However, this was not done.

11. The argument of learned counsel for the appellant / Insurance Company that the driver and owner were in collusion with the claimants and hence were not examined does not hold water. At the very least, the Insurance Company could have filed an application to summon them as witnesses. Had they turned hostile, the Insurance Company could have brought the true facts on record through their cross-examination. However, the Insurance Company did not make any effort to bring these witnesses before the Tribunal.

12. Thus, it is evident that the Claims Tribunal, while analyzing the issue of involvement of the vehicle in paras 11, 12 and 16 of the impugned award, has rightly concluded that the insured vehicle was involved in the accident.

13. As regards the cases relied upon by the learned counsel for the appellant / Insurance Company, the facts of the case in ***Smt. Shahbano (Supra)*** were distinguishable. In that case, the so called eyewitnesses found to be not the eyewitnesses in fact and they even denied having seen the accident. Considering this, the co-ordinate Bench of this Court held that the accident was not proved.

14. Similarly, in the case of ***Setubai (Supra)***, the facts were totally different. In that case, the initially FIR was lodged by an eyewitness mentioning that the accident was cause by a Truck but the police after investigation filed chargeshee against a bus. The claimants therein filed claim against bus, in these circumstances the court held that it was for the

claimant to explain why truck was mentioned in the FIR and when they wanted to rely on the chargesheet they should have explained this contradiction by bringing the IO into the witness box. But in the present case there is no such dispute. However, in the present case, there is an independent eyewitness, who has clearly deposed before the Claims Tribunal regarding the involvement of the insured vehicle and in the police investigation also same vehicle was found to be involved.

15. As such, in the considered view of this Court, the conclusion of the Claims Tribunal regarding the involvement of the insured vehicle is neither perverse nor illegal in the light of the evidence available on record.

16. Consequently, the present Misc. Appeal fails and is hereby dismissed.

No order as to costs.

Certified copy as per rules.

(PAVAN KUMAR DWIVEDI)
JUDGE

Anushree