IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

MISCALLNEOUS APPEAL No.7546 of 2023

SMT. RASHMI MARAVI AND OTHERS

Versus

SANJAY KUMAR PANDEY AND OTHERS

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Appearance:-

Shri Durgesh Kumar Singrore – Advocate for the appellants.

None on behalf of respondent No. 1 and 2.

Ms. Asgari Khan – Advocate for the respondent No.3.

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RESERVED ON : 07.04.2025

PRONOUNCED ON : 17.05.2025

This appeal having been heard and reserved for judgment, coming on for pronouncement on this day, the Court passed the following:-

ORDER

This appeal has been filed by the appellants/ claimants under Section 173 (1) of the Motor Vehicles Act, 1988 against the award

dated 17.10.2023 passed in Claim Case No.403 of 2020 (*Smt. Rashmi Maravi and Others Vs. Sanjay Kumar Pandey and Others*) by Member, M.A.C.T Mandla, District-Mandla whereby appellants/claimants petition under Section 166 of The Motor Vehicles Act, 1988, has been dismissed.

2. Brief facts relevant for disposal of present appeal are that appellants/claimants filed a claim petition under Section 166 of Motor Vehicle Act on the ground that on 16.05.2020, deceased had come to Jabalpur for official work and thereafter, he was returning to his house Mandla on motorcycle. As soon as, deceased reached near main road, Village Nagai, Near Hanuman temple at about 6:30 in the evening, then, at that time, truck bearing registration No.MP-19-GA-0884 (hereinafter referred to as "offending vehicle") coming from Kundam side, which was being driven rashly and negligently by respondent No.1, hit deceased's motorcycle. Later-on, deceased succumbed to injuries sustained as above.

3. Learned counsel for the appellants submits that learned Tribunal has wrongly dismissed appellants' claim petition on the ground that FIR is delayed. It is also urged that *merg* (Ex.P/4) was registered on 21.05.2020. Thereafter, *merg* enquiry was conducted and on the basis

of *merg* enquiry, FIR (Ex.P/2) was registered and therein number of vehicle has been mentioned. It is also urged that at relevant point of time, there was lock-down on account of COVID. Therefore, means of conveyance were not available. It is also urged that respondent/Insurance Company has not examined Investigating Officer to prove that offending vehicle was not involved in the incident. With respect to aforesaid submissions, learned counsel for the appellants has relied upon ***The Oriental Company Ltd. Vs. Rooplal Uike and Others*** (MA.No.1872 of 2017 decided on 25.10.2023). Further, it is also urged that unladen weight of offending vehicle is 7,000 kgs and driver of offending vehicle was having licence to drive LMV. Hence, in view of law laid down in ***Mukund Dewangan Vs. Oriental Insurance Company Limited*** (2016) 4 SCC 298 and ***Ms. Bajaj Alliance General Insurance Co. Ltd Vs. Rambha Devi & Ors, (2025) 3 SCC 95***, it cannot be said that at the time of accident, offending vehicle was being driven in violation of terms and conditions of Insurance policy. On above grounds, it is urged that impugned award passed by the Tribunal be set aside and compensation be awarded to appellants.

4. Learned counsel for the respondent No.3-Insurance Company submits that initially, *merg* information was lodged against unknown vehicle. FIR is a manipulated document. Appellants were required to prove that accident has occurred on account of rash and negligent driving on the part of driver of offending vehicle. It is also urged that Mir Roshan Tahir Ali was eye-witness to the incident but he has not been examined. Instead, appellants have examined one Dhaneshwar Jhariya and his name is not mentioned in witness list attached to the charge-sheet. After referring to testimony of Dhaneshwar Jhariya, it is urged that this witness is not a reliable witness. Though, this witness claims to have seen the accident but he did not inform police/family members of deceased. With respect to accident, this witness also did not inform 108. Therefore, learned Tribunal has rightly dismissed appellants' claim petition. With respect to above, learned counsel for the respondent has relied upon ***Branch Manager New India Assurance Company Limited Vs. Smt. Tara Yadav and Others*** *(*M.A.No.2175 of 2023 decided on 19.12.2023) and ***Branch Manager New India Assurance Company Limited Vs. Smt. Pushpa Rungirey and Others*** (M.A.No.1544 of 2023 decided on

29.05.2024). Hence, appeal filed by the appellants be dismissed and findings recorded by the Tribunal be affirmed.

5. Heard. Perused record of the case.

ANALYSIS AND FINDINGS:-

6. Perusal of record of the case as well as submissions of both the parties reveal that appellants/applicants tried to prove the factum of accident by offending vehicle, including the fact that at relevant point of time, it was being driven rashly and negligently by respondent No.1, by examining applicant witness Dhaneshwar Kumar Jhariya as eye-witness and with charge-sheet as well as documents attached with the charge-sheet. Tribunal held that applicant witness Dhaneshwar Jhariya is not a reliable witness and also held that appellants failed to prove that instant accident occurred from offending vehicle and that it was being driven rashly and negligently by respondent No.1. Case of respondent/Insurance is that applicant witness Dhaneshwar Jhariya is not an eye-witness to the incident and his name is not mentioned in the witness list attached with charge-sheet and factum of accident from offending vehicle, cannot be proved solely by filing of charge-sheet.

7. Having regard to facts of the case as well as issue involved in the case, the question arises as to what should be the approach of the Court while assessing and examining the evidence in a claim case, including as to what is required /expected from applicant/claimant to prove the factum of involvement of a particular vehicle (including driver) and manner in which accident took place i.e rashness and negligence on the part of driver of the offending vehicle and how and in what manner applicant/claimant can prove the aforesaid.

8. It is but common that generally, grounds taken by the insurance company /owner and driver of offending vehicle in a claim case are that, report has not been lodged immediately after the accident; name of driver/number of offending vehicle is not mentioned in the earliest report; report was not lodged; name of witnesses examined by the applicant/claimant, as eye witnesses, have not been mentioned in the witness list of charge sheet; person travelling along with deceased has not been examined; best witness has not been examined; witness examined by the applicant/claimant did not himself report the matter immediately after the accident; eye witnesses have not been examined; in criminal case/trial, driver has been acquitted; except charge-sheet and documents filed along with

the charge sheet, there is no evidence in support of applicant/claimant case.

9. Aforesaid issues, including the effect and use of charge sheet filed against the driver of offending vehicle in establishing the case of applicant /claimant, have been examined and dealt with by Hon'ble Apex Court in a Catena of decisions. Hon'ble Apex Court in ***Mangla Ram Vs. Oriental Insurance CompanyLimited and Others (2018) 5 SCC 656,*** while dealing with the aforesaid, has held as under:-

> "**9.** The High Court noted that the Tribunal was not convinced about the involvement of the vehicle, despite which it held that involvement was proved. Furthermore, no finding regarding negligence of the driver of the jeep had been recorded by the Tribunal rather it found that the appellant was negligent while riding his motorcycle. The High Court took the view that mere filing of a charge-sheet, without any finding of conviction, was insufficient to prove negligence by Respondents 2 and 3. Additionally, the High Court also held that the statement of the appellant, wherein he claimed that the bumper of the jeep had hit the rear of his motorcycle, was contradicted by the investigation report of the jeep which recorded that it did not bear out that the jeep had been involved in an accident. The High Court, therefore, was pleased to set aside the Tribunal's award and allowed the appeal filed by the driver and owner of the jeep (Respondents 2 and 3 respectively) while dismissing the appeal filed by the appellant.
>
> **15.** The moot question which arises for our consideration in these appeals is about the justness of the decision of the High Court in reversing the finding of fact recorded by the Tribunal on the factum of involvement of Jeep No. RST 4701 in the accident occurred on 10-2-1990 at about 8.00-8.30 p.m. and

also on the factum of negligence of the driver of the jeep causing the accident in question. On the first aspect, the High Court has noted that the Tribunal having discarded the oral evidence adduced by the appellant claimant could not have based its finding merely on the basis of the FIR and the charge-sheet filed against the driver of the offending vehicle and also because the mechanical investigation report (Ext. 5) merely indicated that on the left side of the offending vehicle a scratch mark was noticed on the mudguard of the left tyre which contradicted the statement of the claimant and the Police Investigation Report much less showing involvement of the vehicle in the accident. As regards the second aspect on the factum of negligence, the High Court noted that the Tribunal did not record any finding about the negligence of the driver of the jeep and the site map (Ext. 2) would indicate that the appellant claimant himself was negligent in driving the motorcycle in the middle of the road.

18. The debatable issue is about the factum of involvement of Jeep No. RST 4701 allegedly driven by Respondent 2 and whether it was driven rashly and negligently as a result of which the accident occurred.

20. Nevertheless, the Tribunal then adverted to the FIR and the charge-sheet filed in respect of the accident naming Respondent 2 as accused. The Tribunal placed reliance upon the copy of challan (Ext. 1), copy of FIR (Ext. 32), site map (Exts. 3 & 4), jeep seizure report (Ext. 5), x-ray (Ext. 6) and injury report (Ext. 7), to opine that these police records gathered during the investigation of the crime not only confirmed that an accident had occurred but also indicated the involvement of the offending Jeep No. RST 4701, which was driven by Respondent 2 at the relevant time. The Tribunal went on to conclude that there was no reason to disagree with the opinion of the Investigating Agency in that behalf. The charge-sheet was accompanied by the statements of the appellant and the witnesses Rooparam, Thanaram and Pratap Singh. On the basis of the entirety of the evidence, the Tribunal had held that Jeep No. RST 4701 which was driven by Respondent 2 at the relevant time was involved in the accident in question, causing severe injuries to the appellant.

21. The High Court, however, reversed this finding of fact rendered by the Tribunal essentially on two counts : First, that the Tribunal having discarded the oral evidence about the involvement of Jeep No. RST 4701 in the accident in question, allegedly driven by Respondent 2, could not and ought not to have recorded the finding on the relevant issue against Respondents 2 & 3 merely by relying on the documents forming part of the police charge-sheet. Second, the jeep seizure report (Ext. 5) indicated that only a scratch on the mudguard of the left tyre of the vehicle was noticed, which contradicted the claim of the appellant about the involvement of the vehicle.

22. The question is : Whether this approach of the High Court can be sustained in law? While dealing with a similar situation, this Court in ***Bimla Devi v. Himachal RTC, (2009) 13 SCC 530*** noted the defence of the driver and conductor of the bus which inter alia was to cast a doubt on the police record indicating that the person standing at the rear side of the bus, suffered head injury when the bus was being reversed without blowing any horn. This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In paras 11-15, the Court observed thus :

> "**11**. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-à-vis the averments made in a claim petition.

12. The deceased was a constable. Death took place near a police station. The post-mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of the constable had taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus-stand and near a police station. In such an event, the Court can presume that the police officers themselves should have taken possession of the dead body.

13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.

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)

The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside.

23. Following the enunciation in ***Bimla Devi v. Himachal RTC, (2009) 13 SCC 530***, this Court in ***Parmeshwari v. Amir Chand, (2011) 11 SCC 635*** noted that when filing of the complaint was not disputed, the decision of the Tribunal ought not to have been reversed by the High Court ***Parmeshwari v. Amir Chand, (2011) 11 SCC 635*** on the ground that nobody came from the office of the SSP to prove the complaint. The Court appreciated the testimony of the eyewitnesses in paras 12 & 13 and observed thus: **(Parmeshwari Case)**

> "**12**. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. <u>The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself.</u> We are constrained to repeat our observation that the total approach of the High Court,

unfortunately, was not sensitised enough to appreciate the plight of the victim.

13. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. …"

24. It will be useful to advert to the dictum in ***N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal (1980) 3 SCC 457***, wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negatived the said argument by observing that the nature of proof required to establish culpable rashness, punishable under IPC, is more stringent than negligence sufficient under the law of tort to create liability. The observation made in para 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus :

> "**3**. Road accidents are one of the top killers in our country, especially 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 emphasising 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."

25. In ***Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646,*** this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in ***Bimla Devi v. Himachal RTC, (2009) 13 SCC 530.*** In paras 8 & 9 of the reported decision, the dictum in ***United***

India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC, has been adverted to as under : (**Dulcina Fernandes case)**

"8. In ***United India Insurance Co. Ltd. v. Shila Datta (2011) 10 SCC 509,*** while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow : (SCC p. 518, para 10)

''10. (ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are *suo motu* initiated by the Tribunal.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. …

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry.'"

9. The following further observation available in para 10 of the Report would require specific note (**Shila Datta case)**

''10. … We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.''

In para 10 of ***Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646*** , the Court opined that non-examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability.

26. In the above conspectus, the appellant is justified in contending that the High Court committed manifest error in reversing the holistic view of the Tribunal in reference to the statements of witnesses forming part of the charge-sheet, FIR, jeep seizure report in particular, to hold that Jeep No. RST 4701 driven by Respondent 2 was involved in the accident in question. Indeed, the High Court was impressed by the mechanical investigation report (Ext. 5) which stated that only a scratch mark on the mudguard of the left tyre of the vehicle had been noted. On that basis, it proceeded to observe that the same was in contradiction to the claim of the appellant claimant, ruling out the possibility of involvement of the vehicle in the accident. This conclusion is based on surmises and conjectures and also in disregard of the relevant fact that the vehicle was seized by the police after investigation, only after one month from the date of the accident and the possibility of the same having been repaired in the meantime could not be ruled out. In other words, the reasons which weighed with the High Court for reversing the finding of fact recorded by the Tribunal upon holistic analysis of the entire evidence, about the involvement of Jeep No. RST 4701 in the accident, cannot be countenanced. For, those reasons do not affect the other overwhelming circumstances and evidence which has come on record and commended to the Tribunal about the involvement of the subject jeep in the accident in question. This being the main edifice, for which the High Court allowed the appeal preferred by Respondents 2 & 3, it must necessarily follow that the finding of fact recorded by the Tribunal on the factum of involvement of Jeep No. RST 4701 in the accident in question will have to be restored for reasons noted hitherto.

27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 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 v. Joaquim Xavier Cruz, (2013) 10 SCC 646,*** 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.

28. Reliance placed upon the decisions in ***Minu B. Mehta v. Balkrishna Ramchandra Nayan, (1977) 2 SCC 441]*** and ***Oriental Insurance Co. Ltd. v. Meena Variyal, (2007) 5 SCC 428***, by the respondents, in our opinion, is of no avail. The dictum in these cases is on the matter in issue in the case concerned. Similarly, even the dictum in ***Surender Kumar Arora v. Manoj Bisla, (2012) 4 SCC 552*** will be of no avail. In the present case, considering the entirety of the pleadings, evidence and circumstances on record and in particular the finding recorded by the Tribunal on the factum of negligence of Respondent 2, the driver of the offending jeep, the High Court committed manifest error in taking a contrary view which, in our opinion, is an error apparent on the face of record and manifestly wrong."

10. Hon'ble Apex Court in **Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others, (2020) 13 SCC 486** has also discussed the aforesaid issues and has held as under:-

> **"20.** The thrust of the reasoning given by the High Court rests on the unreliability of the witnesses presented by the appellants: first, that the evidence given by Bhagchand (AD 2) was unreliable because he was not shown as a witness in the list of witnesses mentioned in the charge-sheet filed by the police and that the said witness could not identify the age of the pillion rider, Rajulal Khateek. Second, the said pillion rider himself, Rajulal Khateek, who was the "best" witness in the matter, was not

presented for examination by the appellants. The High Court also relies on the site map (Ext. 3) to record the finding on the factum of negligence of the deceased Sitaram in causing the accident which resulted in his death.

21. We have no hesitation in observing that such a hypertechnical and trivial approach of the High Court cannot be sustained in a case for compensation under the Act, in connection with a motor vehicle accident resulting in the death of a family member. Recently, in **Mangla Ram v. Oriental Insurance Co. Ltd.(2018) 5 SCC 656 :** (to which one of us, Khanwilkar, J. was a party), this Court has restated the position as to the approach to be adopted in accident claim cases. In that case, the Court was dealing with a case of an accident between a motorcycle and a jeep, where the Tribunal had relied upon the FIR and charge-sheet, as well as the accompanying statements of the complainant and witnesses, to opine that the police records confirmed the occurrence of an accident and also the identity of the offending jeep but the High Court had overturned that finding inter alia on the ground that the oral evidence supporting such a finding had been discarded by the Tribunal itself and that reliance solely on the document forming part of the police record was insufficient to arrive at such a finding. Disapproving that approach, this Court, after adverting to multitude of cases under the Act, noted as follows: (**Mangla Ram case)**

*"***22.**The question is: Whether this approach of the High Court can be sustained in law? While dealing with a similar situation, this Court in ***Bimla Devi v. Himachal RTC, (2009) 13 SCC 530*** noted the defence of the driver and conductor of the bus which *inter alia* was to cast a doubt on the police record indicating that the person standing at the rear side of the bus, suffered head injury when the bus was being reversed without blowing any horn. This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine

the amount of fair compensation. In paras 11-15, the Court observed thus: (SCC pp. 533-34)

> "**11.** While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-à-vis the averments made in a claim petition.
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> **13.** The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.
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> **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)

> The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside.

23. Following the enunciation in **Bimla Devi v. Himachal RTC, (2009) 13 SCC 530** this Court in **Parmeshwari v. Amir Chand, (2011) 11 SCC 635** noted that when filing of the complaint was not disputed, the decision of the Tribunal ought not to have been reversed by the High Court on the ground that nobody came from the office of the SSP to prove the complaint. The Court appreciated the testimony of the *eyewitnesses in paras 12 & 13 and observed thus:* ***(P*armeshwari case*).***

> *"***12.** The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.
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> **13.** The other so-called reason in the High Court's order was that as the claim petition was filed after four months

> of the accident, the same is 'a device to grab money from the insurance company'. This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. …'

24. It will be useful to advert to the dictum in ***N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal, (1980) 3 SCC 457*** , wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negatived the said argument by observing that the nature of proof required to establish culpable rashness, punishable under IPC, is more stringent than negligence sufficient under the law of tort to create liability. The observation made in para 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus: (SCC pp. 458-59)

> *"***3.** Road accidents are one of the top killers in our country, especially 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 emphasising 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."

25. In ***Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646,*** this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in **Bimla Devi v. Himachal RTC, (2009) 13 SCC 530.** In paras 8 & 9 of the reported decision, the dictum in **United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509:**, has been adverted to as under **(Dulcina Fernandes case)**

> "8. In **United India Insurance Co. Ltd. v. Shila Datta (2011) 10 SCC 509**, while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present

case and, therefore, may be extracted hereinbelow: (SCC p. 518, para 10)

> "10. … (ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.
>
> *(v)* Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. …
>
> (vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."

9.The following further observation available in para 10 of the Report would require specific note: **[United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509**

> "10. … We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."

In para 10 of **Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646**, the Court opined that non-examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability.

22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

27. The Tribunal's reliance upon FIR No. 247/2011 (Ext. 1) and charge-sheet (Ext. 2) also cannot be faulted as these documents indicate the complicity of Respondent 2. The FIR and charge-sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of Respondent 2 in causing the said accident. Even if the final outcome of the criminal proceedings against Respondent 2 is unknown, the same would make no difference at least for the purposes of deciding the claim petition under the Act. This Court in **Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656**, noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability.

30. Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross-examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (AD 2) evidence from the viewpoint of him not being named in the list of eyewitnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation (as set out in **Parmeshwari**

v. Amir Chand, (2011) 11 SCC 635 and reiterated in **Mangal Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656**) that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross-examine the witness concerned. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross-examination, for which opportunity was granted to the respondents by the Tribunal.

34. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non-examination of some "best" eyewitness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This Court, in **Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646,** faced a similar situation where the evidence of the claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident."

11. Recently, Honble Apex Court in ***ICICI Lombard General Insurance Company Limited Vs. Rajani Sahoo and Others (2025) 2 SCC 599,*** has also dealt with the issues involved in the case and has held as under:-

> "**7**. The core contention of the appellant is that the Tribunal as also the High Court relied on the fraudulent charge-sheet prepared by the respondents in connivance with the police. In short, the contention of the appellant is that the High Court erred in relying on the charge-sheet to arrive at the conclusion that the accident in question in which Udayanath Sahoo lost his life had occurred due to the rash and negligent driving of the truck insured with the appellant. Though Respondents 1 and 2 did not file any counter-affidavit, the learned counsel appearing for them would submit that there is absolutely no illegality in relying on such documents consisting of FIR and the final report prepared in relation to the accident in question by the police, for the purpose of considering the question of negligence in a motor vehicle accident case. That apart, it is contended that the appellant despite attributing connivance of the respondents with the police, the appellant failed to prove the same. In short, it is submitted that the appeal is devoid of merit and the same is liable to be dismissed.
>
> **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,*** held in para 27, thus :
>
> > "**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, 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."
>
> (emphasis supplied)

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**, 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 which has referred to the aforesaid judgment in **Bimla Devi v. Himachal RTC, (2009) 13 SCC 530."**

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."

12. Recently in ***Ranjeet and Another Vs. Abdul Kayam Neb and Another*** (Arising out of SLP (C) No.10351 of 2019 decided on 25.2.2025), also Hon'ble Apex Court has discussed the aforesaid issues and has held as under:-

"3. In an accident which took place on 13.06.2006, one 'Ramkaran' was alleged to have been hit by the bus leading to his death. An FIR was lodged wherein charge sheet was submitted against the driver of the bus. On the

claim being preferred to the Motor Accident Claims Tribunal1, since, the eye-witnesses were not produced, the Tribunal refused to grant any compensation. The decision of the Tribunal was upheld by the High Court.

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 eye-witnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.

5.In view of the aforesaid facts, we are of the opinion that the Tribunal and the High Court both manifestly erred in law in refusing to grant any compensation to the claimants."

13. Keeping in mind the principles of law laid down/observations made in aforesaid pronouncements, broadly basic prepositions of law pertaining to, as to what should be the approach of the Court while dealing with the cases of compensation arising out of use of motor vehicles, including as to how and in what manner facts and evidence of the case are to be examined and assessed and for aforesaid purposes what factors etc. should be kept in mind and other related issues, can be summarized as under:-

(i) that, section 166 and other provisions of the Motor Vehicle Act, 1988 pertaining to claim of compensation arising out of use of motor vehicle are part of welfare legislation and they have to be interpreted and construed accordingly liberally;

(ii) that, applicant/claimant is not required to prove his case, especially the factum of accident, including the number of offending vehicle/name of driver of offending vehicle and the manner in which the accident took place, beyond reasonable doubt. Applicant/ claimant can prove his case by preponderance of probabilities and standard of proof beyond reasonable doubt cannot be applied to such cases;

(iii) that, while determining the evidentiary value and the weight to be attached to filing of charge-sheet, along with documents, against driver of offending vehicle, filed after investigation into the accident, as a piece of evidence for proving the case of applicant/claimant, it has to be kept in mind that the charge sheet has been filed by a public servant, who represents the State. Therefore, a Court cannot at the very outset/threshold ask/require applicant/claimant to prove the charge sheet and documents filed along therewith and they (charge sheet and documents filed along with the charge sheet) cannot be brushed aside lightly;

(iv) that, with respect to aforesaid, following observations of Hon'ble Apex Court in **State (NCT of Delhi) Vs. Sunil, (2001) 1 SCC 652** are relevant and they are as under:-

"21.We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature.....
....."

(v) that, hence, unless otherwise, it is shown that there was some nexus/connivance between the applicant/claimant, owner/ driver of the offending vehicle and investigating officer etc. or investigation officer had any enmity or motive to falsely implicate owner/ driver of offending vehicle and in absence of any evidence pertaining thereto, applicant/claimant can rely upon the charge sheet and documents filed along with the charge-sheet, to establish that the accident has occurred on account of rash and negligent driving of the driver of the offending vehicle;

(vi) that, applicant/claimant's case cannot be dismissed solely on the ground of delay in lodging the FIR/ acquittal in criminal case/name and number of driver of offending vehicle was not mentioned in the FIR/best witness has not been examined; person

travelling with the deceased or injured has not been examined/ best eye witness has not been examined;

(vii) that, testimony of an applicant witness cannot be discarded treating him as wholly unreliable, solely on the ground that his name is not mentioned in the witness list attached with the charge sheet/he did not inform the family members/relatives about the accident, including name of driver and number of offending vehicle/he himself did not report the matter to police etc.;

(viii). that, it has also to be kept in mind that as to whether driver and owner of offending vehicle have remained present before the Tribunal and whether they have filed reply and have also cross-examined applicant witnesses and whether or not driver and owner of offending vehicle got examined themselves or adduced any evidence and also as to whether owner/driver of offending vehicle initially appeared before the Court but was later on, proceeded ex-parte;

(ix). that, it has also to be kept in mind that having regard to the time and place of accident, what type of evidence could have been produced by the applicant/claimant and whether, looking to the time and place of accident, it was possible for the applicant/claimant to

produce any oral evidence. A Court cannot ask or require a person to do something that it is not possible for him to do;

(x) that, in view of aforesaid and having regard to object of legislation, a Court should also keep in mind the relative status/resources of the parties, involved in the case, i.e. private applicant/claimant, owner/driver of offending vehicle, insurance company and state through police authorities, who are duty bound to investigate accident cases;

(xi) that, though, it is true that provisions of law are in the nature of welfare legislation and the Court should adopt liberal approach and applicant/claimant is not required to prove its case by standard of proof beyond reasonable doubt and it can prove its case by preponderance of probabilities;

(xii) But at the same time, if there is any one or more than one suspicious circumstances, casting shadow of doubt on the genuineness/veracity of applicant/claimant's case/version, then, the Court would be more than justified in adopting a more cautious approach and look for something more, which inspires Court's confidence;

(xiii) that, further, in such cases, the Court should not let/permit its liberal approach be misused by unscrupulous elements. Hence, Court should always be on guard and make sure that there is no nexus between the applicant/owner and driver of offending vehicle and other persons and that its liberal approach is not being misused by unscrupulous elements;

(xiv). that, it has also to be examined as to whether there is anything on record to suggest that it is a case of connivance between applicant and owner driver etc. and whether there is any probability of false implication etc.;

(xv) that, with respect to aforesaid, pleadings of the parties and overall facts and circumstances of each case, along with evidence on record, have to be examined and assessed conjointly/cumulatively;

(xvi). that, each case has to be examined and assessed in the light of factual matrix of the case and no straight jacket formula can be laid down as to whether applicant/claimant has succeeded in proving his case.

FACTUAL ANALYSIS OF THE CASE:-

14. So far as factum of accident is concerned, perusal of record of the case reveals that appellants/claimants have examined Dhaneshwar Jharia as eye witness to the accident and has also filed charge sheet as well as documents attached therewith, to establish his case.

15. For examining and assessing the evidentiary value of applicant witness Dhaneshwar Jharia, it would be appropriate to reproduce examination-in-chief as well as cross-examination of Dhaneshwar Jharia, which is as under:-

मुख्य परीक्षण द्वारा श्री जी.पी. रजक अधिवक्ता वास्ते आवेदकगण

1. घटना दिनांक 16.05.2020 को शाम करीब 6–7 बजे ग्राम नैगई हनुमान मंदिर के पास की है। मैं घटना दिनांक को जबलपुर से वापस अपने ग्राम घुलघुलटोला जा रहा था। मै जैसे ही ग्राम नैगई हनुमान मंदिर के पास पहुंचा था उस समय मैने देखा कि एक ट्रक वाहन जो कि कुण्डम की ओर से जबलपुर की ओर जा रहा था। उसने एक मोटर साईकिल को जो कि जबलपुर से कुण्डम की ओर जा रही थी उसे टक्कर मारकर दुर्घटना कारित कर दिया था और ट्रक वाहन मौके से भाग गया था। मैने ट्रक का क्रमांक देखा था जो एम.पी.19–जी.ए. 0884 था। उक्त ट्रक को उसका चालक दुर्घटना के समय लहराते हुये चला रहा था। मोटरसाईकिल चालक को पूरे शरीर में चोटें कारित हुई थी। उसी समय एक भाईजान डिण्डौरी तरफ से आया जिसने 108 में फोन लगाया था तब एम्बूलेंस मौके पर आयी थी और हम लोगों ने घायल व्यक्ति को एम्बूलेंस में रखा था। उसके बाद मै अपने घर चला गया था। बाद में जानकारी प्राप्त हुई थी कि उक्त मोटरसाईकिल सवार घायल व्यक्ति की मौत हो गयी है। मुझे जानकारी लगी थी कि मृतक ओमप्रकाश मरावी मण्डी इंस्पेक्टर के पद पर था।

अनावेदक क्रं. 1 एवं 2 :– एक पक्षीय ।

प्रतिपरीक्षण द्वारा सुश्री दीप्ति शास्त्री अधिवक्ता वास्ते अनावेदक क्रं–3

2. मै जबलपुर से घटना दिनांक को वापस घुलघुलटोला जारहा था इस सम्बन्ध में कोई दस्तावेजी साक्ष्य मेरे पास नहीं है। मै। रश्मि मरावी और उसके परिजनों को पाहले से नहीं जानता था, कल वो मेरे पास आये थे। यह कहना सही है कि मैने कल दिनांक 02.07.2023 के पूर्व रश्मि मरावी और उसके परिजनों को यह नही बताया था कि

मैने ओमप्रकाश मरावी की घटना देखी है। मैने अपनी ओर से पुलिस को भी घटना के सम्बन्ध में कोई जानकारी नहीं दी थी औरन ही पुलिसवाले घटना के सम्बन्ध में मुझसे पूछताछ करने आये थे। यह कहना सही है कि आज से पूर्व मैने किसी भी अदालत में यह नहीं बताया कि मैने ओमप्रकाश की घटना देखी है। यह कहना सही है कि मौके पर पुलिस के आ जाने के बाद भी मैने पुलिस को यह नही बताया था कि मैने ओम प्रकाश की घटना देखी थी। यह कहना गलत है कि मैने घटना होते हुये नहीं देखी थी । यह कहना गलत है कि मै आज घटना देखे जाने के सम्बन्ध में असत्य कथन कर रहा हूं।

प्रतिपरीक्षण द्वारा श्री बृजेश चौरसिया अधिवक्ता वास्ते अनावेदक कं–4 एवं 5

3. कुछ नहीं ।

पुनः परीक्षण – कुछ नहीं।

16. Now question arises as to whether applicant witness Dhaneshwar Jharia is a reliable and trustworthy witness and as to whether, he is an eye witness to the accident or not ?

17. It is correct that name of Dhaneshwar Jharia is not mentioned in the witness list attached to charge sheet. In view of discussion in the foregoing paras, in this Court's considered opinion, testimony of Dhaneshwar Jharia cannot be discarded solely on aforesaid ground and it cannot be said that he is not an eye witness but perusal of cross-examination of aforesaid witness reveals that he did not already know appellant/claimant Rashmi Maravi and her family members and they came to him on 02.07.2023 and before 02.07.2023, he did not inform Rashmi Maravi and her family members that he has witnessed the accident. Now question arises that if applicant witness Dhaneshwar

Jharia and appellants were not acquainted with each other, then, how appellants came to know that witness Dhaneshwar Jharia has witnessed the accident. It is not so that name of witness was mentioned in the witness list of charge sheet.

18. Therefore, in view of aforesaid, in this Court's considered opinion, applicant witness Dhaneshwar Jharia does not appear to be a reliable or trustworthy witness and there is serious doubt about him having witnessed the accident. Therefore, learned Tribunal has rightly disbelieved the applicant witness Dhaneshwar Jharia.

19. So far as documentary evidence is concerned, perusal of Charge sheet (Ex.P/1) and FIR (Ex.P/2) reveals that on the basis of statement of Mir Roshan Tahir Ali, number of offending vehicle /truck has been mentioned in the FIR and it is also mentioned in the FIR that on account of rash and negligent driving by driver of the truck bearing registration number MP-19-GA-0884, accident occurred and offending vehicle hit the deceased motorcycle and on account of the same, deceased fell on the road along with the motorcycle and sustained injuries. Name of Mir Roshan Tahir Ali is mentioned in the witness list of charge sheet (Ex.P/1). Accident has occurred on 16.05.2020 and FIR (Ex.P/2) has been lodged on 06.06.2020, after

merg enquiry. Further, perusal of seizure memo (Ex.P/11) reveals that offending truck, along with documents, has been seized from the respondent/non-applicant No.1 Sanjay Kumar Pandey, driver of offending vehicle on 08.06.2020.

20. Perusal of record of the case reveals that driver and owner of offending vehicle had appeared before the Tribunal after service of notice and at the stage of filing of written statement, on account of their non appearance, they were proceeded ex-parte. Applicants are resident of Village Badikhera, District Mandla, driver of offending vehicle is resident of Allahabad, U.P. and presently residing in Village Bhikampur, District Mandla and owner of offending vehicle is resident of Jabalpur and presently residing in Niwas, District Mandla.

21. There is nothing on record to show that appellants/claimants have conspired/connived with owner and driver of offending vehicle/Investigating authorities in any manner whatsoever. Respondent/non-applicant Insurance Company has examined Mohit Ghadigavkar (Office Assistant) but perusal of his testimony reveals that he is completely silent as to how accident occurred. This witness is completely silent on the point of factum of accident. This witness

has also admitted that insurance company has investigated the matter through its own investigator but this report has not been filed in the instant case.

22. Thus, there is nothing on record to cast shadow of doubt over genuineness/authenticity of investigation proceedings. Further, in absence of any contrary evidence on record, investigation proceedings, including filing of charge-sheet, after investigation into the accident, cannot be doubted. It is correct that appellants/claimants have not examined Mir Roshan Tahir Ali but just on the ground of non-examination of aforesaid witness, appellants/claimants' claim petition cannot be dismissed. If respondents, including owner and driver of offending vehicle/insurance Company, have any doubt over genuineness/authenticity of investigation proceedings/filing of charge sheet, then, they should have examined investigating officer/Mir Roshan Tahir Ali. In this respect, co-ordinate Bench of this Court in **The Oriental Insurance Company Ltd. Vs. Rooplal Uike and others** (M.A.No.1872/2017, decided on 25.10.2023) has held as under:-

> *"4. It is true that he is not an eye witness but at the same time, insurance company did not discharge its burden by examining the I.O. of the case as to how they*

> *had collected the number of the offending vehicle. There is no protest application on behalf of the owner, driver of the offending vehicle to cause dispute in regard to his involvement, therefore, when all these facts are examined, there is no infirmity in the impugned award calling for interference."*

23. From principles of law as discussed in preceding paras, it is established that in appropriate cases, appellants/claimants can prove their case by filing of charge-sheet and documents attached therewith. Further, claimants have to prove their case by preponderance of probabilities and not beyond reasonable doubt.

24. In the instant case, owner and driver of offending vehicle appeared before the Tribunal but they did not contest the petition filed by the appellants/claimants and they have not examined themselves and have not cross-examined applicant witness. Further, there is nothing on record to show that owner/driver of offending vehicle complained to higher police authorities that driver of offending vehicle/offending vehicle has been falsely implicated in the instant case.

25. Therefore, having regard to factual differences as well as principles of law laid down by Apex Court in the preceding paras, principle of law laid down in **Branch Manager New India**

Assurance Vs. Smt. Tara and Branch Manager New India Assurance Company Vs. Smt. Pushpa Rungirey, do not help the appellants in any manner whatsoever.

26. Hence, in view of discussion in the foregoing paras and having regard to pronouncements, as referred and discussed in the preceding paras, in this Court's considered opinion, from evidence available on record, it is clearly established that appellants/claimants have succeeded in establishing that driver of offending vehicle caused accident by driving the offending vehicle rashly and negligently. Resultantly, findings of the Tribunal with respect to aforesaid are hereby set-aside.

27. Next question before this Court is whether at the time of accident, offending vehicle was being driven in violation of terms and conditions of insurance policy?

28. From findings recorded by the Tribunal in the impugned award as well as from testimony of non-applicant witness Mohit Ghadigavkar and Ex.D/2 and Ex.D/3, it is evident that at the time of accident, driver of offending vehicle was having license to drive LMV (non-transport) vehicle. Learned counsel for the appellants,

after referring and relying upon ***Mukund Dewangan*** **(supra)** as well as Ex.D/1 and Ex.D/5 submits that unladen weight of offending vehicle is 7000 kgs. Therefore, in view of principle of law laid down in **Mukund Dewangan (supra),** driver of offending vehicle was legally entitled to drive the offending vehicle. Therefore, it cannot be said that at the time of accident, offending vehicle was being driven in violation of terms and conditions of insurance policy.

29. A five Judge Bench of Hon'ble Apex Court in **Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and others, (2025) 3 SCC 95,** has examined aforesaid issue and has held as under:-

> ***181.*** *Our conclusions following the above discussion are as under:-*
>
> ***181.1*** *A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization under Section 10(2)(e) of the MV Act specifically for the 'Transport Vehicle' class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e- rickshaws, and vehicles carrying hazardous goods.*

> ***181.2*** *The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle,' does not supersede the definition of LMV provided in Section 2(21) of the MV Act.*
> ***181.3*** *The additional eligibility criteria specified in the MV Act and MV Rules generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.*
> ***181.4*** *The decision in* ***Mukund Dewangan (2017) 14 SCC 663*** *is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment.*

30. Thus, gross vehicle weight of offending vehicle is 16200 Kgs. Therefore, in view of law laid down by Honble Apex Court in the case of **Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and others, (2025) 3 SCC 95,** driver of offending vehicle was not entitled to drive the offending vehicle as he was having driving licence to drive the light motor vehicle (non-transport). Therefore, in the instant case, it is established that at the time of accident, offending vehicle was being driven in violation of terms and conditions of insurance policy.

31. So far as compensation is concerned, death of deceased Om Prakash Maravi in motor vehicle accident is not in dispute. So far as age of deceased, at the time of accident, is concerned, learned Tribunal in para 25 of the impugned award has determined deceased's age as 35 years and as per findings recorded by the Tribunal in para 27 of the impugned award, number of dependent on deceased is four.

32. Hence, in view of law laid down in **Sarla Verma & Others Vs. Delhi Transport Corporation and Anr. (AIR 2009 SC 3104) and National Insurance Company Limited Vs. Pranay Sethi (AIR 2017 SC 5157)**, multiplier of 16 is to be applied and 1/4th is to be deducted for personal and living expenses. From testimony of applicant witness Ganesh Prasad Koshta (DW-2) and Ex.P/12, it is established that at the time of accident, deceased was working as Assistant Sub-Inspector in Krishi Upaj Mandi, Jabalpur. Therefore, in view of law laid down by Hon'ble Apex Court in **Pranay Sethi (supra**) and having regard to the age and nature of job of deceased, 50% is to be added as future prospects.

33. So far as income of deceased is concerned, from testimony of appellants/claimants witness Ganesh Prasad Koshta (Accountant) and Ex.P/12's salary slip, it is evident that at the time of accident, gross

salary of deceased was 28,737/-. From aforesaid amount, Rs.250/- for professional tax and Rs.200/- for conveyance allowance has to be deducted. After deducting professional tax and conveyance allowance, salary of deceased comes to Rs.28,287/-.

34. Having regard to aforesaid, compensation amount is calculated as under:-

Sr.NO.	**HEADS**	**COMPENSATION**
1.	Monthly income of deceased	Rs.28,287/-
2.	After deducting 10% tax	Rs.25,458/-
3.	Yearly income of deceased	Rs.3,05,496/-
4.	Future Prospects 50%	Rs.4,58,244/-
5.	1 /4th deductions for Personal and living expenses	Rs.3,43,683/-
6.	Multiplier of 16	Rs.54,98,928/-
7.	Funeral Expenses	Rs.15,000/-
8.	Loss of Estate	Rs.15,000/-
9.	Consortium	Rs.1,60,000/-
10.	Total Compensation	**Rs.56,88,928/-**

35. Now question arises as to whether, appellants/claimants and respondents No. 4 and 5 are entitled to receive Rs.56,88,928/- as compensation. With respect to aforesaid, it has to be kept in mind that appellant/claimant Rashmi Maravi has admitted in her cross-examination that after death of her husband, she has got compassionate appointment. Therefore, having regard to principle of law laid down by Hon'ble Apex Court in **New India Assurance Company Limited Vs. Sunita Sharma and others (SLP No.9515/2020, decided on 08.04.2025)** as well as **Krishna and others Vs. Tekchand (SLP) C.No.5044/2019, decided on 05.02.2024 (SC),** it would be appropriate to deduct 25% from compensation amount. Resultantly, appellants/claimants and respondents No.4 and 5 are entitled to receive Rs.42,66,696/- as compensation along with interest at the rate of 6% per annum from the date of application.

36. It is already clear from the discussion in earlier paras that on the date of accident, respondent No.1 was driver and respondent No.2 was owner of offending vehicle involved in the accident and it was insured with respondent No.3. It is also proved that the offending

vehicle was being driven in violation of terms and conditions of insurance policy. Admittedly, in the present case, deceased is a third party. Therefore, it is a fit case to apply the principle of pay and recover **(National Insurance Co. Ltd. Vs.Swaran Singh & Others-2004 ACJ 1 (SC); Amrit Paul singh Vs. TATAAIG General Insurance Co. Ltd.-AIR 2018 SC 2662** relied on**).**

37. So far as payment of adjudged compensation and interest is concerned, respondent no.1, being driver and respondent No.2 being owner of the offending vehicle involved in the accident, are personally liable to pay the compensation to the appellants and respondent Nos. 4 and 5 and though the offending vehicle involved in the accident was insured with respondent No.3, but, as it was being driven in violation of terms and conditions of insurance policy, respondent no.3 is not liable to pay the adjudged compensation and interest, and therefore, it is exonerated from liability to pay the same. Therefore, respondents no.1 and 2 are liable to pay the above compensation along with above interest to the appellants and respondents No. 4 and 5 jointly and severely. But as the principle of pay and recover has been applied in the instant case, therefore, it is directed that respondent No.3, insurance company, shall at the first

instance pay the adjudged compensation along with interest as adjudged to the appellants and respondents No.4 and 5 but respondent no.3, insurance company, shall be entitled to /shall be at liberty to recover the same from respondent no.1 and 2 (driver and owner of offending vehicle) in the manner as provided in **National Insurance Co. Ltd. Vs. Swaran Singh & Others-2004 ACJ 1 (SC); Amrit Paul Singh Vs. TATAAIG General Insurance Co. Ltd.-AIR 2018 SC 2662; Shammana Vs. Divisional Manager Oriental Insurance Co. Ltd.-AIR 2018 SC 3726/section 174 Motor Vehicles Act.**

38. Accordingly, appeal filed by the appellant is **allowed and disposed off.**

(ACHAL KUMAR PALIWAL)
JUDGE

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