REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1665 OF 2019
(Arising out of SLP (Civil) No. 33757 of 2018)

Sunita & Ors. ...Appellants

:Versus:

Rajasthan State Road Transport Corporation & Anr. ....Respondents

J U D G M E N T

A.M. Khanwilkar, J.

1. Leave granted.

2. The captioned appeal assails the decision of the High Court of Judicature for Rajasthan, Jaipur Bench, dated 25th July, 2018 in S.B. Civil Miscellaneous Appeal No. 521 of 2017, whereby the appeal filed by respondent No.1 (The Rajasthan State Road Transport Corporation) owner of the offending vehicle, was allowed. The High Court was pleased to set aside the Award passed by the Motor Accident Claims

Tribunal, Sawai Madhopur (for short "**the Tribunal**") in favour of the appellants/claimants for the death of their family member, Sitaram and consequently dismissed the SBCMA No.581/2017 filed by the appellants for enhancement of the compensation amount granted by the Tribunal.

3. Briefly stated, on 28th October, 2011 at around 7 A.M., Sitaram (husband of appellant No.1 and father of appellant Nos.2 and 3, minor children) was riding a motorcycle, bearing registration number RJ-25 SA 6923, along with a pillion rider, one Rajulal Khateek, when the motorcycle collided with a bus coming from the opposite direction bearing registration number RJ-26/P.A. 0042, owned by respondent No.1 and rashly and negligently driven by respondent No.2. The accident resulted in the death of Sitaram and severe injuries to the pillion rider, Rajulal Khateek. Thereafter, the appellants and the parents of the deceased Sitaram filed two separate petitions before the Tribunal seeking compensation for the death of Sitaram, who was a senior teacher in a Government school, from the

respondents, to the tune of Rs.2,62,02,408/- and Rs.1,13,42,984/-, respectively.

4. The respondents resisted the said claim petitions. They denied that the offending bus had caused the accident. They contended that the accident was caused due to the mistake and negligence on the part of the deceased Sitaram himself as he was riding on the wrong side of the road and he did not know how to ride the motorcycle. He did not have a valid driving licence and was not wearing a helmet at the time of the accident, which was in violation of traffic rules. The respondents also doubted the validity of the evidence and witnesses on record.

5. The Tribunal in its judgment dated 14th December, 2016, extensively analysed the evidence on record. It considered the evidence of the deceased's wife Sunita (appellant No.1 herein), who deposed about the accident which resulted in Sitaram's death. The father of Sitaram, Mool Chand Kirad (A.D.3), also deposed about the accident of the offending bus with the motorcycle causing the death

of Sitaram at the spot of the accident. The Tribunal also considered FIR No.247/2011 (Exh.1) and charge-sheet (Exh.2) filed against respondent No.2 for offences punishable under Sections 279, 337 and 304A of the Indian Penal Code ('**IPC**') and Sections 134/187 of the Motor Vehicles Act (for short "**the Act**"). It noted that the respondents had not challenged the FIR or the charge-sheet before any authority.

6. The Tribunal also examined the deposition of Bhagchand Khateek (A.D.2), a witness to the incident who deposed that he had gone to his brother's house at Shivad village, one day prior to the date of the accident. At the time of the accident, he had gone to relieve himself and was walking on the left side of the road when he saw the motorcycle with number RJ 25 SA 6923, which was also on the left side of the road, being hit by the offending bus bearing registration No. RJ-26/P.A. 0042, being driven at a high speed coming on to the wrong side of the road, resulting in the instant death of the rider of the motorcycle. He further deposed that the name of the driver of the

offending bus was Banwari (respondent No.2). In his cross-examination, Bhagchand revealed that he did not see Banwari (respondent No.2) after the accident and further, that there was a pillion rider on the motorcycle who was a man, but he couldn't identify the man's age.

7. The respondents challenged the evidence of Bhagchand (A.D.2) on the ground that his name was not mentioned in the list of witnesses set out in the charge-sheet (Exh.2) and could not have been near the spot when the accident occurred. For, he was a resident of Pakhala village, which was 3 (three) Kilometres away from the alleged accident spot. Despite these objections, the Tribunal accepted the veracity of Bhagchand's deposition. It held that not all the eye-witnesses to the incident needed to be named in the charge-sheet and that the respondents had failed to ask Bhagchand any question during the cross examination so as to cast any doubt on the veracity of his statement. Further, the respondents had also failed to ask Bhagchand about giving any statement to the police. Bhagchand had deposed that on the day of incident, he was at his brother's

house in Shivad village, which did not preclude him from being an eye-witness to the incident.

8. The Tribunal then noted that respondent No.2 driver of the offending bus, Banwari Lal, had not been examined as a witness by the respondents. Additionally, it found that the site map of the accident (Exh.3) showed that the accident had occurred at a turning in the road, and yet the offending vehicle was driven at a high speed. This aspect was read with the unchallenged evidence of the witness Bhagchand Khateek (A.D.2), who *inter alia* deposed that at the time of the accident, the offending bus was being driven recklessly at a high speed and also that the respondents had failed to ask the said witness Bhagchand any question about the purported negligence of the rider of the motorcycle, Sitaram. Further, the respondents had failed to show that they had challenged the filing of the charge-sheet (Exh.2) against respondent No.2 driver of the offending vehicle. Finally, the Tribunal adverted to the post-mortem report (Exh.4) wherein it was recorded that the deceased had died due to

shock arising from various fractures on his body. The Tribunal also took into account the notice under Section 134 of the Act (Exh.7), wherein respondent No.2 had not made any statement that the accident had occurred due to the negligence of the motorcycle rider. On a combined reading of the aforesaid evidence, the Tribunal held that there was no negligence on the part of the deceased Sitaram, while riding the motorcycle and that he was fatally hit by the bus being driven recklessly and at a high speed by respondent No.2.

9. The Tribunal also examined the notice under Section 133 of the Act (Exh.6) in which the Assistant Transport Inspector, Tonk Bus Depot, stated that respondent No.2 was the driver of the offending bus bearing registration number RJ-26/P.A. 0042. It then examined the notice under Section 134 of the Act (Exh.7), wherein respondent No.2 stated that the offending bus bearing registration number RJ-26/P.A. 0042 was being operated by him on the date and place of the accident. The Tribunal thus concluded that respondent No.2 was under the employment of

respondent No.1 at the time of the accident and was driving the offending bus which caused the accident.

10. On the basis of the aforesaid findings and observations, the Tribunal partly allowed the two claim petitions. After deducting income tax payable on the income received by Sitaram, the Tribunal awarded compensation of Rs.48,33,235 (Rupees Forty Eight Lakh Thirty Three Thousand Two Hundred and Thirty Five only) jointly and severally to the appellants and the parents of Sitaram, along with interest. The Tribunal observed that there was evidence on record to show that Sunita (appellant No.1) wife of the deceased was having estranged relations with her husband and thus ordered that the compensation be divided in such a way that the appellants herein would receive Rs.38,33,235 (Rupees Thirty Eight Lakh Thirty Three Thousand Two Hundred and Thirty Five only) and the remaining amount of Rs.10,00,000 (Rupees Ten Lakh only) would be given to the parents of the deceased.

11. The appellants, aggrieved by the deduction of income tax from the calculated income of the deceased, filed S.B. Civil Miscellaneous Appeal No.581 of 2017 while the respondents filed two appeals viz. S.B. Civil Miscellaneous Appeal No.521 of 2017 and S.B. Civil Miscellaneous Appeal No.522 of 2017, before the High Court of Rajasthan, Jaipur Bench. Vide a common judgment dated 25th July, 2018, the High Court set aside the Tribunal's judgment in entirety, on the grounds that non-examination of the pillion rider, Rajulal Khateek, was fatal to the case of the appellants, that the witness Bhagchand (A.D. 2) was unreliable and his evidence could not be reckoned and that the site map of the accident (Exh.3) showed that the deceased Sitaram was riding his motorcycle on the wrong side of the road at the time when the accident occurred, thus, proving that it was Sitaram, and not respondent No.2 (bus driver), who was guilty of negligence. The High Court thus allowed the two appeals filed by the respondents and set aside the Tribunal's judgment, and consequently dismissed the appeal filed by the appellants.

12. We have heard Mr. Anuj Bhandari, learned counsel appearing for the appellants and Mr. S.K. Bhattacharya, learned counsel appearing for the respondents. Mr. Bhandari submits that the Motor Accident Claims are summary proceedings so as to adjudicate the adequate amount of compensation in case of an accident and that a claim under the Act has to be decided on the touchstone of preponderance of probability rather than on the standard of proof beyond reasonable doubt which applies in criminal matters. He submits that evidence of Bhagchand (A.D.2) was justly accepted by the Tribunal and the High Court discarded the same on specious ground that he was not cited as a witness in the criminal case registered by the local police in respect of the subject accident and was unable to tell the age of the pillion rider. Further, the non-examination of a witness cited in the charge sheet would not be fatal to the appellant's claim and the entire claim could not be rejected merely on such ground. Besides, the statement of the pillion rider Rajulal Khateek, as recorded by the police under Section 161 of the Criminal Procedure Code ('**CrPC**'), clearly stated that the offending bus was

being driven in a rash and negligent manner and on the wrong side of the road and although this witness has not been examined in these proceedings, his statement nevertheless remained on the record as part of the final report filed under Section 173 CrPC and hence, that could not be discarded merely for lack of examination of the said witness.

13. Mr. Bhandari also submits that on the issue of negligence by the rider of the motorcycle and the said motorcycle being driven on the wrong side of the road, the High Court came to a diametrically opposite finding from the Tribunal, merely by reference to the site plan, on the basis of conjuncture and surmises and in complete disregard of the other evidence and, in particular, the factual position as set out in the site plan (Exh.3). He submits that the Tribunal had justly opined that the site plan indicated that the offending bus was being driven at a high speed and after hitting the motorcycle, it went further ahead and rammed into an electricity pole off the road, well

past the accident spot. The Tribunal's judgment was a well-reasoned decision and a plausible view of the matter. Thus, the High Court committed grave illegality in setting aside the said decision. He relied upon ***Kusum Lata and Ors. Vs. Satbir and Ors.***[1], ***Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors.***[2], ***United India Insurance Company Limited Vs. Shila Datta and Ors.***,[3] and ***Dulcina Fernandes and Ors. Vs. Joaquim Xavier Cruz and Anr.*** [4], in support of his arguments.

14. Per contra, Mr. S.K. Bhattacharya, learned counsel for the respondents, argues that the Tribunal's decision was wholly untenable. Not only did the appellants failed to examine any independent witness to the case but also, the testimony of Bhagchand (A.D. 2) was not credible as neither was his name set out in the list of witnesses nor could he identify the age of the pillion rider on the motorcycle. However, the same witness could clearly identify both, the

1 (2011) 3 SCC 646
2 (2009) 13 SCC 530
3 (2011) 10 SCC 509
4 (2013) 10 SCC 646

number of the motorcycle and the number of the offending bus, thus indicative of the fact that the witness was tutored and not a natural witness. Mr. Bhattacharya submits that the Tribunal's opinion, that not all witnesses named in the charge-sheet were required to be presented by the investigating agency rather, only the spot witnesses were required, was contradictory, since the pillion rider on the motorcycle, Rajulal Khateek, was mentioned as a witness in the charge-sheet but the said person was not presented for examination.

15. Mr. Bhattacharya further argues that the two principles applicable to the assessment of evidence in matters of reckless driving and negligence are *res ipsa loquitor* and preponderance of probability. That principle casts a burden on the appellants/claimants to show that the deceased Sitaram was not negligent in riding his motorcycle. The facts, however, indicate that the accident occurred in the middle of the road and although the offending bus was being driven in the middle of the road,

the fault lay with the lighter vehicle namely, the motorcycle. Merely because the bus was being driven fast, it does not follow that the same was also being driven negligently. The evidence on record lacked basic requirements to prove the guilt of respondent No.2 driver, let alone on the preponderance of probability and there was no evidence to indicate the callousness or negligence of the bus driver. There was no assessment of contributory negligence on the part of the deceased Sitaram and the appellants failed to prove any negligence on behalf of the respondents.

16. Finally, Mr. Bhattacharya submits that the compensation awarded by the Tribunal to the parents of the deceased Sitaram was incorrect since there was no evidence on record to show that the parents were dependent on the deceased or that they were staying with him. Sitaram was admittedly not a bachelor and was not staying with his parents. While the parents did have the right to filial consortium, however, compensation under such head was to be awarded separately and not on a structured basis.

17. We have cogitated over the above submissions and have examined the relevant record. The pivotal question is about the correctness of the approach of the High Court in setting aside the findings of fact recorded by the Tribunal. Further, whether the circumstances emanating from the evidence produced by the parties justify the conclusion reached by the High Court on the factum of negligence on the part of the motorcycle rider, the deceased Sitaram, in causing the accident with the offending bus driven by respondent No.2.

18. Indeed, we are conscious of the scope of an appeal under Article 136 of the Constitution of India. This Court ordinarily does not re-examine or re-appreciate the evidence. But it is certainly open to this Court to interfere if the findings recorded in the judgment under appeal are found to be manifestly wrong or perverse.

19. We may immediately turn to the manner in which the well-considered and exhaustive judgment of the Tribunal running into over 24 pages came to be reversed by the High

Court, if we may say so, in a cryptic manner in 5 pages. The relevant portion of the High Court judgment under appeal, after recording facts and submissions of the counsel, reads thus:

> *"In order to prove Issue No.1, claimants examined AW-2 Bhagchand. The said witness deposed that on 28.10.2011, while he was returning after answering the call of nature, he saw that a motorcycle was coming from village Manhapura side. The Roadsways but came from opposite direction and struck against the motorcycle. As a result, one person, who was sitting on the motorcycle died. In his cross-examination, he deposed that one more person was also sitting on the motorcycle. However, he could not tell if the said person was young, old or a child.*
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> *FIR Exhibit-1 was lodged by Kailash Chand with regard to the accident in question. A perusal of the same reveals that the motorcycle was being driven by Sita Ram and Raju Lal Khateek was sitting on the pillion seat. Best eye-witness in the present case can be said to be Raju Lal Khateek, who was travelling with the deceased at the time of accident. However, Raju Lal Khateek has not been examined by the claimants before the Tribunal. The name of Bhagchand is not shown in the list of witnesses as an eye-witness in the criminal case. In the criminal case, Raju Lal Khateek has been shown as an eye-witness. A perusal of the site plan Exhibit-3 reveals that the bus was going on its correct side of the road, whereas, the motorcycle was coming on the wrong side of the road, had struck against the bus.*
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> *In the facts and circumstances of the present case, no reliance can be placed on the statement of AW-2 Bhagchand, who had been examined by the claimants as an eye-witness to the accident. The said witness could not even tell in his cross-examination with regard to the age of the person, who was sitting on the pillion seat. Thus, the learned Tribunal fell in error in deciding Issue No.1 in favour of the claimants. Accordingly, finding of the*

Tribunal on Issue No.1 is reversed and the said issue is decided against the claimants."

This is the only analysis/discussion in the entire judgment to reverse the exhaustive analysis done by the Tribunal to which we have set out in brief in paragraphs 5 to 9 above. 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 (A.D.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 (Exh.3) to record the finding on the factum of negligence of the deceased Sitaram in causing the accident which resulted in his death.

20. We have no hesitation in observing that such a hyper-technical 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 Vs. Oriental Insurance Company Limited and Ors.***[5], (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:

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5 (2018) 5 SCC 656

"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*[6] 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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> *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.
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> *13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was*

6 Supra at footnote 2

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 case*, this Court in *Parmeshwari* v. *Amir Chand*[7] 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

7 (2011) 11 SCC 635

the testimony of the eyewitnesses in paras 12 & 13 and observed thus: (*Parmeshwari case*, SCC p. 638)

> "*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*[8], 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, 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

8 (1980) 3 SCC 457

> 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*[9], 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*. In paras 8 & 9

9 Supra at footnote 4

of the reported decision, the dictum in *United India Insurance Co. Ltd.* v. *Shila Datta*[10], has been adverted to as under: (*Dulcina Fernandes case*, SCC p. 650)

> "*8.* In *United India Insurance Co. Ltd.* v. *Shila Datta* 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)
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> '*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.
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> * * *
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> (*v*) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. …
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> (*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.'
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> *9.* The following further observation available in para 10 of the Report would require specific note: (*Shila Datta case*, SCC p. 519)
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> '*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*, 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."

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10 (2011) 10 SCC 509

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.

21. In the present case, we find that the Tribunal had followed a just approach in the matter of appreciation of the evidence/materials on record. Whereas, the High Court adopted a strict interpretation of the evidence on the touchstone of proof beyond reasonable doubt to record an adverse finding against the appellants and to reverse the well considered judgment of the Tribunal in a cryptic manner.

22. Reverting to the factual matrix, the actual occurrence of the accident between the motorcycle driven by Sitaram bearing registration number RJ 25 SA 6923 coming from one side and a bus belonging to respondent No.1 (the Rajasthan State Road Transport Corporation) bearing registration number RJ-26/P.A. 0042 coming from the opposite direction, is duly proved. The Tribunal has relied upon the uncontroverted evidence of witnesses A.D.1 and A.D. 3, and the documents presented by them, especially FIR No. 247/2011 (Exh. 1) and charge-sheet (Exh.2) against one Banwari Lal Bairwa (respondent No.2), charging him with offences under Sections 279, 337 and 304A of the IPC and Sections 134/187 of the Act, to establish that on 28.10.2011 at around 7 A.M., Sitaram, along with pillion rider Rajulal Khateek, was riding on a motorcycle bearing number RJ 25 SA 6923 from village Bapuee to Chaut ka Barwad for Daug, to his sister, when, near Mahapura tri-section, bus number RJ-26/P.A. 0042 belonging to respondent No.1 (the Rajasthan State Road Transport

Corporation) coming from the opposite direction hit the motorcycle from the front, resulting in the death of Sitaram.

23. The Tribunal had justly accepted the appellants' contention that the respondents did not challenge the propriety of the said FIR No. 247/2011 (Exh. 1) and charge-sheet (Exh. 2) before any authority. The only defence raised by the respondents to this plea was that the said FIR No. 247/2011 was based on wrong facts and was filed in connivance between the appellants/complainants and the police, against which the respondents complained to the in-charge of the police station and the District Superintendent of Police but to no avail. Apart from this bald assertion, no evidence was produced by the respondents before the Tribunal to prove this point. The filing of the FIR was followed by the filing of the charge-sheet against respondent No.2 for offences under u/Sections 279, 337 and 304A of the IPC and Sections 134/187 of the Act, which, again, reinforces the allegations in the said FIR insofar as the occurrence of the accident was concerned and the role of respondent No.2 in causing such accident. Be that as it

may, the High Court has not even made a mention, let alone record a finding, of any impropriety against FIR 247/2011 (Exh. 1) or charge-sheet (Exh. 2) or the conclusion reached by the Tribunal in that regard. Yet, the FIR and the Charge-sheet has been found to be deficient by the High Court.

24. Before the Tribunal, respondent No.1 has neither denied that respondent No.2 was in its employment at the time of the accident nor has it denied that respondent No.2 was driving the offending bus no. RJ-26/P.A. 0042 at the time of the accident. The Tribunal has also referred to the Post-mortem report (Exh.4) which establishes that Sitaram died due to shock arising from various fractures on his body, which, undoubtedly, were rendered due to his accident with the offending bus. All of the aforesaid evidence remained uncontroverted. While the Tribunal has accepted these depositions and the evidence presented in that regard, the High Court has, surprisingly, not even referred to it or even the numerous documents presented by the said witnesses as evidence, apart from a passing reference to FIR 247/2011 (Exh.1).

25. The Tribunal's reliance upon FIR 247/2011 (Exh. 1) and charge-sheet (Exh. 2) also cannot be faulted as these documents indicate the complicity of respondent No.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 the respondent No.2 in causing the said accident. Even if the final outcome of the criminal proceedings against respondent No.2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act. This Court in ***Mangla Ram*** (supra), 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.

26. Accordingly, we have no hesitation in upholding the finding recorded by the Tribunal that there was an accident on 28-10-2011 at around 7AM between the motorcycle driven by Sitaram bearing registration number RJ 25 SA 6923 and a bus belonging to respondent No.1. (the

Rajasthan State Road Transport Corporation) bearing registration number RJ-26/P.A. 0042 coming from the opposite direction and being driven rashly and negligently by respondent No.2, which resulted in the death of Sitaram.

27. The next question is whether the purported shortcomings in the evidence of Bhagchand Khateek (A.D.2) and the lack of evidence of the pillion rider on the motorcycle, Rajulal Khateek, would be fatal to the appellants' case. As regards the evidence of Bhagchand, the High Court found that the deposition of the said witness was unreliable because his name was not mentioned in the list of witnesses in the criminal proceedings and also because he was unable to tell the age of the pillion rider. Besides, the said witness lived in Pakhala village, which was 3 (three) kilometres away from the accident spot and hence, he could not have been near the said spot when the accident occurred. The Tribunal had dealt with these objections quite substantially and, in our opinion, correctly, in its judgment, wherein it records:

" In the present case the petitioners have got examined the eye-witness A.D.2 Bhag Chand son of Ram Dev. **Admittedly the name of the witness Bhag Chand is not mentioned in the list of witnesses in exhibit-2 charge sheet but if the interrogation with this witness is perused then the opponent in order of not considering this witness as eye-witness, has not asked about giving police statement or not having his name in the list of witnesses.** The witness A.D.2 Bhag Chand Khateek, in interrogation on behalf of opponents has accepted this that he neither knows Banwari nor after the incident he has seen Banwari.

During interrogation the statement of the witness has been that I was near the place of incident itself. That time I was returning after relieving myself. **The argument of the opponents has been that the witness Bhag Chand is resident of village Pakhala whereas the place of incident is at distance of 3 k.m. therefore, the statement of going to toilet is false. Therefore, he should not be considered eye-witness. But the witness A.D.2 Bhag Chand Khateek has stated in his main statement that one day from dated 28.10.2011, he had come to his brother's house at village Shivad. In such a Situation, in our humble opinion, the witness being at a distance of 3 k.m. from spot of incident, being resident of Pakhala village, this cannot be considered that this witness would not be considered eye-witness.**

Whereas there is question of his name not being in the charge-sheet as witness, definitely due to this fact, each such witness cannot be considered eyewitness who gives little statement about incident. **But the evidence which the witness A.D.2 Bhag Chand Khateek has given on oath, in order to prove that distrust worthy, the opponents have not done any such interrogation from which there is suspicion in the statements of witness. The witness Bhag Chand Khateek was not even this suggestion that his police statement was not taken or the police had not interrogated him. In our humble opinion, in cases like accident occurring suddenly, the persons present near the place of incident are eye-witness of the incident. But during investigation this is not necessary that the investigation agency should name all the eye-witnesses as witness in the charge sheet. Therefore, the statement**

> **of witness A.D.2 Bhag Chand Khateek cannot be considered distrust worthy that his name in the charge sheet is not mentioned as witness.**"
>
> (emphasis supplied)

28. 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 (A.D.2) evidence from the viewpoint of him not being named in the list of eye witnesses 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*** (supra) and reiterated in ***Mangla Ram*** (supra)] 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 concerned witness. 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.

29. The importance of cross-examining a witness has been elucidated by this Court on several occasions, notably in ***Kartar Singh Vs. State of Punjab***,[11] where a Five-Judge Bench of this Court elaborated:

> "278. Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. **It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:**

11 (1994) 3 SCC 569

> **(1) to destroy or weaken the evidentiary value of the witness of his adversary;**
> **(2) to elicit facts in favour of the cross- examining lawyer's client from the mouth of the witness of the adversary party;**
> **(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness;**
> **and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.**
>
> 279. The identity of the witness is necessary in the normal trial of cases to achieve the above objects and **the right of confrontation is one of the fundamental guarantees so that he could guard himself from being victimized by any false and invented evidence that may be tendered by the adversary party.**"
>
> (emphasis supplied)

The High Court has not held that the respondents were successful in challenging the witnesses' version of events, despite being given the opportunity to do so. The High Court accepts that the said witness (A.D.2) was cross examined by the respondents but nevertheless reaches a conclusion different from that of the Tribunal, by selectively overlooking the deficiencies in the respondent's case, without any proper reasoning.

30. The High Court discarded the evidence of Bhagchand (A.D. 2) also because he could not recollect the age of the

pillion rider. The inability of the witness to identify the age of the pillion rider cannot, *per se*, be a militating factor to discard his entire version especially since the presence of the witness at the time and place of the accident has remained unshaken and including his deposition regarding the manner of occurrence of the accident and identity of the driver of the offending vehicle. The filing of FIR No.247/2011 (Exh.1) and the subsequent filing of the charge-sheet (Exh.2) corroborate the witnesses' evidence. The view taken by the Tribunal therefore, on the veracity of the evidence of A.D. 2, is unexceptionable and there was no reason for the High Court to interfere with the same.

31. 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" eye witness 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 (supra), faced a similar situation where the evidence of 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.

32. On the issue of negligence by the deceased Sitaram in causing the accident, the Tribunal has referred to the notice issued under Section 134 of the Act (Exh. 7) to the driver of the offending vehicle, respondent No.2. It records that in the said notice, respondent No.2 failed to give any statement indicating that the accident occurred due to any mistake by the rider of the motorcycle, Sitaram. The Tribunal has further relied upon the evidence of Bhagchand (A.D.2) and

also upon the site plan of the accident (Exh. 3) to reach a conclusion that respondent No.2 recklessly drove the speeding bus on the wrong side of the road, into the motorcycle being ridden by Sitaram, who was on the correct side of the road, and caused his death. Whereas, the High Court has disregarded the evidence of Bhagchand. Further, the site plan (Exh. 3) cannot be read in isolation. It will have to be examined in conjunction with the other evidence.

33. The site plan (Exh. 3) has been produced in evidence before the Tribunal by witness A.D. 1 (appellant No.1 herein) and the record seems to indicate that the accident occurred in the middle of the road. However, the exact location of the accident, as marked out in the site plan, has not been explained muchless proved through a competent witness by the respondents to substantiate their defence. Besides, the concerned police official who prepared the site plan has also not been examined. While the existence of the site plan may not be in doubt, it is difficult to accept the theory propounded on the basis of the site plan to record a finding against the appellants regarding negligence

attributable to deceased Sitaram, moreso in absence of ocular evidence to prove and explain the contents of the site plan.

34. Be it noted that the evidence of witness A.D.2 (Bhagchand) unequivocally states that the respondent No.2 bus driver was negligent in driving recklessly at a high speed on the wrong side of the road, thus, resulting in the accident which caused the death of Sitaram. It was not open to the High Court to discard this evidence. Additionally, the Tribunal had justly placed reliance on the contents of FIR No.247/2011 (Exh. 1) and charge-sheet (Exh.2) which *prima facie* indicate the negligence of respondent No.2 in driving the bus. We once again remind ourselves of the dictum in ***Dulcina Fernandes*** (supra) and thereafter in ***Mangla Ram*** (supra), and answer the factum of negligence of the driver of the offending vehicle against the respondents.

35. Reverting to the question of adequacy of compensation amount determined by the Tribunal, the appellants have not

assailed the order of the High Court rejecting their appeal. Further, in their appeal before the High Court (SBCMA No.581 of 2017), the limited grievance was about deduction of income tax from the calculated income. That ground is unsustainable in light of the decision in ***National Insurance Company Limited Vs. Pranay Sethi and Ors.***[12] We cannot permit the appellants to widen the scope in the present appeal, muchless pray for enhanced compensation. We are instead inclined to restore the Award passed by the Tribunal as it has determined the just compensation amount, keeping in mind all the relevant parameters including the apportionment thereof between the family members of the deceased. Upholding that Award would be doing complete justice.

36. Resultantly, this appeal must succeed. We hold that the impugned judgment and order of the High Court deserves to be set aside and instead, the Award passed by the Tribunal dated 14th December, 2016 be restored.

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12 (2017) 16 SCC 680

37. Appeal is allowed in the above terms. No order as to costs.

.....J
(A.M. Khanwilkar)

.....J
(Ajay Rastogi)

New Delhi.
February 14, 2019.