* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : 6th February 2026***
Pronounced on : 17th April 2026
Uploaded on : 18th April 2026

\+ **MAC.APP. 174/2021 & CM APPL. 14103/2021**

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. A.K. Soni, Adv.

versus

SUNITA SINGH & ORS. .....Respondents

Through: Mr. Aseem Mehrotra and Ms. Deeksha Mehrotra Advs. for R-1 to 4.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

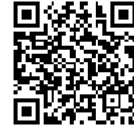
ANISH DAYAL, J.

1. This appeal has been filed by the Insurance Company assailing the impugned judgment and award dated 26th November 2020 passed in ***MACP No.249/2017*** by Motor Accidents Claims Tribunal ['***MACT***'], Saket Courts, New Delhi (hereinafter, '***Tribunal***') whereby, the Tribunal allowed a total sum of Rs.63,81,940/- as compensation to be paid to the claimants, along with interest at the rate of 7.5% from the date of filing the petition within 30 days, failing which interest to be paid at the rate of 12% per annum for the delayed period.

2. Appellant/Insurance Company is agitating the appeal essentially on the ground that the Tribunal relied merely on criminal record of respondent no.5/driver, despite negligence not having been proved by respondent nos. 1 to 4 (hereinafter, '***claimants***') who failed to produce any eyewitness even after the matter was remanded back to the Tribunal. According to appellant/Insurance Company, the motorcycle driver-*Pawan Kumar* should have been held solely or at least contributorily negligent. Moreover, compensation awarded by the Tribunal has been challenged as being exorbitant and unsustainable, since the income of deceased was wrongly assessed by adding annual commission given by Life Insurance Corporation ('***LIC***'), without any proof of actual loss; incorrectly deducted 1/4th towards personal expenses by treating father of deceased as a dependent. Challenge was also on the award of interest at 7.5% with penal interest at 12%.

<u>The Incident</u>

3. The incident occurred on 24th September 2010 at about 8:10 a.m., when *Anupam Kumar Singh* (hereinafter, '***deceased***') was traveling on a motorcycle bearing no. DL-6ST-9807 with his colleague, *Pawan Kumar,* from *Naraina* towards *Munirka*. When they reached Moti Bagh Flyover, a bus bearing no.DL-lPB-3806 driven rashly and negligently by respondent no.5, hit the motorcycle from behind causing fatal injuries to the deceased. The offending vehicle/bus was owned by respondent no.6 and insured with appellant/Insurance Company. Deceased was about 35 years of age at the time of accident and was working as senior manager/ commission agent and earning approximately about Rs.38,500/- per month.



4. Claim petition was filed by his wife, daughter and parents seeking compensation. Driver and owner of the offending vehicle appeared but did not file their written statements, while the insurer contested the claim.

Impugned award

5. The claim was originally decided by Tribunal *vide* order dated 31st October 2012 and had returned a finding that death had occurred due to involvement of offending vehicle/bus and negligent driving of the bus driver, primarily on basis of statement of ***PW-1*** (*wife of deceased /claimant*) and copy of investigation proceedings in FIR No. 308/2010 registered at P.S. R. K. Puram. Appellant/Insurance Company filed an appeal ***MAC.APP. No.172/2013*** which was disposed of by this Court on 9th May 2016 noting the contentions of Insurance Company that no evidence was adduced about the involvement of offending vehicle/bus and negligence on the part of its driver and that ***PW-1***, the solitary witness examined, was admittedly not an eye witness. Matter was then remanded back to Tribunal with liberty granted to claimants to lead further evidence and for contesting parties to cross examine witnesses, pursuant to which the Tribunal could pass a fresh judgment. Post the remand, the impugned judgement and award have been passed.

6. Tribunal took note of the details of accident and that FIR No. 308/2010 was registered on 25th September 2010 at P.S. R. K Puram, basis statement of *Pawan Kumar*/driver of the motorcycle. Statement of *Pawan Kumar* was recorded as ***Ex.PW1/A*** in the criminal proceedings, FIR was exhibited as ***Ex.PW1/B*** and *post-mortem* report of deceased was exhibited as

Ex.PW1/C.

7. Wife of deceased examined herself as ***PW-1***, tendered her affidavit as ***Ex. PW-1/1*** and referred to documents *i.e.* copy of bank passbook, attested copy of FIR, *post-mortem* report, salary certificate and Form 16A issued by LIC and Bajaj Capital Limited in her support. For proving the income of deceased, claimants examined *Sh. Sudeep Kumar*, working as Assistant Administrative Officer with LIC India. Respondents did not choose to lead any evidence.

8. Counsel for claimants, argued that the accident occurred due to rash and negligent act of bus driver; eye-witness could not be examined due to non-availability, but he had been examined in Criminal Court on 18th February 2012 and had relied on said evidence led before the Court. Counsel for appellant/Insurance Company objected to reliance on certified copy of evidence of witness in a criminal case, since they did not get a chance to cross-examine the witness.

9. Tribunal however, relied upon statement of *Pawan Kumar* made before the Criminal Court, wherein, he had categorically stated that the offending vehicle/bus had hit the motorcycle from behind and consequently, he along with *Anupam Kumar Singh*/deceased fell down due to impact of accident and the deceased came under bus and expired. Since chargesheet had been filed and witness had been examined before the Criminal Court, the fact that the witness was not examined before Tribunal was not considered as a factor to dismiss the claim.

10. Factum of accident had not been denied. As per the SI Janak Raj IO,

Inspector Mahavir, Traffic Inspector, Delhi Cantt, who handed over the accused driver to him, the deceased was found lying beneath offending vehicle/bus at the center part, length wise. Accordingly, the Tribunal held that deceased suffered fatal injuries due to rash and negligent driving of offending vehicle/bus.

Compensation Awarded by Tribunal

11. Since deceased was working as Senior Manager (Accounts and Finance) in *Sinewave Technologies Inc.* with annual salary of Rs.4,31,000/-, Rs.9,600/- was deducted towards personal allowances, an amount of Rs.4,21,400/- per annum was determined as his income. Apart from this, the deceased was working with LIC as an insurance agent and earning commission of Rs.30,000/- per annum on average (*Rs.35,916/- in one year, Rs.38,000/- for next year*), which was added to this amount. Therefore, annual income was worked out to Rs.4,51,400/-

12. Relevant multiplier of 16 was taken considering the deceased was 35 years on the date of accident, 25% was added towards future prospects and 1/4th was deducted on account of personal expenses, since the Tribunal accounted for all the family members. Loss of dependency was calculated at Rs.61,91,940/- and the total compensation was calculated at Rs.63,81,940/-, along with interest at the rate of 7.5% per annum.

Analysis

13. Countering the submission made by appellant/Insurance Company that due to lack of examination of eyewitness before the MACT, reliance on

statement of *Pawan Kumar*/driver made in the criminal proceedings could not be taken into account and therefore, liability could not be fastened on appellant/Insurance Company, since no negligence was established, *Mr. Aseem Malhotra*, counsel for claimants, made the following submissions:

(i) Facts of the accident could not have been doubted, as the deceased was found underneath the bus and FIR was subsequently, registered on 25th September 2010 against respondent no.5/bus driver.

(ii) FIR was registered on the basis of statement of *Pawan Kumar,* who was driving the motorcycle and the deceased was sitting as a pillion rider. According to the statement of *Pawan Kumar*, they had descended from the flyover at about 8.10 p.m. when the bus (*offending vehicle*), driven by respondent no.5, hit their motorcycle from behind.

(iii) Respondent No.1/Wife of deceased was cross-examined but no suggestion was given to her that the accident did not take place on account of rash and negligent driving of respondent no.5/bus driver

(iv) Appellant/Insurance Company did not lead any evidence and no written statement was filed by respondent no.5/bus driver and respondent no.6/bus owner. Moreover, appellant/Insurance Company did not summon the bus driver to be examined as a witness.

(v) Chargesheet was filed on 25th February 2011 along with the Medico-Legal Certificate ('***MLC***') of deceased and *Pawan Kumar*.

In the criminal proceedings, *Pawan Kumar* was examined as ***PW-1***. In his examination-in-chief he stated that the motorcycle was being driven by him which was hit by the offending vehicle/bus in question and due to the impact of accident, the two of them fell down. He stated that the offending vehicle/bus was coming at high speed. In his cross examination by the APP, he admitted that in ***Ex. PW-1/A***, he had stated that the accused was driving the bus in a rash and negligent manner and further, admitted the site plan which was prepared at his instance. IO was examined as ***PW-2***.

14. Claimants tried to contact *Pawan Kumar* though his mobile number, residential address and office address, however the mobile number was found non-existing and office address was 'closed' and at his residential premises they were informed that *Pawan Kumar* does not stay there.

15. The following judgments have been relied upon by *Mr. Aseem Malhotra*, Advocate in support of his submissions:

(a) ***National Insurance Company Ltd. vs. Smt. Pushpa Rana & Ors***. 2007 SCC OnLine Del 1700;

(b) ***New India Assurance Company Ltd. vs. Smt. Pooja Bhatia & Ors.*** 2013 SCC OnLine Del 1615;

(c) ***Dulcina Fernandes and Others vs. Joaquim Xavier Cruz and Anr.*** (2013) 10 SCC 646

(d) ***Sunita and Others vs. Rajasthan State Road***

Transport Corporation and Anr. (2020) 13 SCC 486

(e) ***Vimla Devi and Others vs. National Insurance Company Limited and Ors.*** (2019) 2 SCC 186

(f) ***Mathew Alexander vs. Mohammed Shafi & Anr.*** 2023 INSC 621

16. Countering the same, *Mr. A.K. Soni*, counsel for appellant/Insurance Company has relied upon the following decisions in support of his submissions:

(a) ***Minu B. Mehta & Anr. Vs. Balkrishna Ramchandra Nayan & Anr***. (1977) 2 SCC 441

(b) ***Oriental Insurance Co. Ltd. Vs. Meena Variyal &Ors.*** (2007) 5 SCC 428

(c) ***New India Assurance Co. Ltd. Vs. Devki & Ors***. 2016:DHC:1735

(d) ***Surender Kumar Arora & Anr. Vs. Dr. Manoj Bisla & Ors***. 2012 (4) SCC 552

(e) ***Sarla Verma v. DTC*** (2009) 6 SCC 121

17. It would be essential to examine what has been stated in these decisions which have been considered below in chronological order.

18. In order to establish that the accident took place due to rash and negligence of the bus driver, reliance was placed upon ***Pushpa Rana*** (*supra*), wherein this Court held that mere filing of FIR and charge sheet serve as sufficient proof to determine that the driver of offending vehicle was negligent. Relevant observations of this Court are extracted as under:

> *"12. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgement of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal; 2007 (5) SCALE 269. On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."*
>
> (emphasis added)

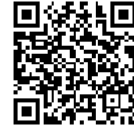
19. Further reliance was placed on ***Pooja Bhatia*** (*supra*), where this Court upheld the Tribunal's finding on negligence by perusing through the FIR and chargesheet, which were also proved by the ASI in-charge of investigation the criminal case. ***SLP No. 38095/2013*** was filed against this decision, however, the same was dismissed by the Apex Court on 13th December 2013. Relevant observations of this Court are extracted as under:

"14. I have heard ld. Counsels for the parties. As far as the issue of negligence is concerned, claimants have to prove either by examining the witnesses or by the criminal record. In the present case PW-2 Shri Charles Tirkey, ASI, who investigated the FIR No. 299/2007 registered at PS Delhi Cantt has been examined to prove the aforesaid FIR Exhibit PW-2/1, Charge Sheet as Exhibit PW-2/2, DD Report as Exhibit PW-2/3 and rough site plan as Exhibit PW-2/4. The aforesaid witness also proved the seizure memo of the offending vehicle as Exhibit PW-2/5 and notice issued under Section 133 of the Act as Exhibit PW-2/6. Moreover, the aforesaid PW-2, who was the IO of the case, also proved the superdari order of the vehicle Exhibit PW-2/7 and order of the ld. MM by which the driver of the offending vehicle was charged as Exhibit PW-2/8.

15. Apart, the statement of Shri Vikram recorded under Section 161 Cr.PC proved as Exhibit PW-2/12 and MLC of Sanjay Bhatia, deceased, has been proved by him as Exhibit PW-2/13. Post-mortem report has also been proved as Exhibit PW-2/14. Seizure memo of driving licence of the driver Ranjit Singh is proved vide Exhibit PW-2/15."

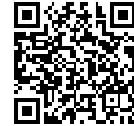
(emphasis added)

20. The second contention raised by counsel for claimants, relates to preponderance of probabilities and reliance was placed upon the decision of Supreme Court in ***Dulcina Fernandes*** (*supra*) where the Court reversed the finding on negligence and held that prima facie negligence can be adduced, in cases where there is sufficient material to put the accused on trial. It is trite law that the evidence has to be examined on preponderance of probabilities and standard of proof beyond reasonable doubt cannot be applied in such



cases. Relevant paragraphs are extracted as under for reference:

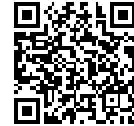
> *"8. In United India Insurance Co. Ltd. v. Shila Datta [(2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (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.*
>
> *…*
> *10. The cases of the parties before us will have to be examined from the perspective of the principles and propositions laid down in Bimla Devi case [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] and Shila Datta [(2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] . While it is correct that the pillion rider could have best unfolded the details of the accident what cannot be lost sight of is the fact that while the accident occurred on 29-6-1997 the evidence before the Tribunal was recorded after*



> *seven years i.e. in the year 2004. Keeping in view the nature of the jurisdiction that is exercised by a Claims Tribunal under the Act we do not think it was correct on the part of the learned Tribunal to hold against the claimants for their failure or inability to examine the pillion rider Rosario Antao as a witness in the case. Taking into account the hapless condition in which the claimants must have been placed after the death of their sole breadwinner and the sufficiently long period of time that has elapsed in the meantime, the learned Tribunal should not have treated the non-examination of the pillion rider as a fatal and fundamental law to the claim made before it by the appellant."*
>
> (emphasis added)

21. In order to fortify their argument, further reliance was placed on Supreme Court's decision in ***Sunita*** (*supra*) where the Court reiterated that once the foundational fact of the accident stands established, the Tribunal's task is to determine just compensation on the basis of the material placed before it and that the Tribunal is not strictly bound by the pleadings of parties. Moreover, standard of proof should be one of preponderance of probabilities, decisively holding that the absence of testimony of pillion rider (*therein*) shall not be detrimental to claimants' case, as the Courts should not adopt a hyper technical in such cases. Relevant findings are extracted as under:

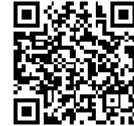
> *"34. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non-examination of some "best" eyewitness in the case but to analyse the evidence 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 [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , 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."*
>
> (emphasis added)

22. This stance has been reiterated by the Supreme Court in ***Vimla Devi*** (s*upra*) where claimants were not disentitled to the claim due to non-exhibition of documents, when there was sufficient material on record to establish the identity of offending vehicle. Keeping in view the beneficial nature of legislation and the evidence put forth by claimants, the Court awarded compensation and made the relevant findings extracted hereinbelow:

> *"20. Keeping in view the aforementioned principle of law, when we examine the facts of the case at hand, we are of the considered opinion that the Claims Tribunal and the High Court were not justified in dismissing the appellants' claim petition. In our view, the appellants'*



claim petition ought to have been allowed for awarding reasonable compensation to the appellants in accordance with law. This we say for the following reasons:

20.1. *Firstly, the appellants had adduced sufficient evidence to prove the accident and the rash and negligent driving of the driver of the offending vehicle, which resulted in death of Rajendra Prasad.*

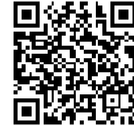
20.2. *Secondly, the appellants filed material documents to prove the factum of the accident and the persons involved therein.*

20.3. *Thirdly, the documents clearly established the identity of the truck involved in the accident, the identity of the driver driving the truck, the identity of the owner of the truck, the name of the insurer of the offending truck, the period of coverage of insurance of the truck, the details of the lodging of FIR in the police station concerned in relation to the accident.*

20.4. *In our view, what more documents could be filed than the documents filed by the appellants to prove the factum of the accident and the persons involved therein.*

20.5. *Fourthly, so far as the driver and owner of the truck were concerned, both remained ex parte since inception and, therefore, neither contested the appellants' claim petition nor entered into the witness box to rebut the allegations of the appellants made in the claim petition and the evidence. An adverse inference against both could be drawn.*

20.6. *Fifthly, so far as the Insurance Company is concerned, they also did not examine any witness to*



rebut the appellants' evidence. The Insurance Company could have adduced evidence by examining the driver of the offending truck as their witness but it was not done....”

(emphasis added)

23. Culling out the law on proof of negligence and considering that the matter has to be decided on preponderance of probabilities and not on the basis of proof beyond reasonable doubt, the Supreme Court in its decision in ***Mathew Alexander*** (*supra*) reiterated previous decisions of ***Bimla Devi v. Himachal Road Transport Corporation*** (2009) 13 SCC 530 and ***Dulcina Fernandes*** *(supra),* noting as under:

> *“9. Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.*
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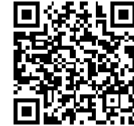
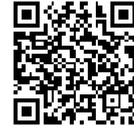
> *In this context, we could refer to judgments of this Court in the case of N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal reported in AIR 1980 SC 1354, wherein*



> *the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case of Bimla Devi vs. Himachal Road Transport Corporation ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. 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 vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi."*

(emphasis added)

24. Conversely, counsel for appellant/Insurance Company placed reliance on ***Minu B. Mehta*** (*supra*) to state that in order to award compensation, negligence needs to be proved by the claimant. Upholding the finding on negligence, the Supreme Court observed that no damages would be payable without proof of negligence on the part of driver of motor vehicle involved in



the accident. It was further observed that provisions of Chapter VIII of Motor Vehicles Act, 1939 were merely procedural and had not altered the substantive law. Relevant findings of the Court in that regard are extracted as under:

> *"23. The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English law. The relevant sections found in the three English Acts Road Traffic Act, 1930, the Third Parties (Rights against Insurance) Act, 1930 and the Road Traffic Act, 1934 were incorporated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the person damaged or injured should be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff, and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car.*
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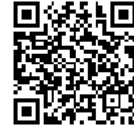
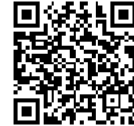
> *…*



> *27. This plea ignores the basic requirements of the owner's liability and the claimant's right to receive compensation. The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results."*

(emphasis added)

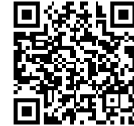
25. It may be relevant to note that the above observations made the Court in ***Minu B. Mehta*** (*supra*) were overruled by the Supreme Court in ***Gujarat SRTC v. Ramanbhai Prabhatbhai*** (1987) 3 SCC 234 to a limited extent where the Court in *paragraph 8* observed that, the observations made in ***Minu B. Mehta*** (*supra*) were in the nature of *obiter dicta,* since there was no necessity to go into the question of whether proof of negligence on the part of the driver of motor vehicle was necessary or not to claim damages under Chapter VIII of the Motor Vehicles Act, 1939, as negligence had already



been established by both High Court and Supreme Court in that case.

26. Further reliance was placed on ***Meena Variyal*** (*supra*), where the Supreme Court reiterated the position taken in ***Minu B. Mehta*** (*supra*) regarding the finding of negligence on the part of driver and owner of offending vehicle when a claim petition has been filed under Section 166 of Motor Vehicles Act, 1988. Relevant observations are extracted as under:

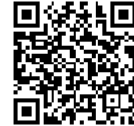
> *"26. Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel relied on Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] in support. In that decision, this Court clarified that the observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VII-A of the 1939 Act and the introduction of Section 92-A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110-A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as amended. This Court did not have the occasion to construe a provision like Section 163-A of the Act of 1988 providing for compensation without proof of negligence*



in contradistinction to Section 166 of the Act. We may notice that Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] was decided by three learned Judges and the Gujarat SRTC case [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] was decided only by two learned Judges. An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. On a careful understanding of the decision in Gujarat SRTC [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163-A of the Act of 1988, we are persuaded to think that the so-called obiter observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163-A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] deserve to be ignored."

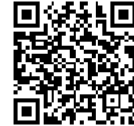
(emphasis added)

27. Attention was drawn to this Court's decision in ***Devki*** (supra) where the Tribunal had arrived at a finding of negligence by relying upon certified



copies of record of criminal case such as FIR, mechanical inspection report, *post mortem* report, which was appealed by the Insurance Company. Allowing the appeal and remanding the matter back to the Tribunal, this Court observed that in a claim petition filed under Section 166, the burden is on claimants to prove negligence. Moreover, the witness whose statement was recorded in the criminal proceedings, could have been summoned and the matter was thereafter, remanded to accord an opportunity to claimants to adduce further evidence. Relevant findings of this Court are extracted hereinbelow for reference:

> *"5. It is well settled that in proceedings arising out of a claim petition under Section 166 of MV Act based on fault liability principle, a person cannot be held liable unless he contravenes any of the duties imposed on him by the common law or by the statute. In the case of a motor accident it is imperative that the claimants show by some evidence that the driver of the motor vehicle had been negligent in relation to the said vehicle and thereby had caused an accident resulting in bodily injuries or death or damage to the property so as to be held liable as the principal tort-feasor. The owner's liability arises out of his failure to discharge a duty cast on him by the law, on the principle of vicarious liability. Proof of negligence is necessary before the owner or the insurance company may be held liable for payment of compensation in a motor accident claim case brought under Section 166 MV Act.*
> *6. The law to above effect declared in Minu B Mehta v. Balkrishna Ramchanra Nayan (1977) 2 SCC 441 was reiterated by Supreme Court in Oriental Insurance Company Ltd. v. Meena Variyal 2007 (5) SCC 428. It appears there was some confusion raised with regard to*



these principles on account of view taken in the case of Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai (1987) 3 SCC 234. In Meena Variyal (supra) the Supreme Court clarified as under :

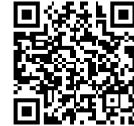
> *"On a careful understanding of the decision in Gujarat State Road Transport Corporation (supra) we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163A of the Act of 1988, we are persuaded to think that the so called obiter observations in Minu B. Mehta's case (supra) govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in Minu B. Mehta's case should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B. Mehta's case deserve to be ignored."*

7. In Pushpa Rana (supra), the learned Single Judge of this Court holding the case of the claimant as duly proved on the basis of the certified copies of the record of the corresponding criminal case, while dealing with identical contention took note of the judgment in Meena Variyal (supra) but proceeded to observe thus:

> *"13. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the Judgment of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. Meena Variyal*

(supra). On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."

8. In the facts and circumstances, this Court finds it difficult to follow the view taken in Pushpa Rana (supra). Since the law declared by the Supreme Court in Meena Variyal (supra) is binding, there is no escape from the conclusion that it is the burden of the claimants in a petition under section 166 of MV Act to prove negligence. Should they find it difficult to prove evidence with regard to negligence, the option to have resort to no- fault liability on the structured formula under Section 163A of MV Act is always available to seek just compensation. The case of Bimla Devi (supra) cannot be an illustration to hold otherwise inasmuch as it is clear from the narration of facts noted therein that an eye witness was available and the conclusion on facts had been reached on the basis of his



testimony.

9. It is clear from the perusal of the evidence adduced before the Tribunal, and the view taken thereupon, that the claimants did not examine any witness, whether in the nature of eye witness of the actual occurrence or of the circumstances attending upon the events leading to the death. The version of the conductor Manoj Kumar in the FIR (Ex.PW1/1) is in the nature of his statement to the police under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). It is trite that a statement whether made under Section 154 or Section 161 Cr.P.C. cannot be treated as evidence in the strict sense of the term. The said witness, it is conceded, has been available all along and could have been summoned to prove the circumstances. It may be that there is no eye witness available to the actual occurrences wherein the deceased went to sleep on the ground during the night near the Kela Devi fair and on next morning was found having been crushed by the offending bus. But then, the circumstances in which the deceased had retired for the night, and the circumstances in which his dead body was found crushed under the wheels of the said bus at least could have been brought home through evidence which is available. In absence of the witnesses of such circumstances, the principle of res ipsa locutor also cannot be invoked on the available material brought before the Tribunal.

10. Faced with above situation, the learned counsel for the claimants fairly conceded that the conclusions on facts reached by the Tribunal cannot be denied. He submitted that since the conductor on whose statement the FIR had been registered has been available, in order not to deny just compensation to the next of kin of the deceased, justice demands that fresh opportunity be given to them to bring the said witness before the Tribunal. The counsel submitted that while the appeal

> *of the insurance company may be allowed, the claimants' case may be remitted to the Tribunal for further inquiry. The counsel for the appellant insurance company submitted that he has nothing to say on this prayer."*
>
> (emphasis added)

28. In order to further emphasize the contention that a claim petition filed under Section 166 requires the claimant to prove negligence, reliance was placed on ***Surender Kumar Arora*** (*supra*) by counsel for appellant/Insurance Company. Relevant paragraph is extracted as under:

> *"6. The learned counsel Shri S.L. Gupta, appearing for the respondent Insurance Company would submit that since the petition that was filed by the parents of the deceased person was under Section 166 of the Act, the entire responsibility of proving the act of rash and negligent driving by the driver of the vehicle was on the claimants and since that was not done by adducing cogent evidence, the courts below were justified in rejecting the claim petition filed by the appellant claimants under Section 166 of the Act. In aid of his submission, the learned counsel has drawn our attention to the observations made by this Court in Oriental Insurance Co. Ltd. v. Meena Variyal."*

29. The impugned award dated 26th November 2020 was passed by the Tribunal post-remand by this Court by order dated 9th May 2016. Necessity of remand was explained by the Court and the relevant observations are extracted as under:

> *"2. The tribunal has returned a finding upholding the case that the death had occurred due to involvement of the bus and*

the negligent driving thereof by its driver, primarily on the statement of the first claimant (first respondent) who appeared as a witness (PW-1) tendering her affidavit (PW1/1) and a copy of the record of investigation relating to the first information report (FIR) no.308/2010 of PS R.K. Puram.

3. The insurance company which has been fastened with the liability to pay the compensation awarded by the tribunal by the judgment dated 31.10.2012, raises the prime issue of there being no evidence adduced about the involvement of the bus and negligence on the part of its driver. It may also be added that the insurer further questions the computation of compensation as well.

4. PW-1, the solitary witness examined with regard to the involvement of the bus and negligence was admittedly not an eye witness. On being asked, the counsel for the claimants submitted that he may now be given an opportunity to prove the necessary facts by proper evidence, in as much as the eye witness was available, he being the person travelling on the motorcycle with the deceased at the same point of time.

5. With this submission, the counsel fairly concedes that the impugned judgment may be set aside and the matter remitted to the tribunal.

6. In the above facts and circumstances, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry in accordance with law. In the further inquiry, the claimants shall be entitled to entitled to lead further evidence. Needless to add, the parties which contest will be entitled to cross-examine the witnesses to be further examined by the claimants and also lead evidence in rebuttal. After giving such opportunity, the tribunal shall pass a fresh judgment with an open mind without feeling bound by the view taken earlier. The parties shall appear before the tribunal on 07.06.2016."

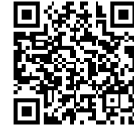
(emphasis added)

30. Impugned award notes that the parties did not appear before the Tribunal on 7th June 2016, thereafter, the claim petition was dismissed for want of prosecution and then set aside by an application under Order IX Rule 9 of Code of Civil Procedure, 1908 ('***CPC***') on 5th March 2020. At that stage, counsel for claimants, stated before the Tribunal that the eyewitness was not available and his evidence be closed, which was thereafter, closed and matter was fixed for arguments.

31. Counsel for claimants, instead relied upon certified copies of criminal proceedings relating to the accident, where the eyewitness/*Pawan Kumar* had been examined and cross examined. On the strength of that record, counsel for claimants, argued that the accident had occurred due to rash and negligent driving of the offending vehicle/bus. As narrated above, deceased was the pillion rider of the bike driven by *Pawan Kumar* and the collision took place with the bus driven by respondent no.5 and owned by respondent no.6. PCR came to the spot and found the deceased under the bus, after which he was shifted to Batra Hospital, where he succumbed to his injuries on the following day.

32. Counsel for appellant/Insurance Company, once again raised the issue before the Tribunal that the eyewitness, who was a colleague of the deceased had not been examined.

33. Tribunal noted that opportunities were given to examine the eyewitness, however, he was not available. Benefit of examination before the Criminal Court was available to the Tribunal which had been relied upon. Charge-sheet had been filed against the bus driver. Further, SI *Janak Raj*, IO



had also been examined in the criminal proceedings, wherein, he deposed that he found the offending vehicle/bus and the bike in accidental condition and a person lying under the centre part of the offending vehicle/bus lengthwise.

34. The issue raised by counsel for appellant/Insurance Company, that the bus tyre did not have blood stains, was rightly considered by the Tribunal as not being relevant considering that the IO had deposed that the deceased was found under the bus in the centre part. *Post mortem* report further stated that the cause of death was due to *cranio cerebral* damages as a result of crush injury. Accordingly, in the opinion of this Court, the Tribunal was not amiss in deciding the issue of negligence in favour of claimants.

35. In this regard, it must be noted that the assessment done by any Tribunal is effectively based on three fundamental principles – ***first***, the procedure before the Tribunal is in nature of an *inquiry* and not akin to an adversarial *lis*, therefore, not bound by strict rules of evidence; ***second***, depending on the facts of the accident itself, applying the doctrine of *res ipsa loquitur* would shift the burden on the respondent/defendant to prove that they had taken full care to avoid unforeseeable harm and; ***third***, the ultimate assessment has to be on the basis of preponderance of probabilities. These principles have been reiterated time and again by the Supreme Court in various judgments.

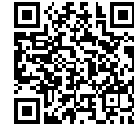
36. It may be true that an eyewitness is not available in every case. Undoubtedly, the Tribunal has powers under Section 169 of Motor Vehicles Act, 1988 (‘***MV Act***’) to compel the presence of any person who has special

knowledge of the accident. However, the Supreme Court in ***Anita Sharma v. New India Assurance Co. Ltd.***, (2021) 1 SCC 171 has stated that the non-examination of best eyewitnesses, as may happen in a criminal trial cannot be a reason for the Tribunal to not go ahead and determine the issue of negligence based on material placed before it.

37. This is because the procedure before the Tribunal is not bound by rules applicable to adversarial *lis,* but is based on an assessment of facts placed before them on the issue of negligence, on the touchstone of preponderance of probabilities. It also does not mean, as the Supreme Court stated in ***Meena Variyal*** (*supra*), that the Tribunal will jettison all fundamental principles of law, but that the essential foundational facts will have to be established by the claimant, on the basis of which the Tribunal, if convinced, can draw an inference either on bare facts or on application of the doctrine of *res ipsa loquitur* and the burden will then shift on respondent/defendant to prove that they took full care to avoid any foreseeable consequences.

38. In this process of inquiry and applying preponderance of probabilities, the Supreme Court has further reiterated that reliance on criminal proceedings, in particular FIR and charge-sheet would tilt the balance in favour of claimants, particularly, when no protest has been filed against the charge-sheet. Moreover, testimonies recorded during criminal proceedings, if any, eyewitness or otherwise, have testified against the driver of offending vehicle, as regards negligence.

39. It would be apposite to refer to decisions of the Supreme Court in this



regard, which may be relevant.

40. The Supreme Court in ***Ranjeet v. Abdul Kayam Neb***, 2025 SCC OnLine SC 497 has recently reiterated its position on the said issue, where it stated as under:

> *"**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 eyewitnesses 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."*
> (emphasis added)

41. In ***Meera Bai v. ICICI Lombard General Insurance Company Ltd. & Anr.*** 2025:INSC:600, the Supreme Court has observed that in cases where the eyewitness was not examined, reliance on FIR and charge-sheet was enough for the finding of negligence to be established. In this regard, the relevant paragraphs are as under:

> *"2. The claimants before the Tribunal have filed an appeal from the order of the High Court which allowed the appeal of the insurance company and dismissed the claim petition for reason of no eyewitness having been examined to prove the rash and negligent driving.*
> *3. On facts, it needs to be stated that the accident occurred on 29.01.2015 when the deceased was travelling pillion in a motorbike driven and owned by the second respondent. The FIR was lodged against the owner driver of the vehicle for the offence of rash and negligent driving. A charge sheet was filed against the owner driver. The owner driver filed a*

written statement before the Tribunal denying the rash and negligent driving on his part, however he did not mount the box to depose that it was not due to his fault that the accident occurred.

4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established.”

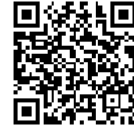
(emphasis added)

42. In ***Srikrishna Kanta Singh v. Oriental Insurance Co. Ltd.***, 2025 SCC OnLine SC 636, the Supreme Court observed as under:

*“**8.** The accident occurred on 03.11.1999 upon which a First Information Report was registered produced as Annexure P-4. Annexure P-4 clearly indicates that the trailer was found to have been driven rashly and negligently; the owner of which was the 1st respondent before the Tribunal and the insurer, the 3rd respondent. The charge sheet has also been filed which is produced as Annexure P-9. After investigation, the charge sheet clearly found that the accident was caused due to the negligence of the driver of the trailer and arrayed him as the accused. PW 1 who was riding pillion also spoke of the rash and negligent driving of the trailer.*

…

***11.** In a motor accident claim, there is no adversarial litigation and it is the preponderance of probabilities which reign supreme in adjudication of the tortious liability flowing from it, as has been held in Sunita v. Rajasthan State Road Transport Corporation. Dulcina Fernandes v. Joaquim Xavier Cruz is a case in which the rider, who also carried a pillion, died in an accident involving a pick-up van. There was a contention taken that the claimants who were the legal heirs of the deceased had not cared to examine the pillion rider and hence the version of the respondent in the written*



> *statement that the moving scooter had hit the parked pick-up van, was to be accepted. It was found, as in the present case, that the Police had charge-sheeted the driver of the pickup van which prima facie showed negligence of the charge-sheeted accused. Similarly in the present case also, the Police after investigation, charge-sheeted the driver of the trailer finding clear negligence on him, which led to the accident. This has not been controverted by the respondents before the Tribunal by any valid evidence nor even a pleading. In fact, the Tribunal, on a mere imaginative surmise, found that since the scooter collided with the tail-end of the trailer, it can be presumed that the driver of the scooter was not cautious, which in any event is not a finding of negligence.*
>
> ***12.** Finding that the driver was not cautious is one thing and finding negligence is quite another thing. Prima facie, we are satisfied that the negligence was on the trailer driver as discernible from the evidence recorded before the Tribunal; standard of proof required being preponderance of probability as has been reiterated in Mangla Ram v. Oriental Insurance Company Limited"*
>
> (emphasis added)

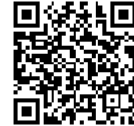
43. As discussed in *paragraph 20* above, on one hand, there is a reiteration by the Supreme Court in various judgments, regarding the nature of proceedings before the Tribunal and the test of preponderance of probabilities to consider proof of negligence. On the other hand, the decision of Supreme Court in ***Meena Variyal*** (*supra*) is often cited by counsels for Insurance Companies seeking to state that such reliance cannot be made. However, one must carefully examine the decision in ***Meena Variyal*** (*supra*).

44. Respondents/claimants in ***Meena Variyal*** (*supra*) had sought to

submit that there was no obligation on claimant to prove negligence, relying upon the decision ***Gujarat SRTC*** *(supra)* where the Court had clarified that observations in ***Minu B. Mehta*** *(supra)* were one in the nature of *obiter dicta.* Supreme Court in ***Meena Variyal*** (*supra*) clarified that the Court did not state that in a claim based on negligence, there is no obligation to establish negligence. In ***Minu B. Mehta*** *(supra)*, the Supreme Court was dealing with no fault liability and a departure from Fatal Accidents Act, 1855 leading to a theory of strict liability. The Court did not have an occasion to construe a provision like 163-A of MV Act, which provides for compensation without proof of negligence in contradistinction to Section 166 of the MV Act. Moreover, ***Minu B. Mehta*** *(supra)* was decided by a three Judge Bench while ***Gujarat SRTC*** *(supra)* was decided by a two Judge Bench.

45. Therefore, the Supreme Court in ***Meena Variyal*** (*supra*) stated that the *obiter dicta i*n ***Minu B. Mehta*** *(supra),* though, not binding, had clear persuasive authority. ***Minu B. Mehta*** *(supra)* merely said that proof of negligence was necessary, but the Supreme Court in ***Meena Variyal*** (*supra*) clarified that these *obiter* observations governed a claim under Section 166 of the MV Act and were inapplicable when claim was made under Section 163-A of the Act.

46. This clarification by the Supreme Court merely reiterates a fundamental position under law, that, in a claim for liability based on negligence, claimant does have to prove negligence. However, what is the nature of that onus on the claimant needs to be understood. The claimant,



who may be injured or a legal representative of the deceased, resulting from an accident, can at best provide facts of the accident which are available to them, by themselves or through police records to a Tribunal. This would include aspects of the nature of collision, vehicles involved, location of the vehicles, *situs* of the accident and in some cases involve an eyewitness testimony, as well. Beyond that, from this conspectus of facts, can an inference of negligence be drawn out. Onus on the claimant cannot be more than this, considering that the claimant would not have access to the information, which is otherwise available to respondent/driver, as to the conduct of respondent/driver while driving the offending vehicle at the time when the collision took place or the events leading to the collision.

47. At best, that can only be achieved by the claimant in cross-examination of the driver of offending vehicle, which as often seen in practice, do not appear before Tribunals, the liability being borne by the Insurance Company. Having discharged the onus to this extent, the Supreme Court's observation in ***Meena Variyal*** (*supra*) having endorsed the *obiter dicta* of ***Minu B. Mehta*** *(supra),* for a claim under section 166 of the MV Act, does not mean that this onus is jettisoned. But it also does not mean that there is something greater than this onus on the claimants to discharge for proving a claim.

48. It has to be emphasized for this reason and considering the nature of accidents and collisions, jurisprudential principles *of res ipsa loquitur* and preponderance of probability have to be applied. Else, the burden of proof on claimant would be as good as that in a civil claim or, in fact, closer to beyond

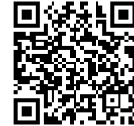
reasonable doubt. Marshalling of all available facts relating to the accident, undoubtedly has to be done and the Tribunal must, in its process of inquiry, attempt to achieve the same.

49. Therefore, the Court is of the opinion that, in this process, the Tribunal can rely upon testimonies made in a Criminal Proceeding, which has led to filing of a charge sheet, which has not been set aside or protested, to be persuasive data to apply the test of preponderance of probabilities.

50. Which is why the line of reasoning provided by this Court in ***Pushpa Rana*** *(supra),* as noted above in *paragraph 18*, has been repeatedly endorsed, till, as recently as in ***Mathew Alexander*** (*supra*), which relied upon a line of judgments upholding the principle of preponderance of probabilities.

51. Therefore, the Court does not find anything amiss in the impugned award passed by the Tribunal, post the remand, having relied upon the testimony of eyewitness before the Criminal Court, and the factum of FIR followed by a charge sheet, thereby, holding respondent no.5/driver of offending vehicle as negligent. To this extent, plea of the appellant/Insurance Company is not tenable.

52. As regards the quantum of compensation, counsel for appellant/Insurance Company, has argued that the annual income of deceased was fixed by the Tribunal at Rs.4,51,400/-, by including income of Rs.30,000/- earned as commission income from working as an Insurance Agent with LIC, beside his salaried income, which should not have been included.



53. Assessment of income of deceased should be based on what was received by the deceased at the time of the accident, be it, the salaried income, any additional amount earned or otherwise, which, in this case, is the commission earned from LIC. There is no cogent reason for such earnings which he was receiving as commission to be excluded.

54. While calculating dependency, the Courts have to compute an amount using a multiplier, so that a certain annuity can be purchased, which would lead to the family income being sustained. Considering that the commission earned from LIC over a reasonable period of years has been supported by documents issued by *Chief Manager, LIC Nehru Place, New Delhi*, there is no reason why it would have been discontinued or excluded, even though the amounts may be not be uniform over the years. The rationale behind calculating income is to use the benchmark at the time of accident and what the family would require for loss of dependency.

55. In this case, in *paragraph 16* of the impugned award, the Tribunal has assessed the issue of commission earned from LIC, by considering the average commission earned in the previous 3 financial years being, 2011-2012, 2010-2011, (*considering that the accident happened in September 2010*) and 2009-2010. Considering that the commission earned during 2011-2012 would have been accrued commission, it was less than the commission accrued during financial years 2009-2010 and 2010-2011. The Tribunal considered an average of the 3 years to be around Rs.30,000/-. Therefore, the plea raised by appellant/insurance company, in this regard, is also rejected and the income assessed for the purposes of dependency is

sustained.

56. Another issue argued by appellant/Insurance Company is the reduction of 1/4th towards personal and living expenses, having considered four dependents, including, the father of deceased. To this effect, it is noted that the deceased was 35 years of age at the time of his death and employed as a Senior Manager *(accounts and finance)* in a private company, *Sinewave Technologies*, earning a monthly salary of Rs.38,500/-.

57. Respondent no.1/wife of deceased, in her testimony as ***PW-1***, stated herself to be 40 years of age, her child to be 3 years of age, and parents of deceased as 63 and 61 years of age. Considering the factual matrix, the Tribunal was correct in assessing the dependency of parents as well, considering that they were both above 60 years of age. Therefore, reduction of 1/4th towards personal and living expenses is considered appropriate. In her cross-examination, respondent no.1/wife of deceased, ***PW-1***, was not confronted on these aspects or given any suggestion otherwise on this issue, therefore, her testimony would withstand and will be sustained.

58. The residual issue being award of interest at the rate of 7.5% per annum, along with 12% penal interest shall not be disturbed, as the assessment made by the Tribunal was on the basis of fixed deposit rates prevalent at the time of the accident. Further, no material has been provided by appellant/Insurance Company to displace the finding of the Tribunal in this regard. Therefore, the interest rates awarded by the Tribunal shall be sustained.

59. Accordingly, the appeal stands dismissed.

60. This Court *vide* order dated 20th September 2021 noted that at the time of the first appeal, awarded amount was deposited with UCO Bank, Delhi High Court and 50% was directed to be released to claimants and balance was kept in fixed deposit. It was also stated by the counsel for appellant/Insurance Company, that the balance amount was still lying in UCO Bank, Delhi High Court. Remaining balance amount shall continue to be disbursed as per the scheme of Tribunal.

61. By way of the first award passed on 31st October 2012, the Tribunal had awarded Rs.62,36,940/- along with interest at 7.5% per annum, which was enhanced to Rs.63,81,940/- along with interest at 7.5% per annum. Considering that the appeal has been dismissed, appellant/Insurance Company is directed to deposit Rs. 1,45,000/-, along with accrued interest, with the Registrar General of this Court within 4 weeks. This amount shall be disbursed to the claimants as per the scheme of the Tribunal.

62. Statutory deposit, if any, be refunded to appellant/Insurance Company, only if the order of deposit has been complied with.

63. Pending applications are rendered infructuous.

64. Judgment be uploaded on the website of this Court.

ANISH DAYAL
(JUDGE)

APRIL 17, 2026/SM/*sp*