

Court No. - 33**Reserved**
A.F.R.**Case :-** FIRST APPEAL FROM ORDER No. - 535 of 2001**Appellant :-** Ram Dulari**Respondent :-** Smt. Saroj Devi And Another**Counsel for Appellant :-** Santosh Tripathi, Amit Kumar Singh, Ram Singh**Counsel for Respondent :-** Arun Kumar Shukla**Hon'ble J.J. Munir, J.**

1. This claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award of Mr. Sarvat Ali Khan, the Motor Accident Claims Tribunal/ the Additional District Judge, Court No.1, Allahabad dated 24th February, 2001, declining the claim under Section 166 of the Act last mentioned and awarding for 'no fault' liability alone.

2. The facts giving rise to this appeal make a brief count.

3. On the 16th of June, 1997 in the morning hours, the claimant's husband, Ramroop was proceeding from his Village to Atrampur Post Office in order to withdraw and deposit money. After finishing his work, he was proceeding to Post Office Senghar when at about 11.30 a.m., Truck No. UP-70H-9920, driven at a high speed, proceeding from the Allahabad end of the road, approached. The driver operating the vehicle negligently hit the deceased's bicycle on the rear side, crushing him under its wheels. The accident is said to have happened in front of one Satya Narain's house, the Local Sarpanch. The truck escaped towards Pratapgarh. Ramroop, the claimant's husband died on the spot. He left behind him a family of three dependents, to wit, his widow Smt. Ram Dulari and two unmarried daughters, Asha Devi and Sangeeta Devi, aged 18 and 15 years in that order. The deceased was a government

servant, a *Grih Darshak*, posted at the Community Health Centre, Karchhana, Allahabad. He was in receipt of a gross salary of Rs.4578/- per *mensem* and a net of Rs.4398/-. The deductions of Rs.180/- were beneficial, being those towards his contributions to the general provident fund account and group insurance. The claimant, accordingly, demanded for herself and the two other dependents of the deceased, a total compensation in the sum of Rs.5,65,000/-.

4. The claimant-appellant, who has instituted this claim petition, unless the context requires an individual or different reference, shall hereinafter be called 'the claimant'.

5. The truck bearing Registration No. UP-70H-9920, which caused the accident, is owned by one Smt. Saroj Devi. She has been impleaded as opposite party No.1 to the claim petition and respondent No.1 to this appeal. She would hereinafter be referred to as 'the owner', unless the context requires an individual or different reference.

6. The New India Assurance Company Limited, Allahabad are the insurers of the offending truck. They are impleaded as opposite party No.1 to the claim petition and respondent No.2 to this appeal. They will, hereinafter, be referred to as 'the Insurers'.

7. A written statement was filed on behalf of the owner, where in para-wise reply to the claim petition, there is a general denial, except the fact that the ownership of the offending vehicle is acknowledged. In the additional pleas, the owner has averred that the offending truck is insured with the Insurers vide Policy No. 3131422000550 21/361, valid from 26.02.1997 to 25.02.1998. It is the owner's case that the offending truck was being driven by one Mehtab Khan, who held a valid driving

licence. The Police have incorrectly shown the driver to be one Durga Prasad Tiwari, who has no connection with the owner. According to her, the Police have filed a charge-sheet against a driver on mistaken identity. The owner has also denied the accident.

8. In the written statement filed on behalf of the Insurers, there is a general denial of the assertions and in the additional pleas it is said that it is incorrect to assert that the deceased died of the injuries sustained in the alleged accident. It is also denied that the accident was caused by the offending truck. There is also a denial of the fact that the accident took place due to rash and negligent driving by the driver of the offending truck. The identity of the claimants mentioned in the petition as dependents of the deceased is denied as well as the deceased's income or the post that he held at the time of his demise. There is then an averment that in the absence of complete particulars of the insurance policy, it is denied at the stage of pleadings that the offending truck was insured by the Insurers. If, however, the insurance policy, produced by the owner or the claimant at any subsequent stage, shows the Insurers to be the ones, who have issued the policy, they reserve their right to file an additional written statement. The fact that the offending truck was driven by a man duly licensed to drive it was denied, citing want of knowledge. The owner was put to strict proof of the fact. The Insurers also availed of the plea that their liability was subject to the provisions of Section 64(v)(b) of the Insurance Act.

9. On the pleadings of parties, the Tribunal framed the following issues (translated into English from Hindi):

"(1) Whether on 16.06.1997 at about 11.30 in the morning hours, near Police Station Nawabganj,

Allahabad, within the local limits of Police Station Nawabganj, Truck No. UP-70H-9920, on account of its driver driving it at a high speed and negligently, caused accident, where the deceased Ramroop sustained grievous injuries, resulting in his death on the spot?

(2) Whether the driver of Truck No. UP-70H-9920, at the time of the aforesaid accident, held a valid driving licence?

(3) Whether at the time of the accident, Truck No. UP-70H-9920 was validly insured with opposite party No.2 and other papers of the truck were valid? If yes, its effect?

(4) Whether the claimant is entitled to compensation on account of the death that happened in the accident? If yes, how much and from which opposite party?"

10. The claimant appeared in the witness-box herself as PW-1 and testified. In addition, documentary evidence was also produced. *Vide* list 29-Ga, a certificate of heirs relating to the deceased and a salary certificate in original issued by the Superintendent and In-charge Officer, Community Health Centre, Karchhana, Allahabad were filed. A list, paper No.31-Ga was filed on behalf of the claimant carrying a certified copy of the FIR, a certified copy of the charge-sheet, a certified copy of the postmortem report relating to the deceased, another salary certificate in original, paper No.35-Ga, a photostat copy of the deceased's High School certificate issued by the U.P. Board of High School and Intermediate Education and a certified copy of the site-plan.

11. The owner along with a list 17-C filed two documents, a photostat copy of the insurance policy and a photostat copy of the driving licence relating to one Mehtab Khan.

12. The Tribunal in returning its finding on Issue No.1 held that accident involving the offending truck is proved, leading to

his death on the spot, but in the absence of evidence, it could not be proved that the offending truck was being driven at a high speed and negligently.

13. Issue No.2 has been decided in favour of the claimant and against the Insurers holding that the driver of the offending truck had a valid driving licence.

14. Issue No.3 was also answered in favour of the claimant and against the Insurers holding that on the date of the accident, the offending truck was validly insured with the Insurers.

15. So far as Issue No.4 is concerned, a compensation of Rs.50,000/- was awarded to the claimants as no fault liability, because of the Tribunal's finding on Issue No.1 that negligence of the offending truck was not proved in the accident, so as to make out a case under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988').

16. Heard Mr. Ram Singh, learned Counsel for the claimant and Mr. Arun Kumar Shukla, learned Counsel appearing on behalf of the Insurers. No one appears on behalf of the owner.

17. So far as the factum of the accident and involvement of the offending truck is concerned, the same is proved because during hearing before the Tribunal, the learned Counsel representing the owner, made a statement admitting the accident involving her vehicle. The Police after investigation also have charge-sheeted the driver of the offending truck in the relative crime *vide* charge-sheet dated 14.09.1997, albeit finding that the driver of the offending truck was one Durga Prasad Tiwari son of Ram Awadh Tiwari, whereas according to the claimant, the driver of the offending truck was a certain

Mehtab Khan. The owner has filed the copy of a driving licence of Mehtab Khan on record acknowledging him to be the driver of the offending truck. The Police, however, have charge-sheeted a different man as the driver of the offending truck, but they too found that it was Truck No. UP-70H-9920, the owner's vehicle that caused the accident.

18. Whoever was the driver of the offending truck, it is certainly within the knowledge of the owner and the driver as to what was the cause of the accident, and, *a fortiori* the negligence, if any, of the driver involved, assuming that there was no eye-witness of the accident. Of whatever evidence is forthcoming, may be circumstantial, points to the negligence of the offending truck. The chief amongst these circumstances is the fact that the deceased was hit from the rear side by the offending truck. A look at the site plan drawn up by the Police, part of the charge-sheet, indicates that the truck driver would have seen the cyclist from a distance sufficient to brake and avert the accident. The site plan shows the place of accident as 'A'. It is slightly moved from the left but not entirely in the centre of the road. The road shown in the site plan is straight and it does not suggest any kind of a sudden bend. To the right of 'A' too, there was sufficient space for the truck to have passed by safely overtaking the deceased. The site plan is strongly suggestive of the offending truck driver's negligence.

19. Whatever happened on the fateful day would certainly be within the knowledge of the owner and her driver, assuming that there was no other eye-witness. There being circumstances to suggest that the offending truck was negligent, burden would lie upon the owner to offer evidence showing that there was no negligence on the driver's part. In this context, the principle of *res ipsa loquitur* has been resorted to in case of motor

accidents, where an accident happened, the cause whereof is within the offending party's knowledge. The principle was acknowledged by the Supreme Court in the case of a motor accident of a different kind, that is to say, the owner's truck catching fire and resulting in one of the employees' death, when he jumped off truck to save himself. This was the principle in **Shyam Sunder and others v. State of Rajasthan, (1974) 1 SCC 690**, where it was held:

"9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim *res ipsa loquitur* is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim *res ipsa loquitur* applies.

10. The maxim is stated in its classic form by Erle, C.J.: [*Scott v. London & St. Katherine Docks*, (1865) 3 H&C 596, 601]

"... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle [*Ballard v. North British Railway Co.*, 1923 SC (HL) 43]. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any

specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, *The Law of Torts*, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant (see *Barkway v. S. Wales Transo* [(1950) 1 All ER 392, 399]).

11. The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability.

12. The answer needed by the defendant to meet the plaintiff's case may take alternative forms. Firstly, it may consist in a positive explanation by the defendant of how the accident did in fact occur, of such a kind as to exonerate the defendant from any charge of negligence.

13. It should be noticed that the defendant does not advance his case by inventing fanciful theories, unsupported by evidence, of how the event might have occurred. The whole inquiry is concerned with probabilities, and facts are required, not mere conjecture unsupported by facts. As Lord Macmillan said in his dissenting judgment in *Jones v. Great Western* [(1930) 47 PLR 39] :

"The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible, but it

is of no legal value, for its essence is that it is a mere guess. An inference, in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution, of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference from the facts actually observed and proved."

In other words, an inference is a deduction from established facts and an assumption or a guess is something quite different but not necessarily related to established facts.

14. Alternatively, in those instances where the defendant is unable to explain the accident, it is incumbent upon him to advance positive proof that he had taken all reasonable steps to avert foreseeable harm.

15. *Res ipsa loquitur* is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where *res ipsa loquitur* is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance [Millner: "Negligence in Modern Law", 92]."

20. The aforesaid decision of the Supreme Court was followed by their Lordships in **Basthi Kasim Saheb (dead) by LRs v. Mysore State Road Transport Corporation and others, (1991) 1 SCC 298**. This was a case under the Motor Vehicles Act, 1939. It was a case where the motor accident again did not involve a collision. It was a case where the Corporation's bus, proceeding on a certain road, moved to the

right to avoid a bullock cart standing unattended. Its wheels left the metalled portion of the road and sank in the muddy soil there, leading the bus to turn turtle. The claimant, who was a passenger on board bus, sustained serious injuries, requiring a long period of hospitalization. The Motor Accident Claims Tribunal accepted it to be a case of rash and negligent act by the bus driver and decreed the claim for Rs.35,000/-. The High Court on appeal by the Corporation thought that there is no negligence of the driver involved and it was just an accident. The claim was dismissed by the High Court. On further appeal by Special Leave to their Lordships of the Supreme Court, circumstances and the evidence were noticed, that did seem to show that the driver had not slowed up sufficiently to avoid the bullock cart and risk wheels of the bus from sinking in the muddy portion of the road. The Court looked into the site plan drawn up by the Police to gauge the width of the road and other necessary circumstances. No doubt, in that case, there was oral testimony of the claimant and other witnesses, but the cause of the accident was apparently beyond explanation by ocular testimony offered by the claimant. It is in those circumstances that it was observed in **Basthi Kasim Saheb** (*supra*):

"8. The evidence in the case indicates that there was no traffic on the road at the time of the accident. No untoward incident took place like sudden failure of the brakes or an unexpected stray cattle coming in front of the bus and still the vehicle got into trouble. In absence of any unexpected development it was for the driver to have explained how this happened and there is no such explanation forthcoming. In such a situation the principle of *res ipsa loquitur* applies. The petitioner, in the circumstances, could not have proved the actual cause of the accident, and on the face of it, it was so improbable that such an accident could have happened without the negligence of the driver, that the court should presume such negligence without further evidence.

The burden in such a situation is on the defendant to show that the driver was not negligent and that the accident might, more probably, have happened in a manner which did not connote negligence on his part, but the defence has failed to produce any evidence to support such a possibility. We, therefore, agree with the finding of the trial court on this issue and set aside the judgment of the High Court."

21. The principle was again invoked by the Supreme Court in **Asha Devi and others v. Assistant Director, State Insurance and Provident Fund Department and others, 2021 (4) TAC 8**, which is a case closer on facts to the one at hand. The facts relevant to the issue, the proceedings before the Tribunal and the High Court, and the holding of their Lordships are encapsulated in the observations of their Lordships in **Asha Devi (supra)**, which read:

"2. The challenge in the present appeals is to an order passed by the High Court of Judicature for Rajasthan at Jaipur Bench, wherein the appeal filed by the Insurance Company was allowed and the claim petition filed Under Section 166 of the Motor Vehicles Act, 1988 was dismissed. The reason for dismissing the claim application was that the wife of the deceased had not deposed regarding the manner of accident as she was not the eye witness. It was thus held that the accident is not proved to be on account of negligent driving of tractor by its driver.

3. We find that the reasoning given by the High Court is patently erroneous. The deceased-Umed Singh was working as a cleanliness employee with the Municipal Council, Beawar. He had gone alongwith the tractor to pick up the garbage. The wife of the deceased appeared as her own witness and produced certain documents to prove income of the deceased. On behalf of the Respondents, an employee of the Insurance Company was produced as NAW-1 Akhil Ahmad and NAW-2 Tarachand Sharma. After considering the evidence on record, the learned Motor Accidents Claims Tribunal found that the deceased was an employee of Municipal Council drawing a salary of ` 13,016/- per month and was of 46 years of age. The Tribunal assessed the compensation as ` 20,14,734/- based upon the last drawn salary and future prospects. The

Tribunal also granted simple interest @ 6% per annum.

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

22. The factum of accident involving the offending truck is admitted to parties. Negligence, as noticed hereinabove, does appear to be there on part of the driver of the offending truck. In these circumstances, it was incumbent upon the owner to have produced the driver in the witness-box and explained the accident consistent with absence of any negligence on his part. Else, the owner would have to offer evidence *aliunde*, that would include the driver's testimony as well to prove that the driver had taken all reasonable care to avert the accident, but still it happened. Nothing of this kind has been done. The owner never called her driver to the witness-box and in the absence of an eye-witness account, the Tribunal, as if it were a Civil Court, has declined to accept a case of negligence, sans ocular or other positive evidence offered by the claimant to prove it. The principle of *res ipsa loquitur*, given the circumstances of the accident ought to have been invoked in this case and this Court is of opinion that it is attracted. It was for the owner to have either explained the accident or offered positive proof of absence of negligence on her driver's part, that has not been done. The negligence, therefore, has to be presumed on the

owner's part, who has exclusive knowledge of the circumstances attending the accident through her driver.

23. There is another vantage of looking at the issue. The factum of accident is not denied and so also the involvement of the offending truck. There are police papers relating to the crime, which show the involvement of the offending truck running over the ill-fated bicycle that the deceased was riding. There is no doubt a discrepancy between the identity of the driver that the owner claims and the one the Police have found on investigation. However, both are unanimous that the accident was caused by the offending truck. Whoever drove the truck, apart from its relevance to determine the Insurers' liability, does not matter much. This is so because the liability is that of the owner vicariously through his driver, who was driving the offending truck at the time of the accident in course of employment. The Tribunal has felt no difficulty in holding that it was the offending truck that caused the accident. Still, the Tribunal has gone off course in not holding the owner liable because there is no evidence in the sense of an eye-witness account or other evidence *aliunde* to prove the offending truck's negligence.

24. This would have been the correct approach if the Tribunal were a Civil Court trying a suit, but the Tribunal is not a Civil Court in *seisen* of an action governed by the Code of Civil Procedure, 1908. The jurisdiction of the Tribunal under the Act of 1988 is one to hold an inquiry into the accident and determine just compensation payable to the injured, or the legal representatives of the deceased, as the case may be. In this connection, it would be apposite to refer to the provisions of Sections 168 and 169 of the Act of 1988. These provide:

"168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned

expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals.

—(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all

the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

25. The issue was considered by me in **Km. Jyoti Tripathi and others v. Devendra Singh Yadav and others, Neutral Citation No. - 2023:AHC:202049**. After an elaborate reference to a Bench decision of the Calcutta High Court in **Sri. Srikrishna Kant Singh v. Sri. Parameswar Achutanan Nair and others, 2019 (4) TAC 920 : 2018 SCC OnLine Cal 5308**, it was held that the duties of the Tribunal while determining a compensation claim in a motor accident are essentially inquisitorial; not adversarial. The provisions of Rule 215 of the U.P. Motor Vehicles Rules, 1998 (for short, 'the Rules of 1998') must also be noticed. Rule 215 of the Rules of 1998 reads:

"215. Power of examination.—The Claims Tribunal may if it thinks necessary, examine any person likely to be able to give information relating to the injury irrespective of the fact whether such person has been or is to be called as a witness or not."

26. If the Tribunal had reminded itself of its duties to hold an inquiry in order to determine the just compensation as envisaged under Sections 168 and 169 of the Act of 1988, instead of the trying the claim as if it were a suit before a Court of civil jurisdiction, the Tribunal would not have held itself back from summoning necessary witnesses and other witness to pass a just award. Since the Tribunal thought of itself as a Court of civil jurisdiction trying an action, it answered the issue of negligence against the claimant on ground that no eye-witness of the accident or other evidence *aliunde* was produced

that might establish the offending truck's negligence. And, to think that the Tribunal adopted this approach though the factum of accident involving the offending truck was not in dispute, certainly makes the Tribunal's determination on the issue flawed, given the nature of its inquisitorial function. The Tribunal has remarked in the judgment that the FIR was lodged by the deceased's brother Nanku Lal and the report gives an impression as if the informant was an eye-witness.

27. With this remark, the Tribunal has observed that no such material has been produced, on the basis of which, it may be impossible to infer that during police investigation, some other eye-witness of the accident was present. The Tribunal has then remarked that in the aforesaid circumstances, it is not possible to hold that the offending truck was being driven at a high speed or negligently. In the aforesaid conclusions, the Tribunal has again forsaken its role that is primarily inquisitorial. If the Tribunal was of opinion that the FIR shows that the informant, Nanku Ram was an eye-witness, the Tribunal was duty bound to examine him in the exercise of powers under Rule 215 of the Rules of 1998. It hardly needs be gainsaid that by the time the Tribunal heard and decided the claim petition, the Rules of 1998 had come into force in Uttar Pradesh.

28. In the opinion of this Court, therefore, the conclusions of the Tribunal on Issue No.1 are patently flawed.

29. In the totality of circumstances, this matter ought to go back to the Tribunal, that has now jurisdiction to decide a motor accident claim under the Act of 1988 for decision afresh. However, the findings of the Tribunal carried in the impugned judgment and award on Issues Nos.2 and 3 are not required to be disturbed and these are affirmed. The Tribunal shall proceed

to decide the claim afresh with reference to Issues Nos.1 and 4. For the purpose, the evidence on record shall be read and such other evidence would be called as the Tribunal considers expedient.

30. In the circumstances, this appeal **succeeds** and is **allowed in part**. The impugned judgment and award passed by the Motor Accident Claims Tribunal/ Additional District Judge, Court No.1, Allahabad dated 24th February, 2001 is **set aside**. The claim petition is restored to the file of the Motor Accident Claims Tribunal that has now jurisdiction in the matter, which shall proceed to hear and decide it afresh in accordance with law within six months of the date of receipt of a copy of this judgment. There shall be no order as to costs.

Order Date :- 19.10.2023
Anoop