

**Court No. - 4**

**Case :- FIRST APPEAL FROM ORDER No. - 434 of 2016**

**Appellant :- Mohd. Siraj**

**Respondent :- Motor Accident Claim Tribunal/Addl.Distt.Judge  
Ct.No.16 Lko.**

**Counsel for Appellant :- Arun Kumar Shukla**

**Counsel for Respondent :- A.K. Singh,Rajesh Trivedi**

**Hon'ble Rajnish Kumar,J.**

1. Heard Shri Arun Kumar Shukla, learned counsel for the appellant and Shri Rajesh Trivedi, learned counsel for the respondents no. 2 to 5. The respondent no. 1 is the tribunal concerned.

2. This first appeal from order has been preferred under under Section 173 of Motor Vehicle Act, 1988 assailing the judgment and award dated 15.03.2016 passed in Claim Petition No. 693 of 2012; Smt. Rajeshwari and others vs. Mohd. Siraj by Motor Accident Claims Tribunal/Additional District Judge, Court No.16, Lucknow by means of which the claim petition has been allowed and an amount of Rs. 5,95,000/- alongwith interest @ 7% per annum w.e.f. date of filing i.e. 27.11.2012 to the date of final payment has been awarded as compensation.

3. Learned counsel for the appellant submits that the first information report of the accident was lodged against vehicle Maruti Omni No. UP 35 M 6404, whereas the number of the vehicle of the appellant is Maruti Omni No. UP 30 M 3604. He further submits that though the chargesheet has been filed against the driver of the vehicle of the appellant but no reason has been assigned in the chargesheet as to how the number was

changed, thus, the vehicle of the appellant has falsely been implicated in the case. He further submits that P.W.-2, who appeared as an eyewitness was neither summoned by the court nor the witness in the chargesheet. The said witness has also admitted that he has come to give the evidence as the claimant-respondent has called him to give the evidence. Thus, his evidence is not reliable. He further submits that P.W.-2 has admitted in his evidence that the number of the vehicle was not informed by him to the claimant-respondent no.1, who is wife of the deceased. He further submits that the evidence of P.W.-2 is not reliable because he has stated that he has left the cycle on the spot, whereas nobody would leave cycle on the spot. He further submits that there is contradiction in the time of leaving house by the deceased in the first information report and the evidence adduced before the tribunal by the respondent no. 2, who appeared as P.W.-1. She has also admitted that the number of the vehicle was not informed by P.W.-2 and she had reached the spot subsequently. He further submits that the vehicle of the appellant has falsely been implicated after it was caught by the police near Police Station and when the appellant went to get it released, the money was demanded, which was not paid by the appellant. He has also submitted that D.W.-1 and D.W.-2 i.e. owner and driver of the offending vehicle have denied the accident. He further submits that the vehicle could not have been damaged in the alleged accident because the deceased was standing on the road side and the offending vehicle had dashed him as alleged.

4. On the basis of above, learned counsel for the appellant submits that the impugned judgment and award has been passed without considering the pleadings, material and evidence on

record rightly and in accordance with law, therefore, the same is not tenable in the eyes of law and liable to be set aside.

5. Per contra, learned counsel for the claimant-respondent nos. 2 to 5 vehemently opposed the submissions of learned counsel for the appellant. He submitted that the impugned judgment and award has been passed after considering the pleadings, evidence and material on record in accordance with law. The vehicle of the appellant i.e. Maruti Van Omni after hitting the deceased could not be controlled by driver and it was dashed in a tree, on account of which the vehicle was damaged, therefore, the contention of the appellant in this regard is misconceived and not tenable. He further submits that merely because inadvertently a number with some digits different than the number of the vehicle was given in the first information report by the claimant-respondent immediately after accident on information given by some other persons, it cannot be said that the vehicle of the appellant was not involved because after investigation the chargesheet was filed against the driver of the vehicle of the appellant. Thus, the submissions of the learned counsel for the claimant-respondents is that the contentions of learned counsel for the appellant are misconceived and not tenable. The impugned judgment and award has rightly been passed in accordance with law. There is no illegality or error in it. The appeal is liable to be dismissed. He relies on judgment and order dated 26.03.2014 passed in the case of **Smt. Chhaya Gupta and others vs. Shailendra Kumar Misra @ S.K. Misra and others; 2014 SCC OnLine All 15164: (2014) 5 All LJ 505: (2014) 104 ALR 71** by a Division Bench of this Court, **Oriental Insurance Company Limited vs. Reena Awasthi and others; 2011 (4) T.A.C. (All.)** and **Bimla Devi and**

**others vs. Himachal Road Transport Corporation and others; (2009) 13 SCC 530.**

6. I have considered the submissions of learned counsel for the parties and perused the records.

7. The claim petition was filed by the claimant-respondent nos. 2 to 5 claiming compensation alleging therein that the husband of the respondent no. 2 and father of the respondent nos. 3 to 5 was going by cycle with some personal work to Itaunja on 23.10.2012 and talking to some known person near Rashid Poultry Farm, Vill-Mahona, District-Lucknow and at 12:00 in the day, the driver of vehicle Maruti Omni Van No. UP 30 M 3604, driving it rashly and negligently hit him, on account of which he suffered serious injuries and died on the spot.

8. The claim petition was contested by the appellant by filing a written statement denying the averments made in the claim petition. It was further alleged that the appellant is the registered owner of the vehicle Maruti Omni No. UP 30 M 3604. The vehicle of the appellant had not gone in Mahona area on the date and time of accident. The first information report bearing Case Crime No. 209 of 2012 under Section 304-A I.P.C. has been lodged at Police Station-Itaunja of the accident on 23.10.2012 at 12 in the day against the vehicle No. UP 30 M 6404, whereas the vehicle number of the appellant is UP 30 M 3604. It is clear from it that the accident has not been caused by the vehicle of the appellant. The appellant had sought the information of registered owner of the vehicle No. UP 30 M 6404 from R.T.O. Lucknow and R.T.O. Hardoi, which has not been provided to the appellant till date. The vehicle of the appellant has falsely been implicated by the Police Station

Itaunja. It was further alleged that the vehicle of the appellant was forcibly caught and involved in this case by the police. All the papers of the vehicle are valid. Only the insurance could not be renewed. It has further been alleged that the claimant-respondent has specifically stated in paragraph 30 of the claim petition that the accident had been on account of rash and negligent driving of vehicle No. UP 30 M 3604, whereas the number of vehicle in F.I.R. is different. There is contradiction in the status of the deceased and claim, therefore, the claim petition is not maintainable. No proof of income has been produced. Thus, the claim petition is liable to be dismissed.

**9.** On the basis of pleadings of the parties, three issues were framed, which are extracted hereinbelow:-

*"(1) क्या दिनांक 23.10.2012 को समय 12 बजे दिन में साईकिल से इटौंजा जाते समय याचिनी संख्या-1 के पति दीना को प्रतिवादी संख्या-1 के स्वामित्व वाले वाहन पंजीकरण संख्या यू०पी० 30 एम-3604 के चालक द्वारा तेजी व लापरवाही से वाहन चलाते हुए दुर्घटनाग्रस्त करने के परिणामस्वरूप उक्त दीना की मृत्यु कारित हो गयी?*

*(2) क्या प्रश्नगत दुर्घटना प्रतिवादी संख्या-1 के वाहन पंजीकरण संख्या यू०पी० 30 एम-3604 से कारित हुई है?*

*(3) क्या याचीगण प्रतिवादीगण से किसी क्षतिपूर्ति धनराशि को प्राप्त करने के अधिकारी हैं? यदि हों तो कितना और किससे?"*

**10.** P.W.-1 Smt. Rajeshwari and P.W.-2 Sitaram had been got examined on behalf of the claimant-respondents. In the documentary evidence, the certified copy of the first information report, certified copy of the chargesheet, certified copy of the site plan, certified copy of the postmortem report and certified copy of the accident inspection report have been filed. On behalf of the appellant, D.W.-1/Mohd. Siraj i.e. appellant and the D.W.-2/Mohd Saleem have been got examined in evidence. In documentary evidence, copy of the inquest report of deceased Deena has been filed.

**11.** The claims tribunal, after hearing learned counsel for the parties and considering the pleadings, evidence and material on record, has allowed the claim petition and awarded the aforesaid amount. While considering the aforesaid issue no. 1, the learned tribunal has recorded a finding that the F.I.R. was lodged against the driver of the Maruti Omni van No. UP 30 M 6404, whereas as per the accident inspection report, it is apparent that the vehicle involved in the Case Crime No. 209 of 2012 is UP 30 M 3604. After investigation and on the basis of sufficient evidence, the chargesheet has been filed under Section 279/304-A IPC. Thus, it is apparent that the accident has been caused by the driver of vehicle No. UP 30 M 3604 and inadvertently by mistake, the vehicle No. UP 30 M 6404 has been mentioned in the F.I.R. The tribunal has also considered the evidence of P.W.-2 and the evidence of D.W.-1 and came to the conclusion that the claimant-respondents have succeeded in proving that the deceased Deena had died on account of accident by rash and negligent driving of the vehicle No. UP 30 M 3604 on 23.10.2012 at 12 in the day.

**12.** The F.I.R. was lodged by the claimant-respondent no. 2/Rajeshwari, who is wife of the deceased Deena on 23.10.2012 registered as Case Crime No 209 of 2012 under Section 379 and 304-A IPC at 13:10 on 23.10.2012 disclosing therein about the aforesaid accident on 23.10.2012 at 12 in the day. The number of the vehicle given in the F.I.R. was Maruti Van Omni No. UP 30 M 6404. It is also mentioned in the FIR that she has come to lodge the F.I.R. leaving the dead body of her husband in the custody of her relatives. Admittedly, the chargesheet has been filed against the driver of vehicle No. UP 30 M 3604. It has also been mentioned in paragraph 23 of the claim petition that

the accident was caused by the offending vehicle No. UP 30 M 3604 Maruti Van Omni. Merely because some digits of the number of the offending vehicle were different in the first information report, it cannot be said that the vehicle of the appellant was not involved because the chargesheet was filed against the vehicle of the appellant. P.W.-2/Sitaram, an eyewitness, is also a witness in the chargesheet at Serial No. 2, which is apparent from the certified copy of the chargesheet on record. The F.I.R. of accident at 12 in day was lodged on the same day at 13:10 by wife of deceased, who had gone to lodge F.I.R. leaving dead body of her husband in custody of her relatives and in such situation, it is possible.

**13.** The claimant-respondent no. 2 appearing as P.W.-1 has proved the contents of the claim petition and that the accident had occurred at about 12 in the day by the rash and negligent driving of the Maruti Omni van. In cross-examination, she has admitted that the person, who had informed about the accident had not told about the vehicle. The vehicle Maruti Omni van was informed by the persons present on the spot. The vehicle was of Mahona. The vehicle was Maruti Omni van. The cross-examination of the claimant-respondent no. 1 indicates that nothing could be extracted by the appellant which may create any doubt about veracity of her evidence. She has stated that her husband had left the house at 11<sup>1/2</sup> and in the F.I.R., no time has been given, thus, the contention of the appellant that the claimant-respondents have given contradictory statements in regard to the time is misconceived and not tenable. Even otherwise a minor discrepancy in the time cannot be a ground for doubting the veracity of the evidence given by the claimant-respondent no. 1.

14. P.W.-2/Sitaram son of Neelkanth has specifically stated that he was going for personal work to Bhagautipur Mahona and when he reached near Rashid Poultry Farm, Police Station Itaunja, Lucknow, his known Paachu and Deena son of Ramai met, therefore, he was talking with them standing there, when Maruti Van Omni No. UP 30 M 3604 being driven rashly and negligently by its driver, came from the side of Itaunja at about 12 in the day and hit all the three and the van in an uncontrolled condition dashed in a tree, therefore, the contention of learned counsel for the appellant that the vehicle could not have been damaged in such an accident, is misconceived and not tenable. He further stated that Deena son of Ramai got serious injuries, as a result of which, he died on the spot. The driver of the vehicle Maruti Omni van had left the vehicle on the spot and ran away. The F.I.R. of the accident was lodged by the wife of the deceased in Police Station, Itaunja on the same day. In cross-examination, he admitted that he had not lodged the F.I.R. and also not informed the vehicle number to the complainant. The cycle of the three were broken, which remained lying there and they had not taken them to their house. When he went again from the same route to meet relatives, his cycle was not there and he had not made any effort to get the same. The cross-examination indicates that nothing could be extracted from the appellant which may create any doubt about the veracity of his evidence and that he was not on the spot. Merely because the cycle was left on the spot as it was broken, it cannot be said that he is lying. It may be for any reason and it may be on account of the situation of both of his friends, who have met with an accident and being in trauma.

**15.** It has also been admitted by the appellant in his evidence that the vehicle of the appellant was caught by the police and he has got his vehicle released from police station. The driver of the vehicle has also been released on bail in the aforesaid F.I.R. Merely, the plea has been taken that the vehicle of the appellant has falsely been implicated. In the written statement, it has been stated that the vehicle was caught forcibly by police of Police Station, Itaunja and falsely involved, whereas in his oral evidence before the tribunal, the appellant stated that while his vehicle was going to Sitapur on 23.10.2012, it was caught by the police personals near Itaunja and lodged in the police station. The vehicle was being driven by Mohd. Saleem son of Munne, who informed to him that vehicle had been caught by police and no challan chit has been given. The next day, when he inquired from Police Station, Itaunja, then he came to know that on account of some accident, it has been lodged in Police Station and police was demanding too much money for its release and when he stated that he would not be able to pay the said amount and get it released from court and no accident has occurred from his vehicle, therefore, it is apparent that the plea, which was not taken in the written statement, has been tried to develop in the evidence leveling false allegations against the police without any evidence and indicating as to how much money was demanded and who had demanded the money. Even otherwise it has been admitted that the vehicle was caught near Itaunja on account of accident and as per evidence of P.W.-2, the vehicle was left by the driver on the spot.

**16.** The appellant has also admitted in his cross-examination that he has written in chief as told by the driver.

He has also admitted that driver has been released on bail from court and the vehicle had also been got released from the court and the criminal case is going on in regard to the accident. The appellant has virtually admitted the accident in the cross-examination stating that "यह कहना सही है कि मैं दुर्घटना के समय घटना स्थल पर अपनी गाड़ी में मौजूद नहीं था। मैं दुर्घटना की बावत कोई बात नहीं बता सकता हूँ।"

**17.** The driver of the vehicle appeared as D.W.-2. He stated that on information given by him to the appellant about the vehicle caught by the police, he went with him to the police station, when the money was demanded. He has also admitted F.I.R. against him and that he has been released on bail from the court and also that the criminal case is going on against him. The driver has also virtually admitted the accident in his cross-examination stating that "दुर्घटना कारित करने वाला वाहन जब मैं लेकर गया था तो उसमें मेरी माँ बैठी थी। दिनांक 23.10.2012 को हुई दुर्घटना के बावत मैंने अपनी जमानत न्यायालय से करवायी है। यह भी कहना सही है कि वह मुकदमा मेरे खिलाफ न्यायालय में चल रहा है। यह भी कहना सही है कि दुर्घटना कारित करने वाला वाहन UP 30 M 3604 मारुति वैन न्यायालय से छूटी थी।"

**18.** Even otherwise any discrepancy in the number of the vehicle in the F.I.R., once a chargesheet has been filed against the vehicle of the appellant, without any cogent evidence cannot create any doubt that vehicle of the appellant was not involved in the accident. It is also settled law that the F.I.R. is not substantive piece of evidence because it is not the requirement of law that the minute details of the case be recorded in F.I.R. immediately after the occurrence.

**19.** A Division Bench of this Court, in the case of **Smt. Chhaya Gupta and others vs. Shailendra Kumar Misra @ S.K. Misra and others (supra)**, considered the issue and held that the contents of F.I.R. is not substantive piece of evidence and after

registration of F.I.R., it is for the investigating officer to proceed further and investigate and record a finding, which may be different than the contents of F.I.R. The relevant paragraph nos. 5 to 9 are extracted hereinbelow:-

*"5. After investigation, the investigating officer of the criminal case found that the vehicle number given in the F.I.R. i.e. U.P. 30-J-839 is not of maruti car but is of motorcycle. A final report was submitted. A protest application was filed before the Magistrate who directed for further investigation. During the course of investigation on 28.5.2008, the claimant informed the investigating officer that the number of maruti car is UP30-J-2839 and in the F.I.R., incorrect number was mentioned. In pursuance of the order passed by the Magistrate, during the course of further investigation, it was found that vehicle bearing No.UP30-J-2839 is a maruti car which has caused the accident. Police submitted chargesheet against the owner of the vehicle bearing No.UP30-J-2839 with the report that accident occurred because of rash and negligent driving of maruti car bearing aforesaid number.*

*6. Tribunal had disbelieved the subsequent police report and chargesheet filed against the owner of the maruti car bearing No.U.P.30-J-2839 on the ground that in the F.I.R., the number given by the claimant is not correct. However, Tribunal seems to have failed to appreciate with regard to important fact that on account of accident, the number plate of maruti car was broken and found at the spot by the investigating officer. The breakage of number plate of maruti car during the course of accident, may be natural cause for mentioning incorrect vehicle number in the F.I.R. The Tribunal should not have over sighted the material evidence on record which indicates the involvement of maruti car in the accident in question. It was incumbent on the Tribunal to take note of oral evidence or statement given by the witnesses on behalf of claimants during the course of trial. The supporting evidence on record in the form of statement of eyewitnesses coupled with the chargesheet filed by the police while proceeding with further investigation in the matter, are trust worthy evidence, which should have been relied upon while recording finding by the Tribunal.*

*7. It is well settled proposition of law that contents of F.I.R., is not substantive piece of evidence. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. After lodging of F.I.R., it is for the investigating officer to proceed further and investigate and record a finding which may be different than the contents of F.I.R., vide (2006) 5 VSS 627: Mohd. Yusuf Vs. Afaq Jahan and another; (2003) 12 SCC 241 Hemraj Vs. State of Punjab).*

*Hon'ble Supreme Court repeatedly held that F.I.R., is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of Evidence Act or to contradict him under Section 45 of that Evidence Act. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence*

reported has always to be kept in mind, vide (2002) 9 SCC 147 *Bijoy Singh and another. Vs. State of Bihar*.

8. In case other material evidence with regard to accident proves the involvement of a vehicle, then such evidence should not be ignored merely on account of some omission or commission in the contents of F.I.R. It is settled principle of law that strict rule of pleading as envisaged in Code of Civil Procedure, does not apply to the compensatory proceeding before the claims Tribunal originating in the realm of social justice to the victim of road accident. The basic requirement is that the petitioner should broadly set up his/her case to apprise respondent of necessary particulars of the accident in the format provided by the Rules framed under Motor Vehicles Act. This proposition has been considered by the Division Bench of this Court in a judgment delivered by one of us (Hon'ble Mr. Justice Devi Prasad Singh) reported in [2011 (9) ADJ 597 (DB) (LB)]: *Smt. Sundara Devi @ Rooprani and others. Vs. Mohammad Zaheer and others*.

After considering catena of judgment of this Court and Hon'ble Supreme Court, the Division Bench in the case of *Sundara Devi (supra)* held as under:

"25- In view of above, the finding recorded by the tribunal with regard to issue no.1 is not sustainable in view of discrepancy between FIR and charge sheet. The finding recorded in the charge sheet by the police after thorough investigation with regard to involvement of vehicle (in the present case) should have been believed by the tribunal, more so when according to the statement of DW 1 himself, he was seen at the place of occurrence alongwith his motorcycle and it abundantly clears beyond doubt that accident has occurred from the vehicle in question."

Aforesaid proposition of law has been reiterated in other case reported in [[2011 (9) ADJ 758 (DB) (LB)]: *State of U.P. Vs. Smt. Chandrawati*.

9. In (2009) 13 SCC 530: *Bimla Devi and others. Vs. Himachal Road Transport Corporation and others*, Hon'ble Supreme Court held that while dealing with a case under Section 166 of Motor Vehicles Act, a Tribunal *stricto sensu* is not bound by pleadings of parties. It should have holistic view of the matter considering the entire factual matrix and circumstances on record. The claimants have to establish merely their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt, could not have been applied, to quote relevant portion of *Bimla Devi (supra)* para 11, 14 and 15:-

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

14. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the

*principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos.2 and 3.*

*15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."*

**20. In the case of Bimla Devi and others vs. Himachal Road Transport Corporation and others (supra),** considered by the Division Bench in the aforesaid case, it has been held that the strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The relevant paragraph No. 15 is extracted hereinbelow:-

*"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."*

**21. A Division Bench of this Court, in the case of Oriental Insurance Company Limited vs. Reena Awasthi and others (supra),** has held that once the vehicle number/identity of the vehicle as well as the owner has been duly investigated and proved in the criminal case, there is no doubt with regard to the involvement of the vehicle in question in the accident in question.

**22.** It is also to be noticed that it was mentioned in the the F.I.R., claim petition as well as the evidence adduced before

the tribunal that the vehicle was Maruti Omni van. Learned counsel for the appellant, though stated that the vehicle number given in the F.I.R. was registered with R.T.O. Hardoi, but on a query being put, he failed to inform as to which was the vehicle. It has also been admitted that the vehicle of the appellant was also registered with the R.T.O. Hardoi. Therefore, the doubt of involvement of vehicle tried to be created is misconceived and not tenable.

**23.** In view of aforesaid discussion, this Court is of the view that the learned tribunal has rightly and in accordance with law allowed the claim petition and awarded the compensation. Since the vehicle of the appellant was not insured on the date of accident, he has tried to take false plea, whereas as disclosed above, the accident has been admitted by the appellant, who is the owner of the offending vehicle as well as by the driver, who was driving the vehicle at the time of the accident. Thus, this Court is of the view that the impugned judgment and award does not suffer from any illegality or error, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds and it is devoid of any merit.

**24.** The appeal is, accordingly, **dismissed** with cost.

**25.** The statutory deposit and any other amount deposited in this appeal before this Court and the lower court record shall be remitted to the concerned tribunal forthwith and in any case, within a period of three weeks from today.

**(Rajnish Kumar,J.)**

**Order Date :-21.11.2024/Raj**

*FIRST APPEAL FROM ORDER No. - 434 of 2016*