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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 20.08.2025***+ **MAC.APP. 267/2022****MS PREETI & ANR.****.....Appellants****Through: Mr. Pankaj Gupta, Advocate****versus****ANKIT BHARDWAJ & ORS.****.....Respondents****Through: Mr. Sahil Goel and Mr. Kaartik S
Rawat, Advocates for R-1 & 2.****Ms. Archana Gaur, Ms. Ridhima
Gaur and Ms. Ring Baliyan,
Advocates for R-3.****CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Appeal has been filed on behalf of the Appellants/ Claimants under Section 173 of the Motor Vehicle Act, 1988 [hereinafter referred to as "MV Act"] seeking to challenge the Award dated 27.02.2020 passed by the learned Presiding Officer, MACT-I (North), Rohini Courts, Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award, the learned Trial Court has given a finding that the cause of death is that the deceased had suffered fatal injuries not on account of rash and negligent driving but he had died on account of "falling from stairs".

2. Briefly the undisputed facts are that on 27.07.2018, the deceased [7-year old boy at the time of the accident] was crossing the road near Krishana Colony, Prahladpur, Delhi, when the driver of the offending vehicle, being driven by Respondent no.1, at about 4 pm had hit the deceased and he



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sustained injuries. The deceased was then taken by the Respondent no.1 to the Maharishi Valmiki Hospital, Delhi. The Appellants rushed to the hospital on receiving the call.

3. At the time of the accident, no FIR or report was lodged, neither were any medical documents prepared. In addition, although, the deceased was hospitalised, no documents *qua* the hospitalisation were prepared. The deceased was discharged from the hospital on 27.07.2018 itself, i.e., on the same day. The Appellants have contended after getting first aid, they took their son home at around 9:00 or 10:00 p.m., the Appellants left the hospital without any papers. However on the very next day, on account of various complaints, the Appellants took their son back to the hospital at around 4:00 a.m. on 28.07.2018. The deceased thereafter passed away on 29.07.2018.

4. The learned Trial Court relied upon a statement of the Investigating Officer [hereinafter referred to as "IO"] and came to the conclusion that the initial accident happened with the offending vehicle on 27.07.2018. However relying on the Post Mortem Report dated 29.07.2018 and report of the IO, which recorded the statement of the father of the deceased to the IO that the deceased had met with an accident on 27.07.2018 and then had fallen from stairs on the next morning, the learned Trial Court held that it stood proved that the deceased died on account of injuries suffered by falling from stairs. The learned Trial Court thus held that since the cause of death was not rash and negligent driving, but on account of the accident of falling down the stairs thereafter on 28.07.2018, the Appellants are not entitled to any amounts and dismissed the Claim Petition.

5. Learned Counsel for the Appellants has taken the Court through the



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record including the evidence led by the Appellants wherein the mother of the deceased, Appellant No.1 [PW1] has described the accident through her evidence. As per her evidence, a phone call was received on the phone of Appellant No.2, her husband, from the Maharishi Valmiki Hospital, Delhi about the fact that their son had met with an accident. She and her husband rushed to the hospital and met with the doctor, however she submitted that no medical documents were prepared at the time when they left the hospital at around 9 or 10 p.m. It was further stated that the time of discharge, no medicine or injections or any bandages were administered to the deceased. Thereafter, the deceased was taken again to hospital at 4:00 am on the 28th morning and the deceased passed away on the 29th.

6. Learned Counsel for the Appellants has also relied on the Detailed Accident Report and the FIR as well as the statement of the IO to submit that the police was not contacted at the time of the accident nor was it contacted in the hospital when the Respondent No.1 was present on the day of the accident, i.e., 27.07.2018. The police only was contacted after the child passed away. Reliance in this behalf is placed on the DAR, the FIR as well as the statement of the IO which forms part of the record as Ex. PW1/6 (Colly). Learned Counsel for the Appellants thus submit that it would not have been possible for the police to make any statement regarding the accident since he arrived only after his death.

7. Learned Counsel for Respondent Nos.1 and 2, on the other hand submits that from a statement made by the IO, it was clear that the deceased had fallen down the stairs and thus, the cause of death was not rash and negligent driving.



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8. Learned Counsel for Respondent No.3/Insurance Company has submitted that there is an undated statement which forms part of the DAR of the father of the deceased that he has fallen down from the stairs, however she fairly concedes that this statement has not been authenticated or produced in evidence.

9. The facts that can be ascertained from the record in the present case are that the deceased was hit by a Wagon R [the offending vehicle] while crossing the road. The driver of the car being Respondent No.1, picked up the boy and took him to a hospital. There are no documents on record *qua* the hospital which form either part of the police report or which form part of the case file to show hospitalisation on 27.07.2018. The deceased died in less than 48 hours after the accident.

10. The mother of the deceased has deposed that the boy was alone when the accident happened and they went to the hospital after receiving a call from the hospital and they were there for several hours and left the hospital with the boy at around 9:00 or 10:00 p.m. The mother has also deposed that the boy was complaining of pain in the stomach. The cross-examination of the mother of the deceased is detailed and she described that the deceased could neither eat nor sleep, and then at 4:00 a.m. seeing the boy's condition, they took him to the hospital again.

10.1 The Affidavit further states that at 4:00 a.m. on 28.07.2018, the deceased was taken to Baba Saheb Ambedkar Hospital where he remained till 1:30 pm. She further deposed that thereafter, they remained in the ambulance for several hours until around 6-7 pm, after which the Appellants got their son admitted to Kalawati Saran Hospital. Subsequently, they were



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informed that their son had passed away. It is apposite to set out the cross-examination of Appellant No.1 [PW-1] below:

"I am illiterate but can read Hindi language. The contents of my affidavit has been read over and explained to me in Hindi by my counsel. Somebody from Maharishi Valmiki hospital, whom I do not know, called my husband on his phone and inform that my son had met with an accident. I went to the hospital along with my husband at about 5-6 pm on 27.07.2018. No police official met me or my husband in hospital on that day. I met with the doctor who attended my child Ritik, name of that doctor, I do not [sic: not] know. Doctor present in the hospital had asked my son regarding the incident. No medical documents were prepared. Again said, I am not aware whether any documents have been prepared or not. At about 9-10 pm, I along with my husband left hospital with my son on 27.07.2018. We hired a champion auto (three wheeler) when we left the hospital. The doctor at Maharishi Valmiki Hospital did not give any medical papers to us in respect to our son. The doctors present at Maharishi Valmiki Hospital did not administer any medicine or injection to my son nor did any bandages to my son. My son had complained pain in the stomach on which the doctors gave him tablets on his own. My son had not taken any food at house. Vol. One banana and one fruity was given to him in hospital. At about 4 am on 28.07.2018, I along with my husband took our son to Dr. BSA Hospital. I remained in the said hospital with my son upto 1 or 1:30 pm and he was referred to Kalawati Saran Children Hospital. He was referred in the morning itself but we could only take him in the hospital at about 1 or 1.30 pm as referring documents were being prepared. No medical treatment was given by Dr. BSA Hospital except preparing the referral documents. The referral document so prepared by the Dr. BSA Hospital were given to me by Dr. BSA Hospital doctor. I got my son admitted in Kalawati Saran Hospital at about 6-7 pm that evening in the ambulance provided by the Dr. BSA Hospital. From 1.30 pm upto 6 pm or 7 pm I along with my son remained in the ambulance. Vol. We reached Kalawati Saran Hospital at about 5 pm but doctor attended my son about 7 pm. We had not paid any amount to the ambulance driver/official. We remained in Kalawati Saran Hospital till the next morning when the doctor at hospital informed us that our son has passed away..."

[Emphasis supplied]

11. The Impugned Award refers to the extracts of the Post Mortem report to give a finding that the cause of death of the deceased was from falling down the stairs. It is not disputed by the parties that there was no medical



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person examined either by the Appellants or by the Respondents to prove the Post Mortem report or the nature of the injuries. However, from a bare perusal of the Post Mortem report and the surrounding circumstances of the case do not support these findings.

12. It is not disputed by any party that the deceased was hit by a car. However, emphasis has been placed by the Respondents, including by the Insurance Company on the fact that the cause of death was falling down from the stairs. The Post mortem report states that the deceased was brought to the Baba Saheb Ambedkar Hospital in an unconscious state and declared dead later that day. The cause of death was sepsis in his right lung. The extract of the brief history as per IO from Post Mortem Report is set out below:

“IV. Brief History as Per I/O

*Alleged history of deceased got injury in the street on 27.07.2018 (as per DD entry no. 18B dated 29.07.2018). On dated 28.07.2018 (as per his father statement), **the deceased had history of fall in the stairs and then he was taken to Dr. BSA hospital in an unconscious state on the same day, where he was declared brought dead at 11.26 am on the same day.** As per death certificate of Kalawati Saran Children hospital, New Delhi (DC No. 704 dated 29.07.2018), death of the children occur at 06.20 am dated 29.07.2018 (**cause of death given in the death certificate refractory shock with sepsis with right lung contusion with right pleural effusion secondary to blunt trauma to the abdomen and chest**). The dead body is preserved in Dr. BSA Hospital Mortuary.”*

[Emphasis Supplied]

13. The Supreme Court in ***Mangla Ram v. Oriental Insurance Company Limited and Others***¹ has held that the strict proof is not required in cases under MV Act as is in the case of criminal trials. The evidence has to be taken keeping in mind the preponderance of probability as to the cause of

¹ (2018) 5 SCC 656



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action. The relevant extract of the **Mangla Ram** case is below:

“22. ...This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal *stricto sensu* is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In paras 11-15, the Court observed thus : (SCC pp. 533-34)

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

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

(emphasis supplied)

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

25. In *Dulcina Fernandes* [*Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , this Court examined similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This



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Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, *prima facie*, materials showing negligence were found to put him on trial. **The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in Bimla Devi** [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] . In paras 8 & 9 of the reported decision, the dictum in United India Insurance Co. Ltd. v. Shila Datta [United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] , has been adverted to as under : (Dulcina Fernandes case [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , SCC p. 650)...

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In para 10 of Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , the Court opined that non-examination of witness *per se* cannot be treated as fatal to the claim set up before the Tribunal. **In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability.**

27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , noted that **the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt.** Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 *prima facie* points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that



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the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.

[Emphasis Supplied]

14. The contents of the FIR placed on record, disclose that the father reported receiving a call from Maharishi Valmiki Hospital on 27.07.2018 that his minor son had met with an accident. It is further stated in the FIR that the deceased son himself stated he was struck while crossing the road by a fast-coming vehicle driven by the same person who brought him to the hospital, and that considering the injuries to be minor at the time, no MLC was prepared and the child was taken home. The FIR further records that the child's condition worsened on 28.07.2018 and he was taken to Dr. BSA Hospital and further referred to Kalawati Saran Children's Hospital where he died during treatment on 29.07.2018. Following these events, the IO registered an offence under Sections 279/304A IPC based on the father's statement. The contents of FIR on record based upon the statement given by the father of deceased to the IO show that there is no authenticated, evidentiary admission by the father establishing a distinct intervening cause of "falling from stairs". The relevant extracts of the deceased's father's statement recorded in FIR are extracted herein below:

"Translated Statement of Father of the Deceased from the Contents of FIR:

I reside with my family on rent at the above address and I am a permanent resident of village Atiniya, P.S., Tehsil and District Chhatarpur, M.P. On 27/07/18 at about 5:00 PM, I received a phone call from Valmiki Hospital, Pooth Khurd, that my son had met with an accident. I reached Maharishi Valmiki Hospital, Pooth Khurd, where my son Ritik, aged 7 years, and another man were standing. My son Ritik told me that while he was crossing the road in front of Gali No. 2 of our colony, coming from the side of Deep Vihar, this uncle's vehicle came fast from the front and hit him, due to which he got injured, and the same



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uncle (driver) brought him to the hospital. Considering my son Ritik's injuries to be minor, I did not get an MLC prepared, and I did not ascertain the name and address of the vehicle driver. The vehicle number was DL-1250, a white colored car; I could not see the full number. After getting medicines, I brought my son home. On 28/07/18, my son Ritik's condition became very serious, so I took him to BSA Hospital, Sec-6, Rohini; there also I did not get an MLC prepared. Due to severe condition, the doctor referred my son to Kalawati Saran Children's Hospital, New Delhi, where during treatment on 29/07/18 at about 6:20 AM my son Ritik died. I then came home and we called number 100. The above vehicle driver drove his vehicle at high speed and with negligence and carelessness and hit my son Ritik, due to which my son Ritik died. You came to my house and wrote my statement as narrated by me, which has been read over and heard, and is correct. Appropriate legal action be taken against the above vehicle driver." Signed: Hindi—Ankesh

Translated Statement of IO from the FIR Contents:

"Sir, Duty Officer, PS S.B. Dairy Delhi, it is submitted that today on receipt of DD No. 18B dated 29/7/18, I, ASI [Rakesh], along with accompanying HC Jitender No. 1711/RD reached the spot at H.No. 62/8, Krishan Colony, Prahladpur Banger Village, Delhi, where the complainant Shri Ankesh S/o Shri Ayodhya Prasad, resident of above address, was met, whose statement was recorded. Thereafter, I, ASI, along with HC Jitender No. 1711/RD and the complainant, took the dead body of his son Ritik to BSA Hospital, where the doctor provided MLC No. 11058/18 for unknown Ritik S/o Shri Ankesh, age 7 years, R/o H.No. 62/8, Krishan Colony, Prahladpur Banger Village, Delhi, with the endorsement: 'Patient brought in casualty in unconscious state and patient declared brought dead at 11:26 AM.' The MLC was obtained. From the statement of the complainant Shri Ankesh, from the circumstances, from the DD entry, and from the MLC, an offence under Sections 279/304A IPC is found to be made out. Therefore, this tehrir is being sent through HC Jitender No. 1711/RD to the Police Station for registration. I, ASI, am engaged in further investigation. Date and time of occurrence: 27/7/18 at about 4:00 PM; Place of occurrence: In front of Main Road, Gali No. 2, Krishna Colony, Prahladpur Banger, Delhi; Date and time of dispatch of tehrir: 29/7/18 at 12:10 PM. Signed: English—ASI Rakesh Kumar No. 495/RD, PS S.B. Dairy Delhi, Dt. 29/7/18."

[Emphasis Supplied]

15. The Post Mortem Report corroborates the above account. The internal examination reveals serious injuries, including effusion of blood on the



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scalp, contusion of the right lung, effusion of blood in the thoracic cavity, rupture of the liver, and fracture of the C-3 vertebrae, all of which are consistent with trauma caused by a blunt force impact. The opinion portion of the report clearly states that death was due to the combined effect of hemorrhagic shock and spinal injury consequent to injuries to the chest, abdomen and C-3 vertebrae, and that all the injuries were ante-mortem, recent, and caused by blunt force/surface impact. Such findings align more with an accident involving a motor vehicle rather than a mere fall from stairs. The reliance placed by the learned Trial Court on the “brief history as per IO” in the Post mortem report is misplaced, as the medical opinion itself decisively attributes the cause of death to multiple blunt force injuries and not to any singular fall. The Relevant Parts of Post Mortem Report are extracted herein below:

“..IX. INTERNAL EXAMINATION

a. Head

On reflection of the scalp, effusion of blood is present in the left frontotemporal area of scalp at places. Skull bones and meninges are intact. Brain parenchyma is pale, edematous, partially softened and weighed 1319 grams.

b. Neck

Extravasations of blood present around the fractured C-3 vertebrae, on dissection, underlying spinal cord is edematous and partially softened. The Larynx and pharynx are unremarkable. Tracheal mucosa is congested. Thyroid gland, strap muscles of neck and vessels of neck "are unremarkable. Hyoid Bone and Thyroid Cartilage are intact.

c. Chest

Effusion of blood is present on reflection of chest wall on both sides at places. Right thoracic wall shows effusion of blood at places. Collar bones, ribs and Sternum are intact. Right pleural cavity contained about 150cc of reddish-yellow colored fluid. Both lungs are pale, edematous, right lung is contused on anterior aspect at places and weighing 180 grams and 205 grams on the



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right and left side respectively. Cut section, both lungs shows congestion, liver like consistency of all the lobes of both lungs present.

Pericardium and pericardial cavity of heart are unremarkable. Heart is flabby and weighed 110 grams. All walls and valves are intact and unremarkable. Aorta is unremarkable. All coronary arteries are patent on cut section. Diaphragm is intact.

d. Abdomen

Peritoneal cavity contains about 300cc of fluid and clotted blood. Liver is ruptured at posterior aspect of right lobe, pale and weighed 1120 grams. Spleen is pale, enlarged and weighed 115 grams.

Stomach contained about 50cc of yellowish colored fluid. No smell is emanating from the contents. Mucosa of the stomach is unremarkable. Small intestine contained fluids and gases. Large intestine contained fecal matter and gases. Mucosa of small intestine is unremarkable. Mesentery is unremarkable. Mucosa of large intestine is unremarkable.

Both kidneys are pale and weighed 75 grams and 78 grams on the right and left side respectively. Cortico-medullary margins are clearly distinguishable. Both adrenals are unremarkable.

e. Pelvis

Pelvic cavity as described in abdomen. Pelvic bones are intact. Urinary bladder is empty. Walls of the bladder are grossly normal. Rectum is empty.

f. Vertebral Column

Vertebral column is unremarkable and grossly normal.

X. OPINION:

Death is due to combined effect of hemorrhagic shock and spinal consequent to injury to the chest, abdomen and C-3 vertebrae. All Injuries are ante-mortem, recent in duration, caused by blunt force/surface impact.

[Emphasis supplied]

16. It is the case of the Respondents, that the deceased's death was occasioned by a fall from stairs, as noted in the brief history recorded in the Post Mortem Report. However, this submission is sans merit. Firstly, the brief history recorded in the Post Mortem Report is not a medical finding but merely a reproduction of the statement attributed to the father, which has not



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been proved in evidence. Secondly, the medical opinion in the same report, when read as a whole, attributes the death to multiple blunt injuries consistent with a motor accident. Thirdly, the FIR, the testimony of PW1, and the surrounding circumstances support the Appellants' version that the chain of events commenced with the vehicular accident and culminated in the death within 48 hours thereof. The plea of the Respondents that a fall from stairs was the proximate cause of death is therefore not borne out from the evidence.

17. From an examination of the circumstances, it is clear that something is amiss. The deceased, after being hit by a car was discharged from the hospital after a few hours. No documents have been placed on record when the boy was taken to the hospital. The DAR, the FIR, the Complaint were registered two days after the death of the child. Multiple hospitals were involved, however the documents *qua* the hospitals involved have also not been brought on record.

18. Given the examination of the Trial Court Record, including the documents annexed along with the DAR, this Court is unable to agree with the learned Trial Court, that the death occurred were on account of falling down the stairs. The Impugned Award is accordingly set aside.

19. The matter is remanded for *de novo* hearing to the learned Trial Court. This order has been passed in the peculiar circumstances of the case since the handling of this case by the various hospitals being Maharishi Valmiki Hospital, Baba Saheb Ambedkar Hospital and Kalawati Saran Children's Hospital is shocking to say the least.

20. The learned Trial Court is requested to hear the matter as



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expeditiously as possible.

21. Learned Counsel for the parties submit that they shall not take any unnecessary adjournments before the learned Trial Court. The parties are bound down by the statement made by their Counsel.

22. The learned Trial Court is also requested to requisition the registers and documents from Maharishi Valmiki Hospital, Delhi of 27.07.2018 in respect of the deceased.

23. The Appeal is allowed in the foregoing terms.

24. The parties shall appear before the learned Trial Court on 15.09.2025.

25. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 20, 2025/pa