

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.10367/2018 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO.9741/2018 (MV-D)

IN M.F.A. No.10367/2018

BETWEEN:

1. SMT. J. JAMUNA
W/O. LATE K.S. BAIYYA REDDY
AGED AOBUT 59 YEARS.
2. K.B. GIRISH
S/O LATE K.S. BAIYYA REDDY
AGED ABOUT 34 YEARS.
3. SMT. PREETHI
W/O MAHESH
D/O LATE K.S. BAIYYA REDDY
AGED ABOUT 31 YEARS

APPELLANTS 1 AND 2 ARE
R/AT DOOR NO.115
GANGOTHRI 1ST STAGE
1ST BLOCK, 2ND CROSS
HBR LAY OUT, 80 FEED ROAD
BANGALORE – 560 043.

APPELLANT NO.3
R/AT NO.298, 6TH MAIN

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

HAL 2ND STGE, DEFENCE COLONY
INDIRANAGAR
BANGALORE – 560 038.

...APPELLANTS

(BY SMT. SUGUNA R. REDDY., ADVOCATE)

AND:

1. SRI K.S. SRINIVASA REDDY
S/O. LATE K.S. SATHYANARAYANA REDDY
AGED ABOUT 52 YEARS
R/AT KASHETTIPALLI VILLAGE AND POST
SRINIVIASAPUR TALUK
KOLAR DISTRICT – 563 135.

2. THE BRANCH MANAGER
IFFCO TOKIO GEN. INSURANCE CO.LTD.
ADITYA BUILDINGS, 2ND FLOOR
S.N.R.HOSPITAL CIRCLE
BANGARPET ROAD
KOLAR DISTRICT AND CITY-563 114.

...RESPONDENTS

(BY SRI B. PRADEEP, ADVOCATE FOR R2;
R1-SERVED)

- - -

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 22.09.2018 PASSED IN MVC
NO.1222/2014 ON THE FILE OF THE III ADDITIONAL JUDGE
AND MEMBER, MACT, COURT OF SMALL CAUSES, BENGALURU
(SCCH-18), PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

IN MFA NO. 9741/2018

BETWEEN:

THE MANAGER
IFFCO TOKIO GIC LTD.,
ADITHYA BUILDINGS, 2ND FLOOR
SNR HOSPITAL CIRCLE
KOLAR – 563 101
LEGAL MANAGER
IFFCO TOKIO GIC LTD.,
CUSTOMER SERVICE CENTER
SRI SHANTHI TOWERS, 5TH FLOOR
NGEF LAYOUT, KASTURBANAGAR
BANGALORE - 560 043.

...APPELLANT

(BY SRI B. PRADEEP, ADVOCATE)

AND:

1. SMT. J. JAMUNA
W/O DECEASED K.S.BAIYYA REDDY
AGED ABOUT 59 YEARS.
2. K.B. GIRISH
S/O DECEASED K.S. BAIYYA REDDY
AGED ABOUT 34 YEARS.
3. SMT. PREETHI
W/O MAHESH
D/O DECEASED K.S. BAIYYA REDDY
AGED ABOUT 32 YEARS

THE RESPONDENT NO.1 TO 2 ARE
PERMANENT RESIDENTS AT
DOOR NO.115 GANGOTHR
I STAGE, I BLOCK, 2ND CROSS
HBR LAYOUT, 80 FT. ROAD
BENGALURU – 560 043

THE RESPONDENT NO.3 ARE
PERMANENT RESIDENT NO.298
6TH MAIN, HAL 2ND STAGE
DEFENCE COLONY,

INDIRANAGAR
BENGALURU – 560 038.

4. K.S. SRINIVASA REDDY
S/O LATE K.S. SATHYANARAYANA REDDY
AGED ABOUT 52 YEARS
R/AT KASHETTIPALLI VILLAGE AND POST
SRINIVASAPURA TALUK
KOLAR – 563 135.

...RESPONDENTS

(BY SMT. SUGUNA R. REDDY, ADVOCATE FOR R1 TO R3;
R4 - SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST
THE JUDGMENT AND AWARD DATED 22/09/2018, PASSED
IN MVC NO.1222/2014, ON THE FILE OF THE III
ADDITIONAL JUDGE & MEMBER, MACT, COURT OF SMALL
CAUSES, BENGALURU (SCCH-18), AWARDING
COMPENSATION OF RS.15,79,600/- WITH INTEREST @ 9%
P.A., FROM THE DATE OF PETITION TILL THE DATE OF
DEPOSIT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
ON 20.07.2026, COMING ON FOR PRONOUNCEMENT OF
JUDGMENT, THIS DAY **VIJAYKUMAR A. PATIL J.**,
DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL)

MFA No.10367/2018 is filed by the claimants seeking for higher compensation and MFA No.9741/2018 is filed by the Insurance Company assailing the judgment and award dated 22.09.2018 passed in MVC No.1222/2014 by the III Additional Judge and MACT, Court of Small Causes, Bengaluru (SCCH-18) (for short, 'the Tribunal'), challenging the liability and quantum of compensation.

2. Though these appeals are listed for admission, with the consent of learned counsel for the parties, they are taken up for final disposal.

3. The brief facts leading to filing of these appeals are that the wife and children of the deceased K.S.Baiyya Reddy filed a claim petition seeking compensation of Rs.45,00,000/- for the death of Sri.K.S.Baiyya Reddy in a road traffic accident on 10.12.2013. It was averred that the deceased was proceeding as a pillion rider on motorcycle bearing registration No.KA-07-R-1084 and the respondent No.1 was the rider-cum-owner of the said

motorcycle. It was further averred that when they were proceeding on Srinivasapura-Madanapalli Road, the rider of the motorcycle rode the same in a rash and negligent manner, lost control due to which, the pillion rider K.S.Baiyya Reddy fell down and sustained grievous injuries. It was also averred that the injured was shifted to R.L.Jalappa Hospital, Kolar, and thereafter to B.G.S.Global Hospital, Kengeri, Bengaluru. During the course of treatment, he succumbed to the injuries on 13.02.2014. It was contended that the deceased was aged about 65 years and used to earn Rs.3,00,000/- to Rs.5,00,000/- p.a. Due to his untimely death, the claimants have lost the emotional as well as financial support, hence they sought to allow the claim petition.

4. The respondent No.1, owner-cum-rider of the motorcycle had filed objections. The vehicle involved in the accident was duly insured with the respondent No.2. It was averred that it was inevitable to the respondent No.1 to avoid head-on-collision with another vehicle and therefore, he rode the motorcycle on the mud road and

while doing so, the pillion rider fell down from the motorcycle and sustained injuries.

5. The respondent No.2-Insurance Company averred that the liability, if any, is subject to the terms and conditions of the policy. It was averred that the rider was not having a valid and effective driving licence. It was further averred that there was a delay of 33 days in lodging the complaint with the police and the claimants, colluding with the respondent No.1 has created false documents in order to get the compensation. It was also averred that the police information register maintained by the hospital indicates the incident as RTA while travelling on two wheeler, self-fall. It was contended that the IMV report neither indicates any damage nor tyre burst. Hence, a false claim is made and sought for dismissal of the claim petition.

6. The Tribunal framed the issues. The claimant No.1 examined herself as PW-1 and got marked Exs.P1 to P14. The respondents examined RW-1 and RW-2 and got

marked Exs.R1 to R5. The Tribunal, on appreciation of the oral and documentary evidence, allowed the claim petition by awarding total compensation of Rs.15,79,600/- with interest @ 9% p.a. from the date of petition till realization, by recording the finding that the accident is caused due to the actionable negligence on the part of the rider of the motorcycle i.e. respondent No.1 and directed the respondent No.2-Insurance Company to pay the compensation. Being aggrieved, the Insurance Company as well as the claimants have filed these appeals challenging the liability and seeking for higher compensation respectively.

7. Sri.B.Pradeep, learned counsel for the appellant-Insurance Company submits that the Tribunal has committed a grave error in appreciating the oral and documentary evidence on record. It is submitted that as per the claimants, the accident occurred on 10.12.2013. However, a police complaint was filed by the son of the deceased after 33 days which clearly establishes that filing of the police complaint is an after thought and based on

such complaint, the jurisdictional police claimed to have investigated and filed charge sheet. It is further submitted that the respondent No.1-K.S.Srinivasa Reddy was alleged to be the rider of the motorcycle. However, nothing is placed on record to show as to why he did not approach the police and register the complaint and no material is placed with regard to the injuries suffered by the rider of the motorcycle. It is also submitted that the respondent No.1-K.S.Srinivasa Reddy is a close relative of the deceased and as an after thought, his vehicle has been implanted in order to get the compensation. It is contended that Exs.R2 and R3 are the copies of the register maintained by R.L.Jalappa Hospital and copy of the police information book. The MLC intimation was never sent to the jurisdictional police by the said hospital and RW-2 has clearly deposed with regard to the same. It is further contended that the claimants have failed to prove the aspect of involvement of the vehicle, that the respondent was the rider of the motorcycle and that the accident was caused due to his negligence. In the

absence of any such evidence, the liability cannot be saddled on the Insurance Company. It is also contended that the Tribunal has erred in awarding exorbitant compensation and awarding interest @ 9% p.a., without any special reasons and the same calls for interference. Hence, he seeks to allow the appeal filed by the Insurance Company and dismiss the appeal filed by the claimants.

8. Smt.Suguna R.Reddy, learned counsel for the appellants-claimants supports the impugned judgment and award of the Tribunal insofar as the aspect of negligence and liability of the Insurance Company is concerned. It is submitted that the police complaint lodged by the son of the deceased clearly explains the reason for the delay as the entire family was busy in providing treatment to the injured. It is further submitted that the jurisdictional police, after investigation, filed the charge sheet which is not challenged by the Insurance Company and the said charge sheet is produced and marked before the Tribunal which clearly demonstrates that due to the negligence of the respondent No.1, the accident is caused and the

deceased was the pillion rider. It is also submitted that the standard of proof required in this kind of proceedings is not to prove the case beyond reasonable doubt but by applying the principle of preponderance of probabilities. It is contended that the income of the deceased is required to be re-assessed appropriately by deducting 1/3rd towards the personal and living expenses of the deceased and the compensation under the conventional heads is also required to be awarded with escalation of 20% by allowing the appeal of the claimants. In support of her contentions, she placed reliance on the following decisions:

(i) GEETHA DUBEY AND OTHERS Vs. UNITED INDIA INSURANCE CO. LTD.¹

(ii) ICICI LOMBARD GENERAL INSURANCE CO. LTD. Vs. RAJANI SAHOO²

(iii) ANITA SHARMA AND OTHERS Vs. NEW INDIA ASSURANCE COMPANY LIMITED AND ANOTHER³

(iv) JANABAI WD/O DINKARRAO GHORPADE AND OTHERS Vs. ICICI LAMBORD INSURANCE COMPANY LIMITED⁴

¹ 2024 SCC OnLine SC 3779

² (2025) 2 SCC 599

³ (2021) 1 SCC 171

(v) RAVI Vs. BADRINARAYAN AND OTHERS⁵
(vi) SANJU BAI PRAJAPATI AND OTHERS Vs.
NEW INDIA ASSURANCE COMPANY
LIMITED AND OTHERS⁶

Hence, she seeks to allow the appeal of the claimants by dismissing the appeal of the Insurance Company.

9. We have heard the arguments of the learned counsel for the appellant-Insurance Company, learned counsel for the appellants-claimants and meticulously perused the material available on record including the Tribunal records.

10. The only point that would arise for consideration in this appeal is:

"Whether the impugned judgment and award passed by the Tribunal calls for any interference?"

⁴ (2022) 10 SCC 512

⁵ (2011) 4 SCC 693

⁶ (2025) 9 SCC 414

11. The aforesaid point is answered in the affirmative for the following reasons:

(a) The wife and children of the deceased K.S.Baiyya Reddy filed a claim petition seeking compensation of Rs.45,00,000/- for the death of Sri.K.S.Baiyya Reddy in a road traffic accident on 10.12.2013. The deceased was proceeding as a pillion rider on motorcycle bearing registration No.KA-07-R-1084 and the respondent No.1 was the rider-cum-owner of the motorcycle. When they were proceeding on Srinivasapura-Madanapalli Road, the rider of the motorcycle rode the same in a rash and negligent manner, lost control due to which the pillion rider K.S.Baiyya Reddy fell down and sustained grievous injuries. The injured was shifted to R.L.Jalappa Hospital, Kolar and thereafter to B.G.S.Global Hospital, Kengeri, Bengaluru. During the course of treatment, he succumbed to the injuries on 13.02.2014. The deceased was aged about 65 years and claimed to be earning Rs.3,00,000/- to Rs.5,00,000/- p.a. The appellant-Insurance Company denied its liability

mainly on the ground that there is a delay of 33 days in filing the complaint with the jurisdictional police, the rider who is a close relative of the deceased has not sustained any injury and his vehicle is falsely implicated to get compensation. Exs.R2 and R3 indicate self-fall of the deceased which has been reiterated by RW-2, record keeper of R.L.Jalappa Hospital and there was no MLC intimation from the hospital to the police. However, on collusion, the charge sheet is filed. It is to be noticed that in order to prove the claim petition and to discharge the initial burden of negligence, PW-1, wife of the deceased has clearly deposed before the Tribunal that the respondent No.1-K.S.Srinivasa Reddy was riding the motorcycle and the pillion rider was the deceased-her husband and the accident is caused due to the negligence of the rider of the motorcycle. During the course of the evidence, she got marked investigating papers i.e. copy of FIR, complaint, spot mahazar, seizure mahazar, inquest panchanama, PM report, MVA report and charge sheet as Exs.P1 to P8. A perusal of the oral testimony of PW-1 and

documentary evidence makes it clear that the accident is caused due to the actionable negligence on the part of respondent No.1-rider of the motorcycle. The said witness has been cross-examined by the appellant-Insurance Company at length. However, nothing is elicited during the cross-examination. Hence, considering the oral and documentary evidence on record, the Tribunal has rightly come to the conclusion that the initial burden of proving the negligence, involvement of the vehicle and the accident, is proved by the claimants. It is further to be noticed that mere delay in informing the police cannot be a sole ground to come to the conclusion that a false complaint is registered, unless the same is supported with cogent and acceptable evidence. In the case on hand, the wife of the deceased has spoken before the Tribunal with regard to the accident, injuries suffered and death of K.S.Baiyya Reddy in the road traffic accident and the said oral testimony of the claimants is corroborated with the charge sheet material placed before the Tribunal. The jurisdictional police recorded the statement of various

witnesses, collected the evidence and thereafter, filed a charge sheet against the rider of the motorcycle for the act of negligence. A mere assertion of the Insurance Company in the written statement and posing of questions to PW-1 with regard to the delay in filing the complaint, does not suffice to come to the conclusion that the vehicle involved in the accident was falsely implicated, unless the Insurance Company discharges its burden of proving that the vehicle is falsely implicated since the claimants have discharged their initial burden. It is also to be noticed that in the complaint at Ex.P2, the complainant has specifically stated the reason for delay. A perusal of the said exhibit clearly indicates that the claimants were busy in providing treatment to the injured as he was initially provided treatment at R.L.Jalappa Hospital, thereafter was shifted to B.G.S.Global Hospital, Kengeri, Bengaluru, for further treatment and immediately after the death, the complaint is registered. The said explanation of the complainant appears to be genuine and requires to be accepted. It is required to be noticed that RW-2, record keeper of

R.L.Jalappa Hospital has spoken with regard to Exs.R2 and R3 that they are the accident register maintained by the said hospital and copy of the police information book. It is further required to be noticed that in the accident register extract, it is written as pillion rider self-fall and RTA and it is not clear as to whether the said hospital has sent the MLC intimation to the jurisdictional police or not. However, the records of the hospital indicate that the deceased was admitted in R.L.Jalappa Hospital for sustaining grievous injuries in the road traffic accident. To the said extent, the oral testimony of RW-2 and Exs.R2 and R3 support the case of the claimants. The apprehension of the appellant-Insurance Company with regard to false implication of the vehicle of the respondent No.1, is also liable to be rejected as the respondent No.1 has filed written statement before the Tribunal wherein he has taken a clear stand that it was inevitable for him to take the vehicle on the mud road in order to avoid the head on collision and in the meantime, the pillion rider fell down and sustained injuries. Admittedly, the jurisdictional

police have filed charge sheet against the said rider for his negligent act. Considering the aforesaid oral and documentary evidence, we are of the view that the Tribunal has rightly answered issue Nos.1 and 2 with regard to the occurrence of the accident and the aspect of negligence. We do not find any error or perversity in the said finding of the Tribunal calling for interference in the appeal of the Insurance Company.

(b) It would be useful to refer to paragraphs 20 to 23 of the decision of the Hon'ble Supreme Court in the case of **GEETHA DUBE** referred *supra* which is extracted hereinbelow:

"20. Firstly, it is well settled that in claim cases, in case the accident is disputed or the involvement of the vehicle concerned is put in issue, the claimant is only expected to prove the same on a preponderance of probability and not beyond reasonable doubt. [See Sajeena Ikhbal v. Mini Babu George, 2024 SCC OnLine SC 2883]. We also deem it appropriate to extract the following paragraphs from the judgment of this Court in Bimla Devi v. Himachal Road Transport Corporation, (2009) 13 SCC 530. Repelling similar contentions raised challenging the accident and the

involvement of the vehicle in question, this Court held as follows:

"14. *Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.*

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

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose."

21. *Secondly, applying the test of preponderance of probability, we find that the claimants have established their case that it was the truck bearing registration no. MP-19-HA-1197 which was involved in the accident with car bearing no. MP-19-CB-5879*

wherein the deceased was travelling. We say so for the following reasons:—

a. *The accident occurred on 18.06.2018 and the FIR was lodged on 21.06.2018 clearly giving the date, time and the place where the accident happened. It was also mentioned that it was an unknown truck which came from behind in high speed and hit the car as at that point the claimants were unaware of the number of the truck. It referred to the injuries suffered by the deceased.*

b. *It is also beyond dispute that the husband of the claimant no. 1, the deceased Chakradhar Dubey was treated at Nagpur Arneja Institute of Cardiology Private Limited and he died on 28.06.2018.*

c. *The claimants have explained the delay by clearly stating that after the death, they took time to regroup themselves and set about investigating and collecting information about the accident.*

d. *No sooner they obtained information, the claimant no. 1 submitted an application to the Superintendent of Police giving the list of persons including the name of PW-2 Sonu Shukla who had witnessed the accident.*

e. *Based on the application, the investigation which was originally closed was taken up again as per the order of S.D.O.P., Maihar and after recording the statements of witnesses, a charge-sheet was filed for offences under Sections 279, 337, 338 & 304A, and*

the case is still pending against respondent no. 2- the driver.

***f.** It is also on record that after the application was given by claimant no. 1, a notice under Section 133 of the Motor Vehicles Act was issued to the owner and the vehicle was seized under Exh.P-16 by the police. It has also come on record that the truck was thereafter given on supurdnama by the court to the owner.*

***g.** Sonu Shukla was examined as PW-2 and he has clearly deposed that on 18.06.2018, when he was going from Sarlanagar to Maihar with his colleague Kapil Pandey when respondent no. 2, who was driving the truck bearing registration no. MP-19-HA-1197 in a rash and negligent manner, at around 08 : 15 PM hit the car bearing registration no. MP-19-CB-5879 in which the deceased was travelling. No doubt, the witness states that he gave the information to claimant no. 1. The witness also states that he had taken Chakradhar Dubey to Civil Hospital, Maihar and on the same day informed the claimant's family about the incident. However, he states that he did not inform the police and went back home. The witness admits that his statement was recorded only on 20.04.2019. The witness, however, does not mention that he mentioned the truck number to the family when he conveyed the news of the accident. The witness was cross-examined but he stood by his*

statement. The witness also stated that on a specific question in cross that the front part of the vehicle bearing registration no. MP-19-HA-1197 was of white colour and the body was of red colour and the vehicle was of 12 wheels. The witness also stated that the truck belonged to Sanjeev Kumar Vyasi and denied that the said owner was his relative.

***h.** The insurance company examined Op.W.-1 Raj Kumar Kachhwah who admitted that till the date of his deposition, no information or complaint was given to the senior police officers stating that an attempt is being made by the claimants and the owner and driver of the vehicle to wrongly include the vehicle bearing No. MP-19-HA-1197 in the case. The witness also admitted that no steps to cancel the investigation of the police has been taken and no enquiry has been done into the veracity of the claim.*

***i.** The MACT, on appreciation of the overall conspectus, particularly impressed by the fact that the insurance company did not lodge any complaint of collusion and about the involvement of the truck in an illegal manner concluded that it was truck bearing registration no. MP-19-HA-1197 which hit the car bearing no. MP-19-CB-5879 from behind.*

***22.** Thirdly, the claimants having discharged the initial onus, if the insurance company had a case that there was collusion between the driver/owner of the truck and the claimants, it ought to discharge that burden.*

It is candidly admitted by the witness Raj Kumar Kachhwah that they had taken no steps in this regard.

23. *As held in Sajeena Ikhbal (supra) and Bimla Devi (supra), we are convinced that on the principle of preponderance of probability, the claimants have established the involvement of vehicle bearing registration no. MP-19-HA-1197. The insurance company having set up a specific plea of collusion has not established the same. As was held in Bimla Devi (supra), here too, we feel that there was no reason for the police to falsely implicate the vehicle concerned in the matter and launch prosecution against the driver. If the insurance company had suspected collusion, they would have taken steps to file appropriate complaints including moving the higher police authorities or the court to order an investigation into the alleged wrongful involvement of the vehicle. There is no case for the insurance company that the police officer also colluded. The investigation by the police has resulted in charge-sheet being filed."*

(c) In the case of **ICICI LOMBARD GENERAL INSURANCE CO. LTD. Vs. RAJANI SAHU** referred *supra*, the Hon'ble Supreme Court has held as under:

"9. *It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final*

report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. *In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi [Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510 : 2023 INSC 621] , this Court held thus : (SCC p. 514, para 12)*

"12. ... 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 v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] ."

11. *Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle*

accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible."

(d) The Hon'ble Supreme Court in the case of

ANITA SHARMA referred *supra* has held as under:

"21. *Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.*

22. *A somewhat similar situation arose in Dulcinea Fernandes v. Joaquim Xavier Cruz [Dulcinea Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13]*

wherein this Court reiterated that : (SCC p. 650, para 7)

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101].)"

(emphasis supplied)

(e) The Hon'ble Supreme Court in the case of

JANABAI DINKAR RAO GHORPADE AND OTHERS

referred *supra* has held as under:

"9. *We have heard the learned counsel for the parties and find that the order [ICICI Lombard Insurance Co. Ltd. v. Janabai, 2018 SCC OnLine Bom 21282] of the High Court is unsustainable. Appellant 1 and her husband had received injuries in an accident which took place on 1-6-2007. She lost her husband on 25-6-2007. The primary concern of Appellant 1 or other relatives at the time of incident was to take care of the deceased in his critical condition. The health and well-being of her husband was her priority rather than to lodge an FIR. The High Court has proceeded primarily on the basis of information to the police regarding non-disclosure of the name of the driver of the car in the FIR. Appellant 1 has filed her examination-in-chief on 1-8-2011 disclosing the car*

number of the offending vehicle. The owner and the Insurance Company had the opportunity to cross-examine the witness in support of their stand that the vehicle number given by her was not involved in the accident. In cross-examination, she deposed that she was brought to the hospital in the vehicle which dashed into their vehicle. She deposed that she was mentally disturbed and hospitalised, therefore, she filed the complaint late.

10. *On the other hand, the owner has appeared as a witness. He admitted that he had taken the vehicle on superdari and that he has not filed any proceedings to quash FIR against Sanjay, driver of the Car. He admitted that bail application form and surety bond (Exts. 68, 69 and 70) show that he has stood surety for the driver wherein he has mentioned the accused as driver of his vehicle. It has also come on record that the owner has not made any complaint in respect of false implication of his vehicle or the driver.*

11. *We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of Appellant 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been*

led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable."

(f) The Hon'ble Supreme Court in the case of **RAVI** referred *supra*, has held as under:

"17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of

cases is primarily to intimate the police to initiate investigation of criminal offences.

19. *Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."*

(g) In the case of **SANJU BAI PRAJAPATHI AND OTHERS** referred *supra*, the Hon'ble Supreme Court has held as under:

"5. *The High Court, on an appeal by the Insurance Company, picked holes in the deposition of the eyewitness; according to us without just cause. The fact that he could not speak on the details of the*

vehicle, like colour and registration number, was held to be crucial. The deposition of PW 2 that the registration of the offending vehicle was written in black colour on a white background was disbelieved on the ground that the offending vehicle was a commercial one in which the number plate is written in white on a yellow background. The fact that the FIR was registered after three months was also an additional factor to disbelieve the evidence of the eyewitness, was the finding.

6. *As far as the accident is concerned, it is seen that there is no dispute since a Murg report was made on intimation from the hospital which is produced as Annexure P-1 in which it was recorded that a person involved in a road accident was admitted to the hospital who died at 12.30 a.m. The accident is said to have occurred at 6 p.m. and the Murg report was on the same day. The mere fact that PW 2, the eyewitness did not approach the police cannot be a reason to find the delay in FIR to be suspicious. The accident itself having been proved and a Murg report filed, definitely investigation would be carried out. We see from the FIR that based on the Murg report an investigation was carried out in the course of which the eyewitness was detected and Annexure P-2 FIR was registered. We do not find any reason to disbelieve the FIR, especially since the Insurance*

Company did not make any attempt to examine the investigating officer before the Tribunal.

7. We find absolutely no reason to sustain the order [New India Assurance Co. Ltd. v. Sanju Bai Prajapati, 2023 SCC OnLine MP 7195] of the High Court, therefore, we set aside the same. The amounts, with interest, as awarded by the Tribunal shall be disbursed to the claimants within a period of two months, which shall be equally apportioned in the name of the wife and three minor children. If any of the minor children have not attained majority, the amount shall be kept in a fixed deposit, the interest of which can be disbursed to the mother who is the guardian. The Insurance Company shall deposit the amounts within the period stipulated before the Tribunal and the Tribunal shall apportion the amounts as directed hereinabove."

12. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court in the aforesaid decisions, we are of the view that the claimant, in a motor vehicle case is expected to prove the aspect of negligence and the involvement of the vehicle by adducing the oral and documentary evidence. The Tribunal as well as this Court is required to consider the evidence placed by the claimant by applying the principle of preponderance of

probabilities and not by asking the claimant to prove the case beyond reasonable doubt. The oral and documentary evidence on record *prima facie* establish the aspect of negligence, involvement of the vehicle and a nexus between the accident and the death of Sri.K.S.Baiyya Reddy. Hence, the contention of the Insurance Company that the delay in lodging of the complaint gives room for suspicion, has no basis. The claimants have discharged the initial onus by adducing the oral and documentary evidence before the Tribunal and to rebut the same, nothing is placed on record by the Insurance Company. The contentions and the grounds urged in the appeal filed by the Insurance Company is nothing but finding fault with some portion of the evidence on record which is an attempt to point out the weakness of the claimants and such an attempt would not amount to placing a positive evidence before the Court to accept the version of the Insurance Company.

13. The Hon'ble Supreme Court in the case of **JANABAI** referred *supra*, held that the rule of evidence to

prove the charges in criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988, which is summary in nature and the Tribunal is expected to decide the claim petition on the basis of the evidence led before it and not on the basis of the evidence which should have been or could have been led. In the case on hand, there is sufficient evidence on record to come to the conclusion with regard to the accident, involvement of the vehicle and the nexus between the accident and the death of the deceased. Hence, the contentions advanced by the Insurance Company have no merit and accordingly, the same are rejected.

14. Insofar as quantum of compensation is concerned, the claimants have not produced any cogent or acceptable evidence to prove the income of the deceased. Ex.P14 are the revenue records of the agricultural land in 10 numbers which do not indicate the actual earning of the deceased. Hence, it would be appropriate to assess the income of the deceased at Rs.8,000/- p.m. placing reliance

on the notional income chart prepared by the Karnataka State Legal Services Authority. The deceased was aged about 68 years at the time of accident and there are 3 dependants i.e. wife and children. Hence, the deduction would be 1/3rd towards the personal and living expenses of the deceased and the applicable multiplier would be 5. Each of the claimants would be entitled to Rs.48,000/- under the head of loss of consortium which includes 20% escalation. Similarly, the claimants would be entitled to Rs.18,000/- under the head of loss of estate and Rs.18,000/- towards transportation of dead body and funeral expenses which includes 20% escalation. The enhanced compensation amount carries interest @ 9% p.a. in view of the decision of the co-ordinate Bench in the case of **SRI.BIMAL GOGAI AND ANOTHER Vs. MANAGING DIRECTOR, BMTC**⁷

15. Thus, the appellants would be entitled to the modified compensation as under:

⁷ MFA No.10401/18 & con. appeal dt.09.06.26

HEADS	AMOUNT (in Rs.)
Loss of dependency (8000 x 12 x 5 – 1/3)	3,20,000
Loss of consortium (48,000 x 3)	1,44,000
Transportation of dead body & funeral expenses	18,000
Loss of estate	18,000
Medical expenses	12,99,600
TOTAL	17,99,600

Thus, the appellants-claimants shall be entitled to the total compensation of **Rs.17,99,600/-** as against Rs.15,79,600/- awarded by the Tribunal.

16. In the result, this Court proceeds to pass the following:

ORDER

- a) MFA No.9741/2018 is ***dismissed***.
- b) MFA No.10367/2018 is ***allowed-in-part***.
- c) The impugned judgment and award dated 22.09.2018 passed by the Tribunal in M.V.C.No.1222/2014 is modified to an extent that the appellants-claimants would be entitled to total compensation of **Rs.17,99,600/-** as against Rs.15,79,600/- awarded by the Tribunal.

- d) The enhanced compensation shall carry interest at the rate of 9% p.a. from the date of petition till realisation.
- e) The respondent-Insurance Company shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of the certified copy of this judgment.
- f) The enhanced compensation amount with accrued interest shall be released in favour of the claimants equally.
- g) Registry shall transmit the records along with the amount in deposit, to the Tribunal forthwith.

Draw the modified award accordingly.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV