

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

+ **MAC.APP. 737/2012**

% Date of Decision : 25th July, 2016

MEERA DEVI & ORS Appellants

Through: Mr. S.K. Vashistha, Adv.

versus

JITENDER & ORS Respondents

Through: Mr. Pradeep Gaur and Mr. Amit
Gaur, Adv. for R3.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellants have challenged the award dated 02nd June, 2016 whereby the Claims Tribunal has dismissed their petition.
2. On 13th October, 2005, Parmeshwar Shah was going to Rohini Sector 24, Pocket 27 market on bicycle when he was hit from behind by Maruti Zen car bearing No.HR-12C-5771. Parmeshwar Shah was taken to Sanjay Gandhi Memorial Hospital and then to Lok Nayak Hospital where he succumbed to the injuries sustained.
3. The deceased was survived by widow, two sons and two daughters who filed the claim petition before the Claims Tribunal. The deceased was aged 45 years at the time of the accident and was running a shop of cycle repair earning RS.8,000/- per month.
4. The offending vehicle was driven by respondent no.1, owned by respondent No.2 and insured by respondent No.3. Respondents No.1 and 2

filed the written statement in which they admitted the alleged accident but disputed the negligence of respondent No.1.

5. Appellant No.1 appeared in the witness box as PW-1 to prove the age, occupation, income and legal representatives of the deceased. The appellants examined eye witness Pushpa Devi as PW-2 who deposed that she witnessed the accident which occurred due to the rash and negligent driving of Maruti Zen car bearing No.HR-12C-5771 by respondent No.1 in a rash and negligent manner.

6. The Claims Tribunal dismissed the claim petition on the ground that PW-2 was not examined by the police and her name does not appear in the police investigation/charge sheet. The Claims Tribunal further observed that offending vehicle number has been noted as HR-12C-5717 in the charge sheet whereas the case has been instituted against vehicle bearing No.HR-12C-5771. The Claims Tribunal held that Investigating Officer has falsely implicated vehicle bearing No. HR-12C-5771. The Claims Tribunal further observed that PW-2 is a planted witness and cannot be believed. The Claims Tribunal further held that the petitioner have failed to established that rash and negligent driving on the part of respondent No.1.

7. Learned counsel for the appellants submits that the offending vehicle No.HR-12C-5771 has been correctly mentioned in the FIR as well as on third page of the charge sheet. However, on the second page of the charge sheet, the car number has been inadvertently mentioned as HR-12C-5717 instead of HR-12C-5771 while reproducing the FIR. It is submitted that the inadvertent mistake is apparent on the face of record as the vehicle number is correctly noted in the FIR. It is further submitted that if the learned Claims Tribunal had any doubt, the Investigating Officer could have been examined by the Court. It is further submitted that respondents No.1 and 2

have not disputed the accident and therefore, the view taken by the Claims Tribunal is perverse.

8. This Court is not satisfied with the approach of the Claims Tribunal. It has been time and again held by this Court that the Claims Tribunal has to conduct an inquiry which is different from a trial and it is the duty of the Claims Tribunal to ascertain the truth to do complete justice.

9. In **Mayur Arora v. Amit**, (2011) 1 TAC 878, this Court has held that the Claims Tribunal has to conduct an inquiry to find out the truth. The findings of this Court are reproduced hereunder:-

“10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.”

10. It is fundamental duty of the Court to ascertain the truth and do justice on the basis of truth. In **Ved Prakash Kharbanda v. Vimal Bindal**, 198 (2013) DLT 555, this Court has discussed the relevant principles relating to

the discovery of the truth. Relevant portion of the said judgment is reproduced hereunder:-

“11. Truth should be the Guiding Star in the Entire Judicial Process

11.1 Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

11.2 Krishna Iyer J. in Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155 described truth and justice as under:

“8. ...Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings.”

11.3 In Union Carbide Corporation v. Union of India, (1989) 3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

“30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said :

*“Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words **Truth and Justice** need not be defined in order to be understood in their true sense. **They bear within them a shining beauty and a heavenly light.** I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial....”*

11.4 In *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

11.5 In *Chandra Shashi v. Anil Kumar Verma*, (1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. **People would have faith in Courts when they would find that truth alone triumphs in Courts.**

11.6 In *A.S. Narayana Deekshitulu v. State of A.P.*, (1996) 9 SCC 548, the Supreme Court observed that from the ancient times, the constitutional system depends on the foundation of truth. The Supreme Court referred to Upanishads, Valmiki Ramayana and Rig Veda.

11.7 In *Mohan Singh v. State of M.P.*, (1999) 2 SCC 428 the Supreme Court held that **effort should be made to find the truth; this is the very object for which Courts are created.** To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. **So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses**

and overall, the conscience of a judge evoked by the evidence on record. So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

*11.8 In **Zahira Habibullah Sheikh v. State of Gujarat**, (2006) 3 SCC 374, the Supreme Court observed that right from the inception of the judicial system it has been accepted that **discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.***

*11.9 In **Himanshu Singh Sabharwal v. State of Madhya Pradesh**, (2008) 3 SCC 602, the Supreme Court held that the trial should be a search for the truth and not a bout over technicalities. The Supreme Court's observation are as under:*

*“5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as ‘one of the ablest judgments of one of the ablest judges who ever sat in this Court’, Vice-Chancellor Knight Bruce said [*Pearse v. Pearse*, (1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-29):*

*“31. The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,... **Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.***

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35. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the ‘majesty of the law’.

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38. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty.”

(Emphasis Supplied)

11.10 In Ritesh Tewari v. State of U.P., (2010) 10 SCC 677, the Supreme Court reproduced often quoted quotation: ‘Every trial is voyage of discovery in which truth is the quest’

11.11 In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 370, the Supreme Court again highlighted the significance of truth and observed that *the truth should be the guiding star in the entire legal process and it is the duty of the Judge to discover truth to do complete justice. The Supreme Court stressed that Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth. The Supreme Court observed as under:*

“32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

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35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

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52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every

matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.”

(Emphasis supplied)

11.12 In ***A. Shanmugam v. Ariya Kshatriya***, (2012) 6 SCC 430, the Supreme Court held that ***the entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. The Supreme Court laid down the following principles:***

“43. On the facts of the present case, following principles emerge:

43.1. It is the bounden duty of the Court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

*43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. **Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.***

43.5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.”

(Emphasis supplied)

11.13 In ***Ramesh Harijan v. State of Uttar Pradesh***, (2012) 5 SCC 777, the Supreme Court emphasized that it is the duty of the Court to unravel the truth under all circumstances.

11.14 In ***Bhimanna v. State of Karnataka***, (2012) 9 SCC

650, the Supreme Court again stressed that the Court must endeavour to find the truth. The observations of the Supreme Court are as under:

“28. The court must endeavour to find the truth. There would be “failure of justice” not only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have rights.”

*11.15 In the recent pronouncement in **Kishore Samrite v. State of U.P.**, MANU/SC/0892/2012, the Supreme Court observed that truth should become the ideal to inspire the Courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. The observations of Supreme Court are as under:*

“31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

*32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. **Therefore, the truth should become the ideal to inspire the courts to pursue.** This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure*

that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.”

(Emphasis supplied)

11.16 Malimath Committee on Judicial Reforms discussed the paramount duty of Courts to search for truth. The relevant observations of the Committee are as under:-

*- The Indian ethos accords the highest importance to truth. The motto **Satyameva Jayate** (Truth alone succeeds) is inscribed in our National Emblem “Ashoka Sthambha”. Our epics extol the virtue of truth.*

***-For the common man truth and justice are synonymous. So when truth fails, justice fails.** Those who know that the acquitted accused was in fact the offender, lose faith in the system.*

-In practice however we find that the Judge, in his anxiety to demonstrate his neutrality opts to remain passive and truth often becomes a casualty.

-Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue.

-Many countries which have Inquisitorial model have inscribed in their Parliamentary Acts a duty to find the truth in the case. In Germany Section 139 of the so called ‘Majna Charta’, a breach of the Judges’ duty to actively discover truth would promulgate a procedural error which may provide grounds for an appeal.

-For Courts of justice there cannot be any better or higher ideal than quest for truth.”

11. Section 165 of the Indian Evidence Act empowers the Courts to examine any witness or party at any stage to discover the truth. In **Jai**

Prakash v. National Insurance Company, (2010) 2 SCC 607, the Supreme Court directed the Claims Tribunal to use of 165 of the Indian Evidence Act to discover the truth. Relevant portion of the said judgment is reproduced hereunder:-

“The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.”

12. In ***Ved Prakash Kharbanda v. Vimal Bindal*** (supra), this Court considered the scope of the Section 165 of the Indian Evidence Act. Relevant portion of the said judgment is reproduced hereunder:-

15. **Section 165 of the Indian Evidence Act, 1872**

15.1 Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

15.2 Section 165 of the Indian Evidence Act, 1872 reads as under:

“Section 165. Judge’s power to put questions or order production.-

The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the

leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.”

15.3 *The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.*

15.4 *The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.*

15.5 *The framers of the Act, in the Report of the **Select Committee** published on 31st March, 1871 along with the Bill settled by them, observed:*

“In many cases, the Judge has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to

arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter."

15.6 Cunningham, Secretary to the Council of the Governor – General for making Laws and Regulations at the time of the passing of the Indian Evidence Act stated:

"It is highly important that the Judge should be armed with full power enabling him to get at the facts. He may, accordingly, subject to conditions to be immediately noticed, ask any question he pleases, in any form, at any stage of the proceedings, about any matter relevant or irrelevant, and he may order the production of any document or thing. No objection can be taken to any such question or order, nor are the parties entitled, without Court's permission to cross-examine on the answers given."

15.7 The relevant judgments relating to Section 165 of the Indian Evidence Act, 1872 are as under:-

15.7.1 The Supreme Court in **Ram Chander v. State of Haryana**, (1981) 3 SCC 191 observed that under Section 165, the Court has ample power and discretion to control the trial effectively. **While conducting trial, the Court is not required to sit as a silent spectator or umpire but to take active part within the boundaries of law by putting questions to witnesses in order to elicit the truth** and to protect the weak and the innocent. It is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant".

15.7.2 In **Ritesh Tewari v. State of Uttar Pradesh**, (2010) 10 SCC 677, the Supreme Court held that **every trial is a voyage of discovery in which truth is the quest**. The power under Section 165 is to be exercised with the object of subserving the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth. **It is an extraordinary power conferred upon the Court to elicit the truth and to act in the**

interest of justice. The purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which fall within exceptions contained in the said provision itself.

15.7.3 In *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. The Judge can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The Section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, essential to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. Though justice is depicted to be blind-folded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice and not to ignore or turn the mind/attention of the Court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

15.7.4 In *State of Rajasthan v. Ani*, (1997) 6 SCC162, the Supreme Court held that Section 165 of the Indian Evidence Act confers vast and unrestricted powers on the Court to elicit truth. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn

*Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. A **Judge is expected to actively participate in the trial to elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion.***

*15.7.5 In **Mohanlal Shamji Soni v. Union of India**, 1991 Supp. (1) SCC 271, referring to Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure, the Supreme Court stated that the said two sections are complementary to each other and between them, they confer jurisdiction on the Judge to act in aid of justice. It is a well-accepted and settled principle that a Court must discharge its statutory functions – whether discretionary or obligatory – according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.*

*15.7.6 In **Jamatraj Kewalji Govani v. State of Maharashtra**, AIR 1968 SC 178, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure, 1898 confer jurisdiction on the Judge to act in aid of justice. In criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it.*

*15.7.7 In **Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy**, 1972 CriLJ 1485, the Andhra Pradesh High Court held that **every trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice.** For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact, relevant or irrelevant.”*

13. In **Ved Prakash Kharbanda v. Vimal Bindal** (supra), this Court also discussed the importance of the Trial Court in justice delivery system as

under: -

“16. **Importance of Trial Courts**

*The Law Commission of India headed by H.R. Khanna, J. in its **Seventy Seventh Report** relating to the ‘Delays and Arrears in Trial Courts’ dealt with the importance of Trial Courts in the justice delivery system. The relevant portion of the said Report is reproduced as under:*

*- “If an evaluation were made of the importance of the role of the different functionaries who play their part in the administration of justice, the top position would necessarily have to be assigned to the Trial Court Judge. He is **the key-man in our judicial system, the most important and influential participant in the dispensation of justice. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses.** The image of the judiciary for the common man is projected by the Trial Court Judges and this, in turn depends upon their intellectual, moral and personal qualities.”*

- Personality of Trial Court Judges

“Errors committed by the Trial Judge who is not of the right caliber can sometimes be so crucial that they change the entire course of the trial and thus result in irreparable miscarriage of justice. Apart from that, a rectification of the error by the appellate Court which must necessarily be after lapse of a long time, can hardly compensate for the mischief which resulted from the error committed by the Trial Judge.”

-The ‘Upper Court’ Myth

*“The notion about the provisional nature of the Trial Court decisions being subject to correction in appeal, or what has been called the “upper-Court myth” ignores the realities of the situation. **In spite of the right of appeal, there are many cases in which appeals are not filed.** This apart, the appellate Courts having only the written record before them are normally reluctant to interfere with the appraisal of evidence of witnesses by the **Trial Judges who have had the advantage of looking at the demeanour of the witnesses.** The appellate Court, it has been said, operates in the partial vacuum of the printed record. A stenographic transcript fails to reproduce tones of voice and*

hesitations of speech that often make a sentence mean the reverse of what the mere words signify. The best and most accurate record of oral testimony is like a dehydrated peach; it has neither the substance nor the flavor of the peach before it was dried.”

14. The principles of law summarised by this Court in ***Ved Prakash Kharbanda v. Vimal Bindal*** (supra) are reproduced hereunder:-

“21. **Summary of Principles**

21.1 **Truth should be the Guiding Star in the Entire Judicial Process**

- *Truth is foundation of Justice. Dispensation of justice, based on truth, is an essential and inevitable feature in the justice delivery system. Justice is truth in action.*
- *It is the duty of the Judge to discover truth to do complete justice. The entire judicial system has been created only to discern and find out the real truth.*
- *The justice based on truth would establish peace in the society. For the common man truth and justice are synonymous. So when truth fails, justice fails. People would have faith in Courts when truth alone triumphs.*
- *Every trial is voyage of discovery in which truth is the quest. Truth should be reigning objective of every trial. Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth.*
- *The Trial Judge is the key-man in the judicial system and he is in a unique position to strongly impact the quality of a trial to affect system's capacity to produce and assimilate truth. The Trial Judge should explore all avenues open to him in order to discover the truth. Trial Judge has the advantage of looking at the demeanour of the witnesses. In spite of the right of appeal, there are many cases in which appeals are not filed. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses.*

21.2 **What is 'Truth' and how to discover it**

- *Law's Truth is synonymous with facts established in accordance with the procedure prescribed by law.*
- *The purpose of judicial inquiry is to establish the existence of facts in accordance with law.*
- *Facts are proved through lawfully prescribed methods and standards.*
- *The belief of Courts about existence of facts must be based on reason, rationality and justification, strictly on the basis of relevant and admissible evidence, judicial notice or legally permitted presumptions. It must be based on a prescribed methodology of proof. It must be objective and verifiable.*

21.3 **Section 3 of Indian Evidence Act, 1872**

- *“Evidence” of a fact and “proof” of a fact are not synonymous terms. “Proof” in the strict sense means the effect of evidence.*
- *A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*
- *The term “**after considering the matters before it**” in Section 3 of the Evidence Act means that for judging whether a fact is or not proved, the Court is entitled to take into consideration all matters before it which shall include the statement of the witnesses, admissions of the parties, confession of the accused, documents proved in evidence, judicial notice, demeanour of witnesses, local inspections and presumptions.*
- *The term “**believes it to exist**” in the definition of “proof” is a “judicial belief” of the Judge based on logical/rational thinking and the power of reason, and the Court is required to give reasons for the belief. The reasons are live links between the mind of the decision maker and the belief formed. Reasons convey judicial idea in words and sentences. Reasons are rational explanation of the conclusion. Reason is the very life of law. It is the heart beat of every belief and without it, law becomes lifeless. Reasons also*

ensure transparency and fairness in the decision making process. The reasons substitute subjectivity by objectivity. Recording of reasons also play as a vital restraint on possible arbitrary use of the judicial power. The recording of reasons serve the following four purposes:-

- To clarify the thought process.*
- To explain the decision to the parties.*
- To communicate the reasons to the public.*
- To provide the reasons for an appellate Court to consider.*
- *Non-recording of reasons would cause prejudice to the litigant who would be unable to know the ground which weighed with the Court and also cause impediment in his taking adequate grounds before the appellate Court in the event of challenge.*
- *Nothing can be said to be “proved”, however much material there may be available, until the Court believes the fact to exist or considers its existence so probable that a prudent man will act under the supposition that it exists. For example, ten witnesses may say that they saw the sun rising from the West and all the witnesses may withstand the cross-examination, the Court would not believe it to be true being against the law of nature and, therefore, the fact is ‘disproved’. In mathematical terms, the entire evidence is multiplied with zero and, therefore, it is not required to be put on judicial scales. Where the Court believes the case of both the parties, their respective case is to be put on judicial scales to apply the test of preponderance.*
- *The approach of the Trial Court has to be as under:-*

If on consideration of all the matters before it, the Court believes a fact to exist or considers its existence probable, the fact is said to be ‘proved’. On the other hand, if the Court does not believe a fact either to exist or probable, such fact is said to be ‘disproved’. A fact is said to be ‘not proved’ if it is neither proved nor disproved.

- *The test whether a fact is proved is such degree of probability as would satisfy the mind of a reasonable man as to its existence. The standard of certainty required is of a prudent man. The Judge like a prudent man has to use its own judgment and experience and is not bound by any rule except his own judicial discretion, human experience, and judicial sense.*

21.4 Section 114 of the Indian Evidence Act, 1872

- *Section 114 is a useful device to aid the Court in its quest for truth by using common sense as a judicial tool. Section 114 recognizes the general power of the Court to raise inferences as to the existence or non-existence of unknown facts on proof or admission of other facts.*
- *Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts.*
- *The source of presumptions is the common course of natural events, human conduct and public or private business, and the Section proceeds on the assumption that just as in nature there prevails a fixed order of things, so the volitional acts of men placed in similar circumstances exhibits, on the whole, a distinct uniformity which is traceable to the impulses of human nature, customs and habits of society.*
- *The illustrations though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the section itself.*
- *Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.*
- *Presumptions of fact can be used by the Courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. The function of a presumption is to fill a gap in evidence.*
- *Section 114 of the Indian Evidence Act applies to both civil and criminal proceedings.*
- *Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid*

down. Human behaviour is so complex and room must be left for play in the joints. It is not possible to formulate a series of exact propositions and con-flue human behaviour within straitjackets.

- *No rule of evidence can guide the Judge on the fundamental question whether evidence as to a relevant fact should be believed or not. Secondly, assuming that the Judge believes very few cases, guide him on the question what inference he should draw from it as to assist a Judge in the very smallest degree in determining the master question of the whole subject – whether and how far he ought to believe what the witnesses say? The rules of evidence do not guide what inference the Judge ought to draw from the facts in which, after considering the statements made to him, he believes. In every judicial proceeding whatever these two questions – Is this true, and, if it is true what then? - ought to be constantly present in the mind of the Judge, and the rules of evidence do not throw the smallest portion of light upon them.*

21.5 Section 165 of the Indian Evidence Act, 1872

- *Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.*
- *The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.*
- *The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover*

the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15. In ***Ram Rati v. Devender Singh*** MANU/DE/2887/2012 the Claims Tribunal had dismissed the claim petition on the similar ground that the eye witness examined by the claimants was not examined by the police. This Court held that the Claims Tribunal has not conducted the inquiry in terms of the principles laid down in ***Mayur Arora v. Amit*** (supra) and remanded back the matter to the Claims Tribunal for fresh inquiry. Same view has been taken by this Court in ***K.L. Rohilla v. Ved Prakash Kapoor*** MANU/DE/0931/2012, ***Raj Dulari V. D.T.C.*** MANU/DE/0634/2012, ***Meena Saxena v. Shahid Khan*** MANU/DE/1291/2012 and ***Shashi v. Mohan Varshney*** MANU/DE/2970/2012.

16. The record of the Claims Tribunal reveals that Claims Tribunal has not conducted any inquiry into the matter as contemplated in the Motor Vehicles Act. If the Claims Tribunal has any doubt about veracity of PW-2, the Claims Tribunal should have examined the Investigating Officer under Section 165 of the Indian Evidence Act, 1822. In that view of the matter, the impugned award of the Claims Tribunal is liable to be set aside.

17. The appeal is allowed, impugned award of the Claims Tribunal is set aside and the case is remanded back to the Claims Tribunal for conducting a fresh inquiry under Sections 168 and 169 of the Motor Vehicles Act in terms of the principles laid down in ***Mayur Arora v. Amit*** (supra).

18. While conducting the inquiry, the Claims Tribunal shall consider the examining of Investigating Officer under Section 165 of the Indian Evidence Act to find out the truth.

19. The parties shall appear before the Claims Tribunal on 04th August, 2016.
20. Considering that this case relates to accident dated 13th October, 2005, the Claims Tribunal shall endeavour to complete the inquiry within a period of six months from the receipt of this judgment.
21. This Court appreciates the assistance rendered by Mr. Pradeep Gaur, learned counsel in this matter.
22. Copy of this judgment be sent to the District Judges who shall circulate it along with the copy of the judgment in *Mayur Arora v. Amit* (supra) to all the Claims Tribunals.
23. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.
24. Copy of this judgment be sent to SHO P.S. Sultanpuri who shall file Detailed Accident Report (DAR) before the Claims Tribunal within a period of four weeks from date of receipt of this judgment.

J.R. MIDHA, J.

JULY 25, 2016
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