

\$~

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

%

Date of Decision: 4th May, 2018

+ MAC.APP. 616/2016 and CM No.28424/2016

ICICI LOMBARD GENERAL INSURANCE CO LTD Appellant
Through: Mr. Vishnu Mehra, Advocate

versus

RAJINDER KUMAR CHOPRA & ORS Respondents
Through: Mr. Brijesh Bagga, Advocate for R1.
Mr. Arvind Kumar Gupta, Advocate
for R2 and R3.
Mr. Viraj R. Datar, Advocate as
Amicus Curiae

+ MAC.APP. 594/2016 and CM No. 27585/2016

ICICI LOMBARD GENERAL INSURANCE CO LTD Appellant
Through: Mr. Vishnu Mehra, Advocate

versus

SHAILESH SHETYE & ORS Respondents
Through: Mr. Brijesh Bagga, Advocate for R1.
Mr. Arvind Kumar Gupta, Advocate
for R2 and R3.
Mr. Viraj R. Datar, Advocate as
Amicus Curiae

+ MAC.APP. 612/2016 and CM No. 28414/2016

ICICI LOMBARD GENERAL INSURANCE CO LTD Appellant
Through: Mr. Vishnu Mehra, Advocate

versus

RAJINDER KUMAR CHOPRA & ORS Respondents
Through: Mr. Brijesh Bagga, Advocate for R1.
Mr. Arvind Kumar Gupta, Advocate
for R6 and R7.
Mr. Viraj R. Datar, Advocate as
Amicus Curiae

+ MAC.APP. 615/2016 and CM No. 28422/2016

ICICI LOMBARD GENERAL INSURANCE CO LTD..... Appellant
Through: Mr. Vishnu Mehra, Advocate
versus

SHAILESH SHETYE & ORS Respondents
Through: Mr. Brijesh Bagga, Advocate for R1.
Mr. Arvind Kumar Gupta, Advocate
for R2 and R3.
Mr. Viraj R. Datar, Advocate as
Amicus Curiae

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

Background Facts

1. The appellant has challenged four awards passed by the Claims Tribunal whereby following compensation has been awarded: -
 - 1.1 Compensation for death of Kshama Chopra: Rs.1,00,48,300/-
 - 1.2 Compensation for death of Veena Chopra: Rs.79,84,888/-
 - 1.3 Compensation for injuries to Rajinder Kumar Chopra: Rs.2,83,300/-
 - 1.4 Compensation for injuries to Shailesh Shetye: Rs.9,67,000/-
2. These four appeals arise out of an accident dated 05th May, 2012 between Indigo car bearing No. DL 3TC 0366 and BMW car No.HR 26AV

0007 in Sector-29, Gurgaon. Four persons, namely, Rajinder Kumar Chopra, his wife - Veena Chopra, daughter - Kshama Chopra and son-in-law - Shailesh Shetye were travelling in the Indigo car which was driven by Sanjay Gulati. The accident resulted in the death of three persons, namely, Sanjay Gulati (driver of Indigo car), Veena Chopra and Kshama Chopra, and grievous injuries to two persons namely, Rajinder Kumar Chopra and Shailesh Shetye.

3. The driver of BMW car ran away from the spot after being taken out by the public whereas the driver of Indigo car, four occupants of Indigo car and one occupant of BMW car were taken by the public to Max Hospital.

4. According to the claimants, only two persons were travelling in BMW at the time of the accident and Suraj Sherawat was driving BMW whereas Daksh Jaiswal was sitting on the front seat beside him. The police, on investigation, found this to be correct and the charge-sheet was filed only against Suraj Sherawat. The Court, dealing with the criminal case, has framed the charge only against Suraj Sherawat.

5. The appellant is the insurer of BMW. According to the appellant, there is conscious breach of the insurance policy by the insured by permitting BMW to be driven by Suraj Sherawat who was not holding a driving licence at the time of accident and, therefore, the appellant cannot be held liable to pay compensation to the claimants.

6. Suraj Sherawat admits that he was in BMW at the time of the accident but claims that he was sitting on the front seat beside the driver and the car was being driven by his relative, Rajesh *alias* Raja, who was holding a driving licence. Rajesh *alias* Raja appeared before the Court of Chief

Judicial Magistrate claiming to be the driver of BMW but his application was dismissed by Chief Judicial Magistrate, Gurgaon.

7. The accident dated 05th May, 2012 between Indigo and BMW is not disputed. The presence of Suraj Sherawat and Daksh Jaiswal in BMW is also not disputed. Suraj Sherawat ran away after the accident, is also not disputed. Following questions arose for consideration before the Claims Tribunal:-

7.1. *Whether two or three persons were travelling in BMW at the time of the accident?*

7.2. *Whether Suraj Sherawat was driving BMW at the time of accident, as alleged by the claimants and appellant or Rajesh alias Raja was driving BMW as alleged by Suraj Sherawat?*

8. The Claims Tribunal surprisingly did not give any finding as to the number of persons in BMW and who was driving BMW at the time of the accident. The Claims Tribunal held that it was unable to decide the above question but still held the appellant liable on the ground that there was a valid insurance policy.

9. The following important questions of law arise in this appeal:-

9.1. *Whether a Claims Tribunal can decline to adjudicate the issues raised before it?*

9.2. *Can the Claims Tribunal pass an award against the Insurance Company without determining who was driving the offending vehicle at the time of the accident?*

10. Suraj Sherawat and Devinder Singh (owner of the BMW and father of Suraj Sherawat) are respondents No.2 and 3 respectively in MAC. APP. Nos.594/2016, 612/2016, 615/2016 whereas they are respondents No.6 and 7

respectively in MAC. APP. 616/2016. For the sake of convenience, Suraj Sherawat and Devinder Singh are referred to as “Suraj” and “Devinder” respectively instead of respondent numbers in this judgment.

Factual Matrix

11. On 5th May, 2012 at about 12:15 P.M., Rajinder Kumar Chopra along with his wife - Veena Chopra; daughter - Kshama Chopra and son-in-law - Shailesh Shetye were returning home in Indigo car No. DL 3 TC 0366 from Medanta Hospital, Gurgaon where Rajinder Kumar Chopra was admitted for cardiac ailment. Indigo car was being driven by its driver, Sanjay Gulati. When the Indigo car reached the inter-section near Leisure Park Valley, IFFCO Tower, Sector 29, Gurgaon; it was hit by BMW bearing No.HR 26 AV 0007 which came from South side. BMW hit the Indigo car from right side with such a great force that the Indigo turned turtle due to the impact and was thrown at a distance. The occupants of the Indigo were taken by public to Max Hospital, Gurgaon where Kshama Chopra and Sanjay Gulati, driver of Indigo car were declared brought dead.

12. The driver and occupant of BMW were taken out by the public. The driver of BMW ran away from the spot after the accident whereas the occupant, Daksh Jaiswal was taken to MAX Hospital, Gurgaon in an injured condition.

13. The police registered FIR No.178 of 2012 dated 5th May, 2012 under Sections 279/337/338/304A I.P.C. with P.S. Qutub Enclave, Gurgaon on the statement of Rajinder Kumar Chopra that the accident occurred due to the rash and negligent driving of the driver of BMW.

14. The police recovered a bag from BMW which contained the books of B.Com (Hons.) 1st year and two roll number cards with photographs of Suraj

and Daksh Jaiswal issued by ARSD College, New Delhi which were shown to the eye witnesses of the accident who identified the photograph of Suraj on his roll number card and told the police that Suraj was driving the BMW at the time of accident.

15. The police on investigation found that Suraj was driving BMW and only two persons namely Suraj and Daksh Jaiswal were travelling in BMW at the time of accident. The Crime Team of the police examined vehicles as well as scene of the accident. The Crime Team found both the air bags of BMW were open i.e. of driver seat and the seat next to the driver.

16. On 11th May, 2012, the police interrogated Devinder, owner of the BMW, who told the police that Suraj and Daksh Jaiswal (hereinafter referred as “Daksh”) were travelling in BMW which was being driven by Rajesh *alias* Raja (hereinafter referred as “Rajesh”).

17. On 12th May, 2012, the police issued notice to the Devinder to produce Suraj as well as Rajesh.

18. On 12th May, 2012, Rajesh appeared before Chief Judicial Magistrate claiming to be the driver of BMW at the time of the accident which was opposed by the police on the ground that BMW was driven by Suraj at the time of the accident.

19. On 13th May, 2012, the Commissioner of Police, Haryana formed a Special Investigation Team (SIT) headed by ACP Bhupinder Singh to investigate the case.

20. On 13th May, 2012, the SIT recorded the statement of injured eye-witness, Shailesh Shetye that only two persons were there in the car and he can identify the driver.

21. On 14th May, 2012, the Chief Judicial Magistrate rejected the application of Rajesh on the ground that there was no evidence against Rajesh. This order was not challenged before any Court.
22. On 15th May, 2012, Suraj surrendered before Chief Judicial Magistrate, Gurgaon and obtained bail.
23. On 17th May, 2012, Chief Judicial Magistrate directed Suraj to produce his driving licence and give blood sample.
24. On 24th May, 2012, Suraj joined the investigation. According to the case diary of the Crime Team, Suraj admitted before the police that he was driving BMW at the time of the accident.
25. On 07th August, 2012, the police added Sections 3/180/181 of the Motor Vehicles Act against Suraj for driving BMW without a driving licence.
26. On 09th August, 2012, the police filed the challan against Suraj under Sections 279/337/338/304A IPC and Sections 3/180/181 of Motor Vehicles Act before the Court of Chief Judicial Magistrate, Gurgaon.
27. The Court dealing with the criminal case framed charge against Suraj under Sections 279/337/338/304A/427 of IPC and Sections 3/180/181 of Motor Vehicles Act.
28. Four claim petitions were filed by the claimants against Suraj, Devinder and ICICI Lombard General Insurance Company Ltd. on the averments that BMW was driven by Suraj at the time of the accident, owned by Devinder and insured with ICICI Lombard General Insurance Company Ltd.
29. Three claim petitions relate to the injuries suffered by Rajinder Kumar Chopra, Shailesh Shetye and Veena Chopra whereas fourth claim petition

relates to the death of Kshama Chopra. On 23rd January, 2014, Veena Chopra succumbed to her injuries suffered during the accident whereupon her legal representatives were brought on record.

30. All the four claim petitions were consolidated by the Claims Tribunal on 01st November, 2012 and the case of *Shailesh Shetye vs. Suraj Sherawat*, Suit No. 169/12 was taken as a lead case.

31. The appellant in reply to an application dated 05th May, 2016 under Order I Rule 10 CPC in MAC. APP. 616/2016 disclosed before the Claims Tribunal that the legal representatives of Sanjay Gulati (driver of Indigo) filed a claim petition bearing Suit No.399/2014 titled ***Vineeta Gulati v. Devinder Singh*** which was pending before the Claims Tribunal, Tis Hazari, Delhi.

32. The claimants examined 13 witnesses out of which the statements of the following witnesses are relevant to decide as to who was driving the BMW at the time of the accident: -

PW-1 – Jagdish Rai, Investigating Officer of FIR No.178/2012;

PW-3 – Rajinder Kumar Chopra; and

PW-7 – Shailesh Shetye

33. PW-1, Jagdish Rai, Investigating Officer produced the record of the criminal case and exhibited FIR No.178/2012 as Ex.PW-1/1, criminal case record as Ex.PW-1/2 (Colly) and charge-sheet as Ex.PW-1/3. In cross-examination, PW-1 deposed that the accused, Suraj was not having any driving licence at the time of the accident and was challaned under Sections 3/180/181 of the Motor Vehicles Act. PW-1 deposed that he investigated the case for 3-4 days and thereafter, the case was handed over to Special

Investigation Team. PW-1 further deposed that only two persons were in BMW at the time of accident as per the eye-witnesses.

34. PW-3, Rajinder Kumar Chopra was travelling in the Indigo at the time of the accident and the FIR was registered on his statement. He deposed that he saw only two persons sitting in BMW and police informed him that Suraj was driving BMW at the time of the accident. He denied the suggestion that three persons were sitting in BMW.

35. PW-7, Shailesh Shetye was travelling in the Indigo at the time of the accident and he deposed that only two persons were sitting in BMW at the time of accident and Suraj was driving the offending vehicle. PW-7 was cross-examined at length. PW-7, in cross-examination, deposed that BMW was being driven at the speed of approx. 150 km per hour whereas the Indigo was being driven very slowly. He further deposed that he was fully conscious after the accident and his statement was recorded by the police in Max Hospital, Gurgaon. He deposed that only two persons were travelling in BMW. He denied the suggestion that three persons were travelling in BMW. He further denied the suggestion that Rajesh was driving the BMW. He deposed that he remembered the face of the driver and he informed the police that Suraj was driving BMW.

36. Suraj did not appear in the witness box. However, Suraj examined two witnesses namely, Rajesh (R1W1) and Daksh (R1W2).

37. R1W1, Rajesh deposed that he was cousin of Devinder and Suraj was his nephew. He deposed that he was driving the BMW at the time of the accident and Suraj was sitting beside him whereas Daksh was sitting in the back seat of BMW. He further deposed that the accident occurred due to the rash and negligent driving of Indigo. He further deposed that he and Suraj

ran away from the spot of accident due to fear. He further deposed that he was holding a valid driving licence at the time of accident. The driving license of Rajesh was exhibited as Ex.R1W1/1.

38. R1W2, Daksh deposed that he was travelling with Suraj in BMW. He further deposed that he became unconscious immediately after the accident. He further deposed that Rajesh was driving BMW at normal speed at the time of the accident and he was sitting at the back seat of BMW.

39. Devinder appeared in the witness box as R2W1 and deposed that he was the owner of BMW which was being driven by Rajesh at the time of the accident, and Suraj and Daksh were travelling in BMW. In cross-examination, he deposed that Rajesh was related to him and was employed by him as a driver and he was paying Rs.10,000/- to Rs.12,000/- per month as salary in cash to Rajesh at the time of the accident. He admitted that he was Income Tax payee but had not shown Rajesh as his employee in the Income Tax records.

40. The appellant examined its Legal Manager as R3W1, who deposed that BMW was insured with the appellant by a comprehensive policy (Ex.R3W1/1); the appellant issued notices under Order XII Rule 8 CPC (Ex.R3W1/2 and Ex.R3W1/3) to Suraj and Devinder to produce the driving licence of Suraj ; Suraj was charged under Sections 279/337/338/304A of IPC and Sections 3/180/181 of Motor Vehicles Act; Suraj was not possessing any driving licence at the time of accident; the owner/insured committed an intentional breach of terms and conditions of the policy; and therefore, the insurance company was not liable to indemnify the insured.

Findings of the Claims Tribunal

41. The Claims Tribunal held that the Indigo car was being driven at a slow speed whereas BMW was being driven at a high speed of not less than 100 to 120 km per hour. The Claims Tribunal held the drivers of both the cars were negligent as the accident occurred in the middle of the intersection of the road and both the drivers had the duty to slow down and take due precautions. The Claims Tribunal held that Indigo was more negligent than BMW as Indigo was coming from a link road. The findings of the Claims Tribunal in MACA 594/2016 on the issue of negligence are as under:-

“17. In the present case, it is an admitted fact that the accident has taken place on a crossing of the main double way road and a single link road, where the BMW car was going straight on the double road main road which is around 60 meter wide, though the Indigo Car was coming from the link road from the left side and the same entered the main road and was hit was by the BMW car. On the face of it, it can be easily held that the driver of the Indigo car should have been more cautious while entering into the main road and it seems that he did not take precautions and came on the road without noticing the traffic including the BMW car coming on the road. But if we see the impact of the collision as per the contents of the FIR after collision the Indigo car, toppled and was thrown at a distance, which clearly shows that the speed of BMW car was excessive and would have been 100 Km per hour. In my opinion, it was also the duty of driver of the BMW car though coming on a straight road to slow down his car at the crossing to avoid any mis happening but it seems that BMW car was not slow down and due to which accident took place.

18. I am conscious of the fact that very high speed does not mean negligence in itself and no one can be held guilty merely on the basis of high speed of the car but it is also

a well settled position of law that proceedings before Tribunal are not akin to the proceeding before Criminal Trial Court to decide guilt of the accused. From the facts of the case it can be safely held that speed of BMW car was excessive and the driver of the BMW car did not slow down his vehicle at the crossing which itself amounts to negligence though it may not be gross negligence / culpable rashness U/s 304-A IPC but this much negligence on the part of the driver of the BMW car is sufficient under the law of torts to create liability.

19. *In view of the above mentioned facts and circumstances, I am of the opinion that driver of both the cars were negligent in driving their vehicles. I can go to the extent of saying that the negligence on the part of the driver of Indigo Car was much more than the driver of BMW car as it was Indigo car which was coming from the link road and was to cross one side of the main road to go to the other side of the main road and its driver instead of noticing the traffic on the main road, did not take precautions and he jumped into the main road which resulted into the accident. Needless to say that even if there is slightness of negligence on the part of the respondents they are liable. This is a case of composite negligence and petitioner had the option to file petition against any of the driver, owner and Insurer of the vehicles. In these facts and circumstances, this issue stands decided in favour of the petitioner and against the driver of the BMW Car.”*

42. With respect of the identity of the driver of the BMW, the Claims Tribunal held that PW-3, Rajinder Kumar Chopra had not seen the driver and he was informed by the police that Suraj was driving BMW. With respect to PW-7, Shailesh Shetye, the Claims Tribunal held that PW-7 deposed having seen Suraj driving the BMW but PW-7 cannot be said to be a natural witness and his testimony cannot be relied upon. The Claims Tribunal held that it cannot be decided as to who was driving the BMW at

the time of the accident in the absence of any cogent evidence. The finding of the Claims Tribunal in MAC. APP. 594/2016 is reproduced herein: -

“49. In view of the above mentioned facts and circumstances I am of the opinion that it cannot be held at this stage that who was driving the offending vehicle i.e. Sh. Driver or Sh. Rajesh @ Raja in the absence of any cogent evidence. This is a case of a poor investigation conducted by the investigating agency where they have tried to establish the identity of the driver on the basis of some secret statement of local people. Admittedly, it is a case which was media hyped and which is sufficient to make any unfounded opinion about the identity of the vehicle in a short span of time making the task of the Investigating officer more difficult. Issue No.1 is disposed off accordingly.”

43. With respect to the liability to pay the compensation, the Claims Tribunal held the appellant liable to pay compensation to the claimants. The Claims Tribunal observed that it was not necessary to decide as to who was driving BMW at the time of accident. The Claims Tribunal observed that BMW was insured with the appellant and, therefore, appellant was liable to pay the compensation to the claimants. The Claims Tribunal declined to grant recovery rights to the appellant leaving the question open for appellant to claim recovery rights by filing a civil suit against the owner of BMW in case some clinching/scientific evidence comes on record. The finding of the Claims Tribunal in MAC. APP. 594/2016 is reproduced herein: -

“51. In the present case, as decided in Issue No.1 it could not be decided as to whether it was Sh. Suraj i.e. Respondent No.1 or Sh. Rajesh @ Raja who was driving the offending vehicle at the time of the accident, but the testimony of Sh. Rajesh @ Raja is there on record, wherein he admitted that it was him who was driving the offending vehicle at the time of the accident. In my opinion for deciding these proceedings i.e. for the purpose of determining the

compensation, it is not necessary to decide as to who was driving the vehicle, as the manner of accident has already been proved as decided in Issue No.1 and negligence on the part of the driver of BMW car also stands established as he was driving the vehicle in excessive speed therefore, respondent No.2 being the owner of the offending vehicle, becomes, vicariously liable to compensate the petitioner. It is an admitted position on record that the vehicle was insured with respondent No.3, therefore, respondent no. 3 becomes contractually to indemnify the owner. It is submitted on behalf of the insurance company that even as per the charge sheet it was respondent No.1 who was driving the vehicle at the time of accident and he was not holding the driving licence, therefore, recovery right should be given to the Insurance company for breach of policy on the part of respondent No.2. As stated earlier, it could not be established on record that respondent No.1 was driving the offending vehicle and in view of the admission of Sh. Rajesh @ Raja who was holding a valid driving licence, it cannot be said that there was breach of policy on the part of Respondent No.2. Needless to say that present case was taken up by the media at the relevant time and the chances of developing a wrong opinion about the identity of the driver cannot be ruled out and that is why the Ld. CJM Gurgaon, in its order dated 17.05.2012 emphasized for scientific investigation / evidence for establishing the identity of the accused and it is also an admitted position that blood samples were taken and car seats containing the blood stains were sent to CFL Madhuban for the said purpose which was still to be received till the filing of the charge sheet meaning thereby that even in criminal case it could not be established till now on the basis of scientific evidence, that it was Sh. Suraj who was driving the offending vehicle, therefore, as far as recovery rights are concerned I do not deem it fit to keep this matter pending for deciding the issue of recovery rights as it may take longer time, therefore, I leave this question open for the insurance company to claim their recovery rights by filing a suit against the owner in case some clinching/ scientific evidence comes on record. Therefore, I hold respondent No.3 liable to compensate the petitioner with the awarded compensation at this stage. The issue No. 2 is

accordingly decided in favour of the petitioner and against the respondent No.3.”

Assessment of compensation by the Claims Tribunal

44. Veena Chopra suffered induced polytrauma with fracture B/L shaft radius, fracture of 5th metatarsal and fracture of 5th right metacarpal, multiple abrasions all over body and was case of hemorrhagic contusion injuries in the accident for which she underwent tracheotomy and hemodialysis treatment and remained hospitalized from 5th May 2012 to 28th August, 2012, 8th September, 2012 to 17th September, 2012 and 23rd October, 2012 to 27th October, 2012. Veena Chopra expired on 23rd January, 2014 during the pendency of her claim petition. Veena Chopra was survived by her husband, three daughters and one son. The Claims Tribunal awarded Rs.76,02,388/- towards medical expenditure, Rs.1 lakh towards compensation of loss of love and affection, Rs.1 lakh towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses, Rs.97,500/- towards attendant charges and Rs.50,000/- towards special diet. The total compensation awarded is Rs.79,84,888/-.

45. Rajinder Kumar Chopra, aged 68 years suffered stable wedge compression fracture of L1 along with abrasion over hands and feet and lower back injuries in the accident dated 5th May, 2012 for which he remained hospitalized for six days in Max Hospital, Gurgaon. The Claims Tribunal awarded Rs.1,83,300/- towards medical expenditure, Rs.20,000/- towards special diet, Rs.30,000/- towards attendant charges, Rs.50,000/- towards pain and suffering. Total compensation awarded is Rs.2,83,300/-.

46. Shailesh Shetye, aged 34 years suffered from pelvic fractures, dislocation (left) of sacroiliac joint with fracture in superior pubic rami (right) side and other multiple injuries in the accident for which he remained

hospitalized for 16 days from 5th May, 2012 to 20th May, 2012. The Claims Tribunal awarded Rs.38,000/- towards medical expenditure, Rs.35,000/- towards physiotherapy, Rs.20,000/- towards special diet and conveyance, Rs.30,000/- towards nursing/attendant charges , Rs.7,44,000/- towards loss of income and Rs.1 lakh towards pain and suffering. Total compensation awarded is Rs.9,67,000/-.

47. Kshama, aged 33 years was pregnant at the time of the accident and was survived by her husband, Shailesh Shetye. The deceased was working with IBM India as a Management Consultant upto 12th March, 2012 at a salary of Rs.1,46,178.95 per month. The Claims Tribunal took her income as Rs.12,27,904/- per annum, added 50% towards future prospects and applied the multiplier of 16. The Claims Tribunal granted 1/3rd amount as loss to the estate on the ground that the husband was not financially dependent upon her in terms of the principles laid down in ***Keith Rowe v. Prashant Sagar***, 2011 ACJ 1734. The Claims Tribunal computed loss to the estate as Rs.98,23,300/-. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.1 lakh towards loss of consortium and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.1,00,48,300/-.

Relevant Directions of this Court

48. Vide order dated 29th August, 2016, this Court directed the Investigating Officer of FIR No.178/2012, P.S. Sector-29, DLF Qutub Enclave, Gurgaon to appear along with the relevant record.

49. On 06th September, 2016, the Police informed this Court that SIT constituted by the Commissioner of Police, Haryana has charge-sheeted Suraj. This Court directed the Police to place on record the charge-sheet and

the relevant statements/documents and a brief note of the investigation carried out.

50. On 06th September, 2016, the Police filed a brief note of investigation along with the charge-sheet and the relevant statements/documents. As per the brief note, the eye witness, Jitender identified the driver of BMW as Suraj after looking at the photograph on the roll number card of Suraj found in BMW. The brief note of investigation of Haryana Police is reproduced hereunder: -

“1. That FIR No.178 dated 05.05.2012 U/S 279/337/338/304A IPC, P.S. Sector 29, DLF Qutub Enclave, Gurgaon was registered on the complaint of Mr. Rajinder Kumar Chopra S/o Sh. Desh Raj Chopra R/o House no. 4465, New Khursipur, Bhilai, M.P. giving the details of the accident in which his cab was hit by the BMW car silver colour bearing no.HR26 AV 0007 and in the said accident his daughter, Mrs. Shama Shetty and the driver of the cab, Mr. Sanjay Gulati had died and he himself alongwith his wife Mrs. Veena Chopra and his son-in-law Mr. Shailesh Shetty were injured. Copy of FIR No.178 dated 05.05.2012 is ANNEXURE-1.

2. That initial investigation was carried out by SI Jagdish Rai. One Jitender S/o Ram Rattan R/o Hanuman Nagar, District Gorakhpur, UP who is an independent eye-witness of the incident, identified the driver of the BMW car after looking at the roll no. cards found in the BMW car at the spot. His statement was recorded on 05.05.2012 alongwith statements of other people. Copy of statement under section 161 Cr.P.C. of Mr. Jitender is ANNEXURE-2.

3. That on 12.05.2012 one person named Rajesh alias Raja S/o Sh. Umed Singh R/o Kharar, Hissar surrendered before the court stating that he was the driver of the BMW car at the time of incident.

4. That on 13.05.2012, Commissioner of Police, Haryana formed a Special Investigation Team (SIT)

headed by ACP Mr. Bhupinder Singh and others to investigate the matter. Further, on 13.05.2012 statement of other eye-witness/injured Mr. Shailesh Shetty was also recorded wherein it was stated that there were only two young people in the car and he can identify the driver. Copy of statement under section 161 Cr.P.C. of Mr. Shailesh Shetty is ANNEXURE-3.

5. That on 14.05.12, Police informed the Ld. Court that there are no evidences against Mr. Rajesh and investigation is going on. Thus, the court discharged Mr. Rajesh.

6. That on 15.05.2012 Mr. Suraj S/o Sh. Devinder Sherawat R/o Sector-14, Gurgaon surrendered before the Ld. Court and obtained bail from the Court. The Court on 17.05.2012 directed Mr. Suraj to give his Driving Licence and Blood sample for the investigation and denied the request of police for TIP.

7. That on 24.05.2012 Mr. Suraj joined the investigation and informed that he do not have any driving licence and orally admitted that he was driving the car. Copy of case diary dated 24.05.2012 is ANNEXURE -4.

8. That on 07.08.2012, Section 180/181 challan was prepared and submitted before the Court of Chief Judicial Magistrate, Gurgaon, Haryana. Copy of challan dated 09.08.2012 is ANNEXURE-5. The matter is now fixed for consideration on 07.09.2016 before the Court of Ms. Kavita Yadav, JMIC, Gurgaon, Haryana.”

51. On 07th September, 2016, this Court appointed Mr. Viraj R. Datar, Advocate as *amicus curiae* to assist this Court in this matter.

52. On 11th November, 2016, this Court issued Court notice to eye-witness, Jitender in exercise of power under Section 165 of the Indian Evidence Act to ascertain the truth.

53. On 21st November, 2016, Jitender appeared before this Court and his statement was recorded on oath under Section 165 of the Indian Evidence Act. The statement of Jitender is reproduced hereunder: -

“I received the Court notice issued by this Court on 17th November, 2016. No party contacted me after the receipt of the Court notice.

On 05th May, 2012 at about 12.15 pm, I was travelling in a Crane as a helper near IFFCO Tower, Sector 29, when I heard the bang of accident and saw two vehicles in the accidental condition. I did not see the accident happening but saw the accident after hearing the bang. I also did not see who was driving the offending vehicle.

I was going from Leisure Vally Park side towards Metro Station and was at a distance of 100 steps from the place of the accident. I got down from the Crane and ran towards the place of the accident. It may have taken about two minutes. I took out the injured persons from the cars and put them in the Ambulance. The Ambulance was called by somebody else.

Out of the two cars involved in the accident, one vehicle was a BMW car and the other car I do not remember. There was an injured person in the BMW car on the seat next to the driver's seat. I took that person out from the car and put him also in the Ambulance.

I do not know who was driving the BMW car. I do not know where the driver of BMW car went.

The police recorded my statement as a witness. I made the same statement to the police which is stated by me before this Court today.

(Statement of Jitendra recorded by the police under Section 161 Cr.P.C. in which he stated that he saw the accident happening, there was two persons in BMW car, the driver of BMW car ran away and that he recognised the driver of the BMW car from the Roll Number Card found in the car was confronted and read-over to the witness).

I have seen the statement under Section 161 Cr.P.C. I have not made such statement to the police. I standby the statement made before this Court. The statement under Section 161 Cr.P.C. recorded by the police is marked as Mark A. ”

(Emphasis Supplied)

54. The English translation of the statement of Jitender made to Police under Section 161 of Cr.P.C. (Mark ‘A’) is reproduced herein under:-

“I reside at the aforesaid address and do labour work. On 05.05.12, I was present at IFFCO Tower Chowk. It was about 12-12:15 PM when a White Coloured Tata Indigo came towards Leisure Valley Farm’s side in which three male and two female total five passengers were seated. As they were about to cross the intersection, a silver coloured BMW car came towards Huda City Centre’s side, the driver of which was driving at a very high speed and in a reckless manner. Two youngsters were sitting in the car. The driver rammed into Tata Indigo. Resultantly, the Tata Indigo car flipped other side. People took out all the persons from the cars and removed them to hospital. There were only two boys in the BMW car and I took them out of the car with the help of the public. I have seen the face of the boy who was driving the car. I have indentified his photo which is pasted on the Roll Number slip whose name I came to know as Suraj Sherawat S/o Devinder Sherawat. When I was trying to take out the other boy from the BMW who was trapped in the car, Suraj who was driving the car, ran away from the spot. You recorded my statement at the spot which I have heard and the same is correct.”

(Emphasis supplied)

55. On 04th December, 2017, this Court directed the parties to place on record the relevant photographs and videos available on internet as referred to by the Claims Tribunal in paras 43 to 45 of the impugned award in pursuance to which counsel for the appellant placed on record the relevant

videos in a pen drive on 29th January, 2018. The videos placed on record show the condition of both the vehicles after the accident.

56. **Submissions of the appellant**

- 56.1. Two persons were travelling in BMW at the time of the accident, namely Suraj and his friend, Daksh. Suraj was driving BMW whereas Daksh was sitting beside him on the front seat.
- 56.2. PW-3, Rajinder Kumar Chopra and PW-7, Shailesh Shetye proved that only two persons were sitting in BMW and PW-7 further proved that Suraj was driving BMW.
- 56.3. As per the police investigation, Suraj was driving BMW at the time of the accident. The police filed the charge-sheet against Suraj under Sections 279/337/338/304A of IPC and Sections 3/180/181 of Motor Vehicles Act.
- 56.4. The Court dealing with criminal case has framed the charge only against Suraj under Sections 279/337/338/304A/427 of IPC and Sections 3/180/181 of Motor Vehicles Act.
- 56.5. Suraj did not step into the witness box to rebut the evidence led by PW-3 and PW-7 that Suraj was driving BMW at the time of the accident and only two persons were travelling in BMW which leads to an adverse inference that if Suraj had examined himself, his evidence would have been unfavorable to him. Adverse inference be drawn against Suraj under Section 114(g) of the Evidence Act.
- 56.6. Rajesh surrendered before the Chief Judicial Magistrate on 12th May, 2012 falsely claiming to be the driver of the BMW but his application was rejected by the Chief Judicial Magistrate and no

appeal has been preferred by Rajesh or anyone else against the said order.

- 56.7. Rajesh was not impleaded as a respondent before the Claims Tribunal. Suraj filed an application for impleading Rajesh as a respondent which was dismissed by the Claims Tribunal.
- 56.8. Rajesh appeared in the witness box before the Claims Tribunal and made a false statement on oath that he was driving BMW at the time of the accident.
- 56.9. Rajesh is a planted witness to protect Suraj from criminal prosecution as well as legal liability to pay the compensation as Suraj was not holding any driving licence at the time of the accident.
- 56.10. Rajesh is related to Suraj and Devinder and he appeared before the Claims Tribunal on their instance without any summons being issued to him. The testimony of Rajesh is not reliable.
- 56.11. Devinder, owner of BMW appeared in the witness box as R2W1 and he made a false statement that Rajesh was his paid driver but admitted that he has not shown Rajesh as his employee in his Income Tax Returns. R2W1 also admitted that Suraj was not holding a driving licence at the time of accident. Devinder admitted that Rajesh was related to him.
- 56.12. No independent witness was examined to prove that there were three persons in BMW at the time of the accident.
- 56.13. The impugned award holding the appellant liable is perverse as the Claims Tribunal imposed the liability on the appellant without deciding as to who was driving the offending vehicle at the time of the accident.

- 56.14. In MAC.APP.594/2016 relating to the injuries suffered by Shailesh Shetye, the loss of income of Rs.7,44,000/- has not been proved.
- 56.15. In MAC.APP.615/2016 relating to the death of Kshama Chopra, the Claims Tribunal has taken the income of the deceased as Rs.1,47,178.95 per month though the deceased was not employed and earning at the time of the accident.
- 56.16. BMW was driven by Suraj at the time of accident who was not holding any driving licence at the time of the accident and, therefore, the appellant cannot be held liable for payment of compensation to the claimants. There is deliberate and conscious violation of the policy by the insured which have been proved by the appellant by examining its legal manager as R3W1 who proved the notices under Order XII Rule 8 CPC and the violation of the policy by the insured.
- 56.17. Reference was made to Section 5 of the Motor Vehicle Act which casts responsibility on the owner of a motor vehicle not to permit any person to drive the vehicle who is not holding a valid licence. Section 5 of the Motor Vehicle Act is reproduced hereunder:-

“Section 5 - Responsibility of owners of motor vehicles for contravention of sections 3 and 4.— No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.”

- 56.18. Reliance was placed on ***National Insurance Co. Ltd. v. Swaran Singh*** (2004) 3 SCC 297 in which the Supreme Court held the insurance company not liable where the driver was not holding any licence and was consciously allowed by the owner to drive the

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

“84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major.”

57. **Submissions of the Claimants**

- 57.1. The Claims Tribunal committed grave error in not deciding as to who was driving the BMW at the time of the accident.
- 57.2. The Claims Tribunal further erred in holding that PW-7, Shailesh Shetye cannot be said to be a natural witness. The Claims Tribunal failed to appreciate that PW-7 had no reason to implicate Suraj.
- 57.3. R1W1, Rajesh and R2W2, Daksh were both known to Suraj and they were not summoned witnesses.
- 57.4. The Claims Tribunal failed to appreciate the following chain of events: -

- 57.4.1. Suraj did not possess a driving licence.
- 57.4.2. Suraj never entered the witness box to depose that he was not driving BMW.
- 57.4.3. The matter was investigated by the Special Investigation Team and Suraj was charge-sheeted as an accused.
- 57.4.4. The application to implicate Rajesh as driver instead of Suraj was rejected by the Criminal Court and it was never challenged in any Court.
- 57.4.5. R2W1, Devinder admitted that he did not have any document pertaining to the employment of Rajesh as a driver despite being an Income Tax Assessee. He made a vague statement about Rakesh's salary as Rs.10,000/- to Rs.12,000/- p.m. and not a fixed amount.
- 57.4.6. No independent witness was examined to show that there were three persons in BMW.
- 57.4.7. The positive evidence of PW7, Shailesh Shetye was discarded only to the extent of negligence aspect, stating him not to be a natural witness. No reason has been given in the award for PW7, Shailesh Shetye to be an interested witness to implicate any one driver instead of another.
- 57.5. The finding of the Claims Tribunal holding drivers of both the cars to be negligent is contrary to the evidence on record that Indigo was being driven very slowly as it had a heart patient, Rajinder Kumar Chopra who was discharged from Medanta Hospital after his by-pass surgery whereas BMW was being driven at 150 km per hour and BMW hit the Indigo with such a great force that the Indigo turned turtle and was thrown at a long distance.

57.6. The compensation awarded in respect of the death of Kshama Chopra be enhanced as the Claims Tribunal has wrongly applied the judgment of *Keith Rowe v. Prashant Sagar*, (*supra*) and awarded only 1/3rd of the income as loss of estate instead of loss of dependency. The loss of dependency be awarded by deducting 1/3rd as personal expenses of the deceased.

57.7. The compensation awarded in respect of the death of Veena Chopra is on a lower side as the Claims Tribunal has not awarded any compensation for loss of dependency. Moreover, a claim of Rs.12,22,704/- towards the expenditure incurred on the flight tickets of Veena Chopra; her son, Rakesh Chopra and his wife, Preeti Chopra from UK to India and return was wrongly rejected. Rakesh Chopra being the only son of Veena Chopra, incurred the aforesaid expenditure to attend his ailing parents for their treatment.

58. **Submissions of Suraj and Devinder**

58.1. The accident occurred due to the rash and negligent driving of Indigo driven by Sanjay Gulati. There were three persons inside BMW. Rajesh was driving BMW, Suraj was sitting in front seat of BMW next to the driver and Daksh was sitting in the back seat behind the driver of the BMW.

58.2. PW-3, Rajinder Kumar Chopra did not see who was driving BMW at the time of the accident whereas PW-7, Shailesh Shetye was unfit to give statement when he was taken to the hospital and he was not aware as to who was driving BMW at the time of the accident.

58.3. Rajesh appeared in the witness box as R1W2 and deposed that he was driving BMW at the time of the accident. Daksh appeared in the

witness box as R1W1 and deposed that Rajesh was driving BMW at the time of the accident.

- 58.4. The occupants of the Indigo could not have seen how many persons were sitting in BMW and there is no cogent evidence on record to show who was driving BMW at the time of the accident.
- 58.5. The airbags of both sides of BMW were open and blood stains were found on the back seat which supports the version that two persons, namely, Rajesh and Suraj were in the front seats and Daksh was sitting in the back seat.
- 58.6. Daksh was sitting on the back seat behind the driver seat as the blood was found on the back of driver seat and right side rear gate of BMW. Blood stains/blood found on the back seat was only possible when a person is sitting on the back seat.
- 58.7. This Court examined the eye witness Jitender under Section 165 of Evidence Act who stated that he had not seen the accident and he cannot say that who was driving the vehicle.
- 58.8. The police has cooked up a false story on the basis of roll number cards of Suraj and Daksh that Suraj was driving the BMW at the time of accident.
- 58.9. Non-examination of Suraj in the witness box is of no consequence and no adverse inference can be drawn against Suraj in this matter. Reliance is placed on *Delhi Transport Corporation v. Shakuntala*, 2007 (2) ILR (Del) 237.

59. **Submissions of Amicus Curiae**

- 59.1. Suraj was admittedly travelling in BMW and was a crucial witness to rebut the evidence led by the claimants that Suraj was driving BMW.

However, Suraj did not appear in the witness box to rebut the evidence led against him and therefore, adverse inference should be drawn against him for withholding the best evidence. Reliance is placed on *Cholamandalam v. Kamlesh*, 2009 (3) AD (Delhi) 310, *New India Assurance Co. Ltd. v. Nirmala Devi*, 2015 SCC OnLine Del 9765, *United India Insurance Co. Ltd. v. Neena Somani*, 2011 SCC OnLine Del 3815, *Saroj Bala v. First Secretary, USSR Embassy*, 2003 V AD (Delhi) 391 and *New India Assurance Co. Ltd. v. Sanjay Kumar*, ILR (2007) 11 Delhi 733.

59.2. The appellant is liable to pay the compensation to the claimants and the recovery rights be granted to the appellant to recover the award amount from the driver and owner of BMW. Reliance is placed on *National Insurance Company Limited v. Challa Upendra Rao*, (2004) 8 SCC 517, *Lal Singh Marabi v. National Insurance Co. Ltd.*, (2017) 5 SCC 82, *Manuara Khatun v. Rajesh Kr.Singh*, 2017 (4) SCC 796.

60. **Duty of the driver and occupants of a motor vehicle in case of an accident**

Section 134 of the Motor Vehicles Act casts a duty on the driver as well as occupants of the offending vehicle to secure medical attention to the injured person and Section 187 provides for punishment for violation of Section 134 of the Motor Vehicles Act. Sections 134 and 187 of the Motor Vehicles Act are reproduced hereunder:

“Section 134 - Duty of driver in case of accident and injury to a person.—When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver

of the vehicle or other person in charge of the vehicle shall—

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section the expression “driver” includes the owner of the vehicle.”

“Section 187 - Punishment for offences relating to accident.—Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously

convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

61. **Nature of proceedings under Sections 168 and 169 of the Motor Vehicles Act**

61.1. Section 168 of the Motor Vehicles Act provides that the Tribunal shall hold an **“Inquiry”** into the claim. Section 169 provides that the Claims Tribunals shall follow **“Such Summary procedure as it thinks fit”**. Sections 168 and 169 of the Motor Vehicles Act, 1988 does not use the word **“Trial”**, but uses the word **“Inquiry”** and that too a **“Summary”** one. The statute has allowed the Claims Tribunals to follow **“Such summary procedure as it thinks fit”** which means that wide discretion to evolve procedure has been given to the Claims Tribunal. Sections 168 and 169 of Motor Vehicles Act, 1988 are reproduced as under:

“Section 168 - Award of the Claims Tribunal –

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

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

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

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

(Emphasis Supplied)

“Section 169 - Procedure and powers of Claims Tribunals –

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

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

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

(Emphasis Supplied)

61.2. In *Mayur Arora v. Amit*, 2011 (1) TAC 878, this Court held that the Inquiry contemplated in Section 168 of the Motor Vehicles Act, 1988 is different from a trial. This Court laid down the principles applicable to an Inquiry under Sections 168 and 169 of the Motor Vehicles Act. The relevant portions of the judgment are as under:-

“10. THE ‘INQUIRY’ CONTEMPLATED UNDER SECTION 168 of MOTOR VEHICLES ACT, 1988

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”

xxx

xxx

xxx

“13.1. On a fair reading of the statute, the wide power given to the Tribunal, the absence of “onus” upon the claimant, the general position of the claimants and their wherewithal with the social obligation of the welfare State, all indicate that the procedure of the Claims Tribunal has to be Inquisitorial though keeping in view that most other procedures in the country are Adversarial, it would be proper to conceive and put in practice something which is a mix of the two.

13.2. To explain the difference, the Claims Tribunal would not be simply passive, give both the parties sufficient opportunity to adduce evidence, and at the end of the “trial” announce who has won. At the same time, he will not assume the role of investigator and of the prosecutor apart from being the Judge in the Inquisitorial system.

13.3. Even in the pure Adversarial (where, in the past, the Judge remained passive and even in civil and criminal litigation), there has been a slow and steady move towards more active participation of the Judge. There have been two factors. The first is to do greater justice by removing imbalance between the two parties (and their lawyers); and the second is to more efficiently manage the cases and bring about efficiency.

13.4. The proceedings before the Claims Tribunal are more of an Inquiry rather than an Adversarial trial. In other words, it is not that the claimant has to allege everything which the insurance can (without bothering to ascertain the facts) deny everything and then the Court expects proof of one and every allegation made in the claim petition.

13.5. Keeping in view the wording of the statute, the use of the phrase “hold an inquiry” as also particularly the absence of the word “trial” and; the larger purpose of the statute as demonstrated by the Statement of Objects and Reasons; observation into what has gone on; the type of the claimants; the type of the issues; and the need to bring about efficiency, procedure as are tailored to the subject has to be evolved by the Claims Tribunal.”

xxx xxx xxx

“14.45. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. 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.”

xxx xxx xxx

“14.47. While conducting the inquiry, the Claims Tribunal must be on guard against fanciful or false claims. The victims may deserve sympathy, but the matter has to be approached and decided according to law. Incidence of exaggerated or false claims has to be deftly dealt with. In appropriate cases, the Claims Tribunal should not hesitate to lodge a complaint under Section 340 Cr.P.C. Similarly, the Insurance Company which puts forward an evasive or irresponsible defence is liable to be burdened with costs, but where the defence is found to be false, similar action ought to be taken against them. In order to ensure efficiency of procedures and accuracy of the result (determination of the amount), purity in the information received by the Claims Tribunal and veracity of the documents that are placed before the Tribunal, whatever be the source must be brought about.”

(Emphasis Supplied)

62. **Claims Tribunal was duty bound to adjudicate all the issues by applying the principles laid down in Section 3 of the Indian Evidence Act, 1872**

62.1. Section 3 of the Indian Evidence Act defines that 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. **“Evidence”** of a fact and

“**Proof**” of a fact are not synonymous terms. “**Proof**”, in the strict sense, means the effect of evidence.

62.2. Section 3 defines the expressions ‘Proved’, ‘Disproved’, and ‘Not proved’ as under:- —

“Proved” – 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.

“Disproved” – A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved” – A fact is said not to be proved when it is neither proved nor disproved.”

62.3. The expression “**the matters before it**” in the definition of “**proof**” are wide enough to cover matters which are not “**evidence**” as defined in the Act. For instance, a fact may be orally admitted in the Court. The admission would not come within the definition of the word ‘evidence’ as given in this Act, but still it is a matter which the Court would have to take into consideration in order to determine whether the particular fact was proved or not. The Court is thus entitled to take into consideration all the 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.

62.4. Nothing can be said to be “proved”, unless 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.

- 62.5. Section 3 of the Indian Evidence Act refers to the degree of certainty which is required to treat a fact as proved and is so worded to provide for two conditions of mind; first, that in which a man feels absolutely certain of a fact, in other words, “***believes it to exist***”, and second, that in which, though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would, under the circumstances, act on assumption of its existence.
- 62.6. The test of 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 that of a prudent man. Except where artificial probative value is assigned to certain facts by presumptions, the Act affords no guidance on the question whether one fact is or is not sufficient to prove another fact. On this point, the Judge like a prudent man has to use its own judgment and experience and cannot be bound by any rule except his own judicial discretion. No hard and fast rule can be laid down as to what inference can be drawn from certain circumstances. The cumulative effect of all the circumstances

established by evidence and the nature of these circumstances has to be taken into consideration.

- 62.7. The rules of evidence may provide tests, the value of which has been proved by long experience, by which Judges may be satisfied that the quality of the material upon which their judgments are to proceed is not open to certain obvious objections; but they do not profess to enable the Judges to know whether or not a particular witness tells the truth or what inference is to be drawn from a particular fact. The correctness with which this is done must depend upon the natural sagacity, the logical power, and the practical experience of the Judge and not only upon his acquaintance with the law of evidence.
- 62.8. Cross-examination supplies a test to a certain extent, but those who have seen most of its application will be disposed to trust at least as a proof that a man is not shaken by it, ought to be believed. A cool, steady liar who happens not to be open to contradiction will baffle the most skilful cross-examiner in the absence of accidents, which are not so common in practice as persons who take their notions on the subject from anecdotes or fiction would suppose.
- 62.9. The grounds for believing or disbelieving statements made by people can be brought under following three heads; namely those which affect the power of the witness to speak the truth; those which affect his will to do so ; and those which arise from the nature of the statement itself and from surrounding circumstances:-
- 62.9.1. **Power** - A man's power to speak the truth depends upon his knowledge and his power of expression. His knowledge depends partly on his accuracy in observation, partly on his

memory, partly on his presence of mind; his power of expression depends upon an infinite number of circumstances, and varies in relation to the subject on which he has to speak.

62.9.2. **Will** - A man's will to speak the truth depends upon his education, his character, his courage, his sense of duty, his relation to the particular facts as to which he is to testify and a thousand other circumstances, as to the presence or absence of which in any particular case it is often difficult to form a true opinion.

62.9.3. **Probability of Statement** - The third set of reasons is those which depend upon the probability of the statement.

62.10. All events are connected to each other as cause and effect. The connection may be traced in either direction, from effect to cause or from cause to effect; and if these two words were taken in their widest acceptation it would be correct to say that when any theory has been formed which alleges the existence of any fact, all facts are relevant which, if that theory was true, would stand to the fact alleged to exist either in the relation of cause or in the relation of effect.

63. **Standard of proof in Motor Accident Claims**

63.1. The proceedings under Sections 168 and 169 of the Motor Vehicles Act are of civil nature and have to be decided on the basis of preponderance of probabilities. In motor accident claims, the claimants are not required to prove the case as it is required to be done in criminal trial. The claimants were merely to establish their case on the touchstone of preponderance of probability and not beyond

reasonable doubt. The relevant portion of the aforesaid judgments is given below.

63.2. In ***Bimla Devi v. Himachal Road Transport Corporation***, (2009) 13 SCC 530, the Supreme Court held as under:-

“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.”
(Emphasis supplied)

63.3. In ***Kusum Lata v. Satbir***, (2011) 3 SCC 646, the Supreme Court held as under:-

“9. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

*10. Reference in this connection may be made to the decision of this Court in *Bimla Devi v. Himachal RTC* [(2009) 13 SCC 530 : (2010) 1 SCC (Cri) 1101], in which the relevant observation on this point has been made and which is very pertinent and is quoted below: (SCC p. 534, para 15)*

“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.”

63.4. In **Bimla Devi v. Satbir Singh**, (2013) 14 SCC 345, the Supreme Court held as under:-

“10. In claim cases, it is difficult to get witnesses, much less eyewitnesses, thus extremely strict proof of facts in accordance with provisions of the Evidence Act may not be adhered to religiously. Some amount of flexibility has to be given to those cases, but it may not be construed that a complete go-by is to be given to the Evidence Act.

11.....The Motor Vehicles Act is a social piece of legislation and has been enacted with the intent and object to facilitate the claimants/ victims to get redress for the loss of family member or for injuries at an early date. Thus, it is desirable to adopt a more realistic, pragmatic and liberal approach in these matters. In claims cases, it is difficult to get witness, much less eye-witness, thus extremely strict proof of facts in accordance with the provisions of the Evidence Act may not be adhered to religiously. Some amount of flexibility has to be given to those cases, but it may not be construed that a complete go-by is to be given to the Evidence Act.”

(Emphasis supplied)

63.5. In **Ranu Bala Paul v. Bani Chakraborty**, (1998) 3 Gau LR 32, the Gauhati High Court held as under:

“8.....In deciding a matter Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of pre-ponderance of evidence, but in a claim before the Motor Accident Claims Tribunal the standard of proof is much below than what is required in a Criminal case as well as in a Civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive or decide things

necessary to be decided for awarding compensation. But the Tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary enquiry and this is a legislation for the welfare of the society. In case N.K.V. Bros. (P) Ltd. Petitioner v. M. Karumai Ammal and others etc., Respondents reported in AIR 1980 SC 1354, the Supreme Court pointed out that the Accidents Tribunal must take special care to see that innocent victims do not suffer and person liable do not escape liability merely because of some doubt and some obscurity there. The court should not succumb to niceties, technicalities and mystic maybes. The Court is bound to take broad view of the whole matter that is what was not done in the instant case.”

(Emphasis supplied)

64. **Section 114 of the Indian Evidence Act, 1872**

64.1. Section 114 of the Evidence Act deals with the rebuttable presumptions. 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. The source of such presumptions is the common course of natural events, human conduct and public or private business.

64.2. Section 114 of the Indian Evidence Act is reproduced hereunder:

“Section 114 - Court may presume existence of certain facts.—

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

64.3. The Section merely states the principle, and the several illustrations appended to it are taken from the important presumptions relating to

innocence, regularity and continuity, which were recognized at common law. The illustrations are by no means exhaustive; nor are the presumptions illustrated therein obligatory in the sense that the Court must raise them or conclusive in the sense that no evidence in rebuttal is admissible. The illustrations (e) and (g) to Section 114 provide that the Court “may presume” the following facts:-

“ (e) That judicial and official acts have been regularly performed;

xxx xxx xxx

(g) That evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it;”

64.4. The above illustrations are followed by the following caveat:-

“The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it.”

64.5. The above caveat is illustrated by following explanatory comments which can be conveniently called “counter illustrations”:-

“As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances;”

xxx xxx xxx

“As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;”

64.6. **Sir James Fitzjames Stephen**, while introducing the Bill relating to the Indian Evidence Act stated in regard to Section 114 as follows:-

“The effect of this provision is to make it perfectly clear that Courts of Justice are to use their own common sense and experience in judging the effect of particular

facts, and that they are to be subject to no particular rules whatever on the subject.”

(Emphasis supplied)

- 64.7. The word ‘*common course*’ in Section 114 qualifies not only natural events but also the words ‘*human conduct*’ and ‘*public and private business*’. As to what is ‘*common course of natural events, human conduct and public and private business*’ depends upon the common sense of the Judge acquired from experience of worldly and human affairs.
- 64.8. The subject of presumptions is closely allied to the subject of burden of proof. When the burden of proof of a fact is on a party, it may be said that there is a presumption as to the non-existence of that fact and where there is a presumption as to the existence of a fact, the burden of proving the non-existence of that fact is on the party who asserts its non-existence. When a presumption operates in favour of a party, the burden of proof is on the opponent, and when the burden of proof is on a party, there is a presumption operating in favour of the opponent.
- 64.9. Presumptions of fact are always rebuttable. In other words, the party against whom a presumption may operate has to lead evidence to show why the presumption should not be given effect to. If, for example, the party which initiates a proceeding or comes with a case to Court offers no evidence to support it, the presumption is that such evidence does not exist. And if some evidence is shown to exist on a question in issue, but the party which has it within its power, does not produce it, despite notice to it to do so, the natural presumption is that it would, if produced, have gone against it. Similarly, a presumption also arises from failure to discharge a special or particular onus.

- 64.10. The Judge has to call in aid not only his training and wisdom but also the experience of life to adjudge which set of evidence is more probable and which evidence is to be believed. The Judge decides who is to be believed and how much and if not, why so. He also visualizes what, in ordinary course, should have been the evidence but was not produced, wherefore an adverse inference ought to be drawn.
- 64.11. The presentation of evidence and the inferences that flow from it are placed by the Judge in his (judicial) scales. The task of a Judge is to first assess the weight of the evidence including presumptions, and then place it into the respective pan (scale) hanging from the two ends of the equal arm of judicial balance.
- 64.12. In *Izhar Ahmad Khan v. Union of India*, AIR 1962 SC 1052, the Supreme Court defined presumptions to be an inference, affirmative or disaffirmative of the truth or falsehood of a doubtful fact or proposition drawn by a process of probable reasoning from something proved or taken for granted.
- 64.13. In *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808, the Supreme Court held that the illustrations to Section 114, 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. 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 that 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. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake.

64.14. **Krishna Iyer, J.** in **Tukaram Ganpat Pandare v. State of Maharashtra**, (1974) 4 SCC 544 held that Section 114 of the Evidence Act enables the Court to use common sense as judicial tool. Section 114 thus is a useful device to aid the Court in its quest for truth. While care and caution need to be exercised in drawing any presumption under Section 114, its scope is wide and it has the potential to lend a helping hand in myriad situations.

64.15. In **Syad Akbar v. State of Karnataka**, (1980) 1 SCC 30, the Supreme Court held that presumptions are inferences of certain fact patterns drawn from the experience and observation of the common course of nature, the constitution of the human mind, the springs of human action, the usages and habits of society and ordinary course of human affairs.

64.16. In **Sodhi Transport Co. v. State of U.P.**, (1986) 2 SCC 486, the Supreme Court held that the rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.

64.17. In **State of W.B. v. Mir Mohammad Omar**, (2000) 8 SCC 382, the Supreme Court held that presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the

truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. Section 114 empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

64.18. In ***M. Narsinga Rao v. State of Andhra Pradesh***, (2001) 1 SCC 691, the Supreme Court held that presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. 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.

64.19. In ***Limbaji v. State of Maharashtra***, (2001) 10 SCC 340, the Supreme Court held that a presumption of fact is a type of circumstantial evidence which in the absence of direct evidence becomes a valuable tool in the hands of the Court to reach the truth without unduly diluting the presumption in favour of the innocence of the accused which is the foundation of our criminal law. It is an inference of fact

drawn from another proved fact taking due note of common experience and common course of events. Section 114 of the Evidence Act shows the way to the Court in its endeavour to discern the truth and to arrive at a finding with reasonable certainty. The Supreme Court further held that having due regard to the germane considerations set out in the section, certain presumptions which the Court can draw are illustratively set out. They are not exhaustive or comprehensive. The presumption under Section 114 is, of course, rebuttable. When once the presumption is drawn, the duty of producing evidence to the contra so as to rebut the presumption is cast on the party who is subjected to the rigour of that presumption. Before drawing the presumption as to the existence of a fact on which there is no direct evidence, the facts of the particular case should remain uppermost in the mind of the Judge. These facts should be looked into from the angle of common sense, common experience of men and matters and then a conscious decision has to be arrived at whether to draw the presumption or not.

64.20. In **Hiten P. Dalal v. Bratindranath Banerjee**, (2001) 6 SCC 16, the Supreme Court held as under:

“22....Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.”

(Emphasis supplied)

**Relevant Judgments on Presumption under Sections 114 (g)
Evidence Act**

64.21. In *Saroj Bala v. First Secretary, USSR Embassy*, 2003 RLR 517, this Court drew adverse inference against the driver of the car who fled away from the spot and did not appear in the witness box before the Claims Tribunal. This Court further observed that there was no reason for driver to run away from the spot if he was not guilty of the accident. Relevant portion of the said judgment is as under:

“6.. ...Once it is admitted that the embassy car was involved in the accident, it was for the driver of the car to prove as to how the accident had taken place. No witness on behalf of the owner or the driver appeared in the witness box to prove as to how the accident took place and in the absence of any evidence being produced on behalf of the owner or the driver of the car, in my opinion, the Tribunal has clearly erred in holding that the accident was caused because of the motorcyclist having gone on the wrong side. After it was admitted that the accident had taken place between the car and the motorcycle, the burden of proof that the accident was not caused because of the rash and negligent driving by the driver of the car was entirely upon him. Even assuming that PW-5 and PW-6 were not eye witnesses, the only eye witness of the accident was the driver of the embassy car who has admittedly not appeared before the Tribunal. Moreover, the driver of the car after the accident fled away from the spot. If he was not guilty of the accident, there was no reason for him to run away from the spot. The fact that the car had been removed from the scene clearly show that the driver of the car tried to destroy the evidence which might have proved his guilt. In these circumstances, in my opinion, the Tribunal ought to have drawn an adverse inference against the owner and driver of the embassy car and ought to have held that the accident was cause entirely due to the rash and negligent driving by the driver of the car. Taking all this into

consideration, I have no hesitation in holding that the accident was caused entirely due to the rash and negligent driving of the embassy car by its driver.”

(Emphasis supplied)

64.22. In ***New India Assurance Co. Ltd. v. Sanjay Kumar***, ILR (2007) 2

Delhi 733, this Court held that if a litigant withholds the best evidence, adverse inference can be drawn against him that the best evidence if produced would have been against the said person.

Relevant portion of the said judgment is as under:

“23. Where the assured chooses to run away from the battle i.e. fails to defend the allegation of having breached the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person.

As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.

24. That apart, what more can the insurance company do other than to serve a notice under Order 12 Rule 8 of the Code of Civil Procedure calling upon the owner as well as the driver to produce a valid driving licence. If during trial such a notice is served and proved to be served, non response by the owner and the driver would fortify the case of the insurance company.”

(Emphasis supplied)

64.23. In ***Cholamandalam v. Kamlesh***, 2009 (3) AD (Delhi) 310, this Court

drew adverse inference against the driver of the car who failed to appear in the witness box. This Court observed that claimants had no

enmity with the driver of the offending vehicle to falsely implicate him. The relevant portion of the judgment is as under:

“17. In the charge sheet filed against respondent no.7, the investigating officer conducted investigations and he met people who had witnessed the accident. IO was informed that accident had been caused by vehicle no. DL 4CN-B-0307. Amit Kumar Sharma, eye witness of accident produced one piece of broken number plate of DL-4C WB-03 and stated that the accident was caused by rash and negligent driving the offending vehicle.

18. It is true that no eyewitness of the accident was produced at the trial. But the chargesheet filed by the police speaks for itself.

19. Further, respondent no.7 i.e. driver of the offending vehicle has not appeared in the witness box to corroborate his defence taken in the written statement. Thus, the inference has to be drawn against him.

20. There is nothing on record to show that the claimants had any enmity with the driver of offending vehicle so as to falsely implicate him in this case.”

(Emphasis supplied)

64.24. In ***United India Insurance Co. Ltd. v. Neena Somani***, 2011 SCC Online Del 3851, this Court upheld the adverse inference drawn by the Claims Tribunal against the driver who did not appear in the witness box to explain the manner in which accident occurred.

Relevant portion of the said judgment is as under:

“9. ...Neither the driver of the alleged truck who had left the vehicle in such a manner has been examined nor the owner of the truck has been produced in the witness box. In such circumstances, in my view, the learned Tribunal rightly concluded that the truck driver was guilty of violation of the express provisions of Sections 122, 126 and 127 of the Motor Vehicles Act, 1988 by leaving the offending truck unattended, without due and

proper caution, in the middle of the road, and that too on a flyover..

10. Further, on the aspect of negligence of the driver of the offending truck, the learned Tribunal has, in my view, rightly held that the standard of proof is altogether different in criminal cases and in civil cases. The proceedings before the Motor Accidents Claims Tribunal are of a civil nature and it is settled law that in civil cases it is the preponderance of probability and not the rule of proof beyond any reasonable doubt which holds the field. Adverse inference was also rightly drawn by the learned Tribunal against the driver who did not appear in the witness box to explain the manner in which the accident occurred.”

(Emphasis supplied)

64.25. In **New India Assurance Co. Ltd. v. Nirmala Devi**, 2015 SCC OnLine Del 9765, this Court following **Cholamandalam v. Kamlesh** (*supra*) drew adverse inference against the driver who did not enter in the witness box. Relevant portion of the said judgment is as under:

“5. As far as the negligence part is concerned it is noteworthy that the respondents have not led any evidence. Even respondent No.6 the driver of the offending vehicle has not entered appearance to lead evidence. This Court has in Cholamandalam vs. Kamlesh 2009 (3) AD (Delhi) 310 held that where the driver of the offending vehicle does not enter the witness box an adverse inference can be drawn against the offending vehicle. In the present case respondent No.6 did not enter appearance or enter the witness box.”

(Emphasis supplied)

Consequences of raising a false claim before the Court.

65. Raising a false claim before the Court is an offence under Section 209 of the Indian Penal Code punishable with punishment of imprisonment upto

two years and fine. Section 209 of the Indian Penal Code is reproduced hereunder:

“Section 209 - Dishonestly making false claim in Court —

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.”

66. In *H.S. Bedi v. National Highway Authority of India*, 2016 (155) DRJ 259, this Court discussed the scope of the Section 209 of the Indian Penal Code. Relevant portion of the said judgment is reproduced hereunder:-

“15.1 Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine.

15.2 The essential ingredients of an offence under Section 209 are: (i)The accused made a claim; (ii)The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv)That the accused knew that the claim was false; and (v)The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.

15.3 A litigant makes a ‘claim’ before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a ‘claim’ for relief necessarily impasses the ground for obtaining that relief. The offence is complete the moment a false claim is filed in Court.

15.4 The word ‘claim’ in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the ‘claim’ to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word “claim” would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while

responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a “claim” to the non-existence of the averred fact. A false “denial”, except when the person responding is not aware, would constitute making a “claim” in Court under Section 209 IPC.

15.5 The word ‘claim’ for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.

15.6 Whether the litigant’s ‘claim’ is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigant’s pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigant’s action has a proper foundation which entitles him to seek judicial relief.

15.7 Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy.

15.8 False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude.

15.9 Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false claims.

15.10 The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come

with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

15.11 The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result.

15.12 Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public.”

(Emphasis supplied)

67. **Summary of principles relating to discovery of truth**

In ***Ved Parkash Kharbanda v. Vimal Bindal***, 2013 (198) DLT 555, this Court discussed the meaning of truth and the principles relating to discovery of truth. This Court examined Sections 3, 114 and 165 of the Indian Evidence Act and summarized the principles as under:

“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 sections 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.*

21.6. False claims and defences

- *In the last 40 years, a new creed of litigants have cropped up who do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*
- *False claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be*

minimized to a large extent. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases.

- *Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts continue to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.*

21.7. Imposition of Costs

- *Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution.*
- *It is the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs for prolonging the litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a*

long way in controlling the tendency of filing false cases.”

Findings

68. **Only two persons were travelling in BMW at the time of the accident.** The reasons for this finding are as under: -

- PW-3, Rajinder Kumar Chopra as well as PW-7, Shailesh Shetye proved that they saw only two persons in BMW at the time of the accident.
- The independent witness, Jitender deposed before this Court on 21st November, 2016 that he took out the injured person from BMW on the seat next to the driver seat and put him in the ambulance which confirms that Daksh was sitting on the front seat of BMW next to the driver and only two persons were travelling in BMW.
- The police, on investigation, found that only two persons were travelling in BMW and the chargesheet has been filed on that basis.
- No independent witness was examined by Suraj and Devinder to prove that there were three persons in BMW at the time of the accident.
- R1W1, Rajesh and R1W2, Daksh are both interested witnesses and their testimony that there were three persons in BMW is not believable and is rejected as ‘disproved’.

69. **Suraj was driving BMW and Daksh was sitting on the front seat beside him at the time of the accident.** The reasons for this finding are as under: -

- PW-7, Shailesh Shetye deposed that Suraj was driving BMW at the time of the accident. He further deposed that he was fully conscious

after the accident and he told the police that he remembered the face of the driver. PW-7 is a natural witness and his testimony is accepted. The contrary finding of the Claims Tribunal that PW-7 was not a natural witness, is rejected.

- Suraj and Daksh admit that they were travelling in BMW at the time of the accident.
- The independent witness, Jitender deposed before this Court on 21st November, 2016 that he took out the occupant of BMW from the front seat next to the driver and put him in the ambulance, which confirms that Daksh was sitting on the front seat next to the driver in BMW.
- The independent witness, Jitender, completely demolished the false defence that Suraj was sitting on the front seat next to the driver and Daksh was sitting on the rear seat as well as the theory of three person in BMW.
- No independent witness was examined by Suraj and Devinder to rebut the aforesaid evidence.
- It is '*proved*' that only two persons were travelling in BMW and Suraj was driving BMW and Daksh was sitting on the front seat next to the driver at the time of the accident.
- The contrary statement of Daksh (R1W2) that he was sitting on the rear seat of BMW is false and is rejected as '*disproved*'.
- The plea that the bloodstains were found on the back seat points out to the presence of a third person, is rejected as the blood from the injuries to Daksh on the front seat can spill over to the rear seat

during the accident or when he was being taken out by public after the accident.

70. **Rajesh was not driving BMW at the time of the accident.** The reasons for this finding are as under: -

- Only two persons were travelling in BMW at the time of the accident. The presence of Suraj and Daksh in BMW is not in dispute. In that view of the matter, the presence of Rajesh in BMW at the time of the accident, is not believable.
- The statement of Rajesh was neither believed by the police nor by the Court of CJM, Gurgaon. Rajesh voluntarily appeared before the Court of CJM on 12th May, 2012 claiming to be the driver of BMW which was opposed by the police. The Court vide order dated 14th May, 2012 rejected the application of Rajesh on the ground that there was no evidence against him. The police has charge-sheeted only Suraj and the Court has framed charge only against Suraj.
- No independent witness was examined to depose that Rajesh was driving BMW at the time of the accident.
- Rajesh is related to Suraj and Devinder and he appeared in the witness box at their instance. Rajesh (R1W1) deposed that he was related to Devinder but made no reference to any employment whereas Devinder (R2W1) in cross-examination raised a plea of Rajesh being an employee which is not believable as Devinder admitted that he had not shown him in the Income Tax returns and the salary was paid him in cash.
- The statement of Rajesh that he was driving BMW does not pass the test of judicial belief and is rejected as '*disproved*'.

71. **Conduct of Suraj and presumptions under Section 114 of Evidence Act**

- Suraj was driving dangerously and over-speeding BMW without a driving licence in violation of Sections 3/181 of Motor Vehicles Act.
- Suraj ran away from the spot after the accident on 5th May, 2012 instead of rendering a helping hand to the victims in violation of Sections 134 and 187 of the Motor Vehicles Act and secondly, he did not report to the police within 24 hours of the accident as provided in Section 134(b) of the Motor Vehicles Act.
- No explanation has been given by Suraj why he ran away from the spot of the accident. Daksh, friend of Suraj also suffered injuries in the accident and was admitted to the Max Hospital. Suraj did not even extend any help or assistance to Daksh. If Suraj was not driving BMW, there was no reason for him to run away instead of helping his injured friend Daksh.
- The police contacted his father, Devinder on 11th May, 2012 and directed him to produce Suraj. Despite that Suraj appeared before the Court after 10 days of the accident on 15th May, 2012 and joined the investigation on 24th May, 2012 without any justification. No explanation has been given for not appearing before the police from 5th to 15th May, 2012.
- Suraj misled the investigation and took a false defence that Rajesh was driving BMW.
- The natural presumption from the conduct of Suraj is that he was driving BMW at the time of accident and later on Rajesh was planted

to take the blame for accident as Suraj was not holding a valid licence at the time of the accident.

72. **Adverse inference under Section 114(g) of Evidence Act**

- Suraj fled away from the spot after the accident and failed to appear in the witness box to give evidence and withheld the best evidence.
- Adverse inference is drawn against Suraj under Section 114(g) of the Evidence Act that he was driving BMW at the time of accident and if he had appeared in the witness box, evidence would have been unfavourable to him.
- The principles laid down in *Saroj Bala v. First Secretary, USSR Embassy (supra)*, *New India Assurance Co. Ltd. v. Sanjay Kumar (supra)*, *Cholamandalam v. Kamlesh (supra)*, *United India Insurance Co. Ltd. v. Neena Somani (supra)*, *New India Assurance Co. Ltd. v. Nirmala Devi (supra)* as discussed in paras 64.21 to 64.25 are applicable to facts of the present case.

73. **Presumption under Section 114(e) of the Evidence Act**

- The police, on investigation, rejected the plea of Rajesh that he was driving BMW at the time of the accident.
- The Court of CJM, Gurgaon rejected the application of Rajesh claiming to be the driver of BMW.
- The police filed the charge-sheet only against Suraj.
- The Court dealing with criminal case framed the charge only against Suraj.
- No material has been placed on record by Suraj and Devinder to doubt the correctness of the decision of Police and the Court who were discharging their official functions.

- The judicial and official acts of the police and the Court are presumed to have been regularly performed under Section 114(e) of the Indian Evidence Act.

74. **No man can take advantage of his own wrong (Nullus commodum capere potest de injuria sua propria) –**

- It is a maxim of law, recognized and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.
- In the present case, Suraj ran away from the spot after the accident and did not report the accident within 24 hours in violation of Section 134 of the Motor Vehicles Act.
- If Suraj had remained on spot or if he had reported to the police within 24 hours, the identity of the driver would not have been in dispute.
- Suraj chose to run away from the spot and surrendered after 10 days without given any justification from which the natural presumption is that he was driving BMW at the time of accident. The effect of this presumption is to shift the onus on Suraj to prove that he was not driving BMW and Suraj has chosen not to discharge the burden by entering the witness box and examining an independent witness. Reference be made to the judgments mentioned in para 64 above.

75. **Conduct of the claimants**

- The Claimants were returning from Medanta Hospital where Rajinder Kumar Chopra was admitted for cardiac ailment.

- The accident resulted in immediate death of Kshama Chopra whereas Rajinder Kumar Chopra, his wife - Veena Chopra and son-in-law - Shailesh Shetye suffered grievous injuries.
- Veena Chopra remained hospitalized from the date of the accident i.e. 5th May 2012 to 28th August, 2012, 8th September, 2012 to 17th September, 2012 and 23rd October, 2012 to 27th October, 2012. However, she could not recover from the injuries and finally expired on 23rd January, 2014.
- Rajinder Kumar Chopra remained hospitalized for six days whereas Shailesh Shetye remained hospitalized for 16 days from 05th May, 2012 to 20th May, 2012.
- The whole family of the claimants was shattered by this accident. A prudent person in place of claimants would prosecute the actual driver who caused the accident. It is not believable that the claimants would forgive the culprit and falsely implicate some other person.
- The natural presumption is that the claimants have implicated Suraj because he was actually driving BMW. The claimants have no enmity or animosity with Suraj to falsely implicate him and no motive can be attributed to the claimants for implicating Suraj. On the other hand, Suraj had a clear motive to plant Rajesh to avoid the criminal prosecution as well as civil liability to pay compensation under the Motor Vehicles Act.

76. **The accident dated 5th May, 2012 occurred due to the rash and negligent driving of BMW by Suraj.** The reasons for this finding are as under: -

- Suraj was dangerously driving and over-speeding BMW without a driving licence whereas Indigo car was being driven at a very slow speed as PW-1, Rajinder Kumar Chopra had been discharged from Medanta Hospital after a cardiac surgery.
- The driver of the Indigo car could not notice BMW because it suddenly came on the scene due to very high speed.
- The contrary findings of the Claims Tribunal are perverse and hereby set aside.

77. **Suraj (driver) and Devinder (owner) of BMW are jointly and severally liable to pay compensation to the claimants.** The reasons for this finding are as under: -

- Suraj was not holding any driving licence at the time of the accident which is admitted by his father, Devinder in witness box. Suraj has been charged under Sections 3/180/181 of Motor Vehicles Act for driving without a licence. As such, there is clear violation of Section 5 of the Motor vehicles Act as well as breach of the policy.
- The appellant proved the conscious breach of the policy and violation of Section 5 of the Motor Vehicles Act by examining R3W1 who proved the notices under Order 12 Rule 8 CPC (Ex.R3W1/2 and Ex.R3W1/3) to Suraj and Devinder to produce the driving licence of Suraj. No reply was given by Suraj or Devinder to the aforesaid notice.
- The appellant is not liable to pay compensation to the claimants as there is conscious breach of the policy by the insured who permitted BMW to be driven by Suraj who was not holding a driving licence.

- The contrary finding of the Claims Tribunal holding the appellant liable, is perverse and contrary to the well settled law and is, therefore, set aside.
- The contention that the appellant be held liable and be granted recovery rights against the insured is contrary to the well settled law laid down by Supreme Court in *Swaran Singh* (*supra*) and is, therefore, rejected.
- Suraj (driver) and Devinder (owner) of BMW are held jointly and severally liable to pay compensation to the claimants.

78. **The assessment of compensation by the Claims Tribunal in all the four cases is upheld.** The reasons for this finding are as under: -

- The appellant has sought reduction of compensation in cases of Shailesh Shetye and Kshama Chopra on the grounds mentioned in paras 56.14 and 56.15 whereas the claimants are seeking enhancement in cases of Kshama Chopra and Veena Chopra on the grounds mentioned in paras 57.6 and 57.7. No other ground was urged by the learned counsels for the parties at the time of hearing.
- There is no merit in the appellant's objection to the income of Kshama Chopra which is based on her last employment with IBM India Pvt. Ltd. as Managing Consultant. The Claims Tribunal has rightly taken the income of Kshama Chopra for computation of loss to the estate. There is no merit in the appellant's objection to the loss of income of Rs.7,44,000/- awarded to Shailesh Shetye. The Claims Tribunal has rightly awarded loss of income to Shailesh Shetye.
- There is no merit in the claimant's claim of enhancement in the cases of Kshama Chopra and Veena Chopra. The amount awarded by the

Claims Tribunal is fair and reasonable and does not warrant enhancement.

- The assessment of compensation by the Claims Tribunal in all four appeals is fair and reasonable and does not warrant any interference. The claimants are awarded with interest @ 12% per annum from the date of institution till realization.

79. **The Claims Tribunal was bound to adjudicate all the issues raised before it.**

- The Claims Tribunal was bound to adjudicate as to whether two or three persons were travelling in BMW and secondly, who was driving BMW at the time of the accident by applying the principle of preponderance of probabilities referred to in the judgments mentioned in para 63 above.
- The Claims Tribunal had no liberty or option to decline to decide the disputed questions of fact raised before it. The finding of the Claims Tribunal that he cannot decide who was driving BMW at the time of the accident is conscious disregard of the well settled law discussed in paras 61 to 65 above.
- The judicial discipline required the Claims Tribunal to adjudicate who was driving BMW at the time of accident. The judicial discipline is one of the fundamental pillars on which judicial edifice rests and if such discipline is routed, the entire edifice will be affected.
- The Claims Tribunal acted arbitrarily and irrationally to hold the appellant liable without deciding who was driving BMW. On one hand, the Claims Tribunal declared that it was unable to decide who

was driving BMW and on the other hand, the Claims Tribunal went on to declare that the negligence of BMW owner was not sufficient under Section 304A IPC (see para 18 of the impugned award reproduced in para 41 above). The impugned award purports to exonerate the driver and owner of BMW not only from the civil liability to pay compensation but also the criminal offence which was not the concern of the Claims Tribunal.

- The Claims Tribunal misdirected itself on the vital issues as to render the impugned award to be one in utter disregard of law. This cannot be said to be a mere lapse. The Claims Tribunal appears to have deliberately disregarded well settled rules of evidence.
- The impugned award discloses total non-application of mind to the actual, relevant and vital aspects and issues in their proper perspective.
- The impugned award is based on mere conjectures and pure hypothetical exercises, absolutely divorced from rationality and reality, inevitably making law, equity and justice, in the process, a casualty. The impugned award is so perverse, arbitrary and irrational that no responsible judicial officer could have arrived at such a decision.
- The impugned award bristles with numerous infirmities and errors of very serious nature undermining the very credibility and objectivity of the reasoning as well as the ultimate conclusions arrived at by the Claims Tribunal.
- The conclusions arrived at by the Claims Tribunal are nothing but sheer perversity and contradiction in terms. Even common sense,

reason and ordinary prudence would commend for rejecting the false defence of the driver and owner of BMW.

- The manner in which the Claims Tribunal has chosen to exonerate the driver and owner of BMW demonstrates perversity of approach as well as flagrant violation of the principles of law. The principles of well settled law are found to have been observed more in their breach in the impugned award.
- The Claims Tribunal appears to have relied upon mere surmises and conjectures. The impugned award suffers from obvious and patent errors of law and facts.
- The Claims Tribunal failed in the duty and obligation to maintain purity of standard and preserve full faith and credibility in the judicial system. The impugned award, on the face of it, is based upon absurd, unreasonable and irrational findings.

80. **Suraj and Devinder made a false claim before the Claims Tribunal as well as this Court**

- Suraj and Devinder raised a false claim before the Claims Tribunal as well as this Court that three persons were travelling in BMW and BMW was being driven by Rajesh *alias* Raja and they abused the process of Court by misleading the Claims Tribunal to pass an illegal award.

Conclusion

81. The accident dated 5th May, 2012 was caused by rash and negligent driving of BMW car No.HR 26AV 0007 by Suraj.

82. The appellant is not liable to pay any compensation to the claimants on account of conscious breach of the policy by the insured in permitting

BMW to be driven by Suraj who was not holding any driving licence at the time of the accident.

83. Suraj and Devinder are held jointly and severally liable to pay the compensation amount as assessed by the Claims Tribunal along with interest @ 12% per annum w.e.f. the date of institute till realization to the claimants.

84. The appeals are allowed and the impugned awards, except to the extent of assessment of compensation, are hereby set aside. The quantum of compensation assessed by the Claims Tribunal in the four awards is upheld. Pending applications are disposed of.

85. The driver and owner of BMW raised a false claim before the Claims Tribunal as well as this Court due to which the claimants are without any compensation for the last six years. Cost of Rs.2 lakhs is imposed on Suraj and Devinder in each of the four appeals. The cost be deposited with the Claims Tribunal within 30 days and the Claims Tribunal shall disburse the same to the claimants.

86. Suraj and Devinder are directed to deposit the entire compensation amount as assessed by the Claims Tribunal along with upto date interest @ 12% per annum from the date of institution, with the Claims Tribunal within 30 days. The proof of deposit along with the computation of interest on affidavit be filed with the Registrar General within one week of deposit.

87. After the deposit of the award amount by Suraj and Devinder in terms of this judgment, the Registrar General of this Court shall refund the award amount deposited by the appellant along with the interest accrued thereon to the appellant.

88. List before the Claims Tribunal for reporting compliance and disbursement of the compensation amount to the claimants on 04th June,

2018. The Claims Tribunal shall pass fresh disbursement order in favour of the claimants after hearing the claimants.

89. The statutory amount deposited by the appellant be refunded back forthwith along with interest accrued thereon.

90. Copy of this judgment be sent to the Motor Accident Claims Tribunal, Tis Hazari Court, Delhi to be considered in case of *Vineeta Gulati v. Devinder Singh*, Suit No.399/2014 relating to the death of Sanjay Gulati (driver of Indigo car) which arose out of the same accident. The Claims Tribunal shall expedite the inquiry in Suit No.399/2014.

91. Copy of this judgment be sent to the Registrar General of this Court.

MAY 4, 2018
rsk/dk/ak

J.R. MIDHA
(JUDGE)

सत्यमेव जयते