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

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Date of Decision: 28th September, 2018

+ MAC.APP. 1114/2017

SUMAN DEVI & ANR

..... Appellants

Through: Mr.D. K. Sharma and Mr. Palvinder
Singh, Advocate

versus

MAHESH ARORA & ANR (RELIANCE GENERAL
INSURANCE CO LTD)

..... Respondents

Through: Ms. Mudita Sharda and Ms. Gayatri
Nandwani, Advocates for R-1.
Mr. Arun Yadav, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellants have challenged the award of the Claims Tribunal whereby the Claims Tribunal dismissed their claim petition.
2. On 24th October, 2014 at about 07:30 P.M., Varsha Rani and Neha Batra were travelling in a car bearing No. DL-1CN-7636 driven by Vinav Arora. The driver lost control over the car near Siwah, G. T. Road, Panipat, Haryana and the car hit against an electric pole which resulted in the death of the driver, Vinav Arora and injuries to Neha Batra and Varsha Rani. An electric wire from the electric pole fell on Varsha Rani when she got out of the car immediately after the accident, due to which she died on her way to the hospital due to electrocution.
3. Varsha Rani was aged 25 years at the time of the accident and was survived by her parents who filed an application for compensation before the

Claims Tribunal.

4. The offending car was driven and owned by Vinav Arora and was insured with Reliance General Insurance Company Limited at the time of accident. It was claimed that the deceased was employed with Scalene works, Bangalore and was earning Rs.25,000/- per month at the time of the accident.

5. The appellants examined three witnesses. PW1 produced the salary record (Ex.PW1/1) of the deceased. PW2 is the eye witness who deposed that he was cleaning his pickle shop at Punjabi Rasoi, Village Shiva, near Rohtak Bypass and he saw the car No. DL-1CN-7636 coming from Chandigarh side and going towards Delhi driven by its driver at a very high speed, rashly and negligently and the car suddenly hit an electric pole and overturned. PW2 deposed that the driver of the car died at the spot and an electric wire from the said pole fell on one of the girls who came out of the car. PW2 deposed that many people gathered there and moved the girls to the hospital. PW2 deposed that the accident occurred due to the negligent driving of the driver of the car. The mother of the deceased appeared in the witness box as PW3.

6. Respondent No. 1 examined Neha Batra as R1W1. R1W1 deposed that she was travelling in the car which was driven at a normal speed. R1W1 deposed that the car suddenly got dis-balanced and crashed into an electric pole and thereafter, overturned and fell into a ditch by the roadside. R1W1 deposed that the driver died on the spot whereas Varsha Rani while trying to climb out of the ditch, came in contact with an electric wire and got electrocuted. R1W1 deposed that there was no negligence on the part of the driver.

7. The Claims Tribunal believed the statement of R1W1 that the car was being driven by driver of the car at a normal speed. The Claims Tribunal rejected the testimony of PW2 as not trustworthy on the ground that there was contradiction in his statement in cross-examination. The Claims Tribunal held that the car in question struck against an electric pole and thereafter, overturned but it was not being driven at a high speed or in a rash or negligent manner.

8. Learned counsel for the appellants urged that at the time of hearing that driver of the car was rash and negligent and the contrary finding of the Tribunal is perverse and liable to be set aside. Learned counsel for the appellants relies on the statement of PW2.

9. Learned counsel for the respondent No.1 as well as learned counsel for respondent No. 2 urged at the time of hearing that the driver of the car was not rash and negligent and he was driving the car at a normal speed. Learned counsel for the respondents rely on the statement of R1W1.

10. In *Ved Prakash Kharbanda v. Vimal Bindal*, 198 (2013) DLT 555, this Court has discussed the meaning of truth and how to discover the truth. A fact is said to be proved when the Court, on considering the matters before it, either believes it to exist or considers its existence probable. Relevant portion of the said judgment is reproduced herein below:-

“13. Section 3 of the Indian Evidence Act, 1872

13.1 Proof : 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.

13.2 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.

13.3 Meaning of term “the matters before it”

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.

13.4 Meaning of term “believes it to exist”

The expression “believes” in the definition of “proof” is a “judicial belief” of the Judge based on logical/rational thinking and 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. Reasons are 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 acts 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.

13.5 *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.*

13.6 *Section 3 of the Indian Evidence Act refers to the degree of certainty which is required to treat 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.*

13.7 *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.*

13.8 *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.*

13.9 *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.*

13.10 *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:-*

13.10.1 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.

13.10.2 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.

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

13.11 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.

*13.12 M. Monir, J. in his commentary **Principles and Digest of the Law of Evidence, 13th Edition**, opined that no rule of evidence can guide a judge on the fundamental question whether the evidence as to the relevant facts should be believed or not. He observed that the best guide of a judge is to ascertain the truth by his own common sense and experience of human nature. The observations of the author are reproduced hereunder:*

*“...There is in almost every trial the question whether evidence as to a fact should be believed or not, and if believed what is its effect on the main question. Does this elaborately framed Code of the Law of Evidence give any assistance to the Judge on this question? The answer, of course, must be in the negative. First, however carefully and with whatever detail the rules of relevancy may be framed, **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? Again, rules of evidence are not, and do not profess to be, rules of logic. They throw no inference ought the Judge 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 to the mind of the Judge, and it must be admitted, both that the rules of evidence do not throw the smallest portion of light upon them and that persons who are absolutely ignorant of those rules may give a much better answer to each of these questions than men to whom every rule of evidence is perfectly familiar. The best shoes in the world will not make a man walk, nor will the best glasses make him see; and in just the same way, the best rules of evidence will not supply the place of natural sagacity or of a taste for and training in logic.

The first of these questions, viz., whether a witness should or should not be believed is one peculiar difficulty owing to the perjury that pervades the atmosphere of law Courts in this country. What is the Judge to do where, as it came to the experience of the writer, in answer to true charge of murder the accused is able to support a plea of alibi by proof of an actual conviction of an offence of cattle-lifting alleged to have been committed by him at the time of murder at a place not connected by rail, fifty miles away from the place of murder, and witnesses are prepared to swear to the arrest of the accused and his detention in custody at and since the alleged time of the murder? In another case of murder, the writer again speaks from experience, a conviction of an offence under the Motor Vehicles Act said to have been committed at a place some 200 miles away from the place of murder, where it was physically impossible for the accused to be after committing the murder, was given in evidence, and though the murder resulted in conviction, the difficulty of the Court in coming to a decision to convict can well be judged. Questions of this nature can never be solved by any artificial rules of evidence, and the best guide of the Judge on such questions is his own common sense and experience

of human nature. Again, though the law may declare that a certain fact may be given in evidence to prove another fact, it is impossible for the law to say, except in very rare cases, that the Judge should consider the latter fact to be proved on proof of the former fact. No rules of law can impart to the Judge a knowledge of the ordinary rules of ratiocination, and here again the accuracy of his decision will depend upon his general education, on the development of his intellectual faculties, and his experience of men and the world.”

(Emphasis supplied)

13.13 *The relevant judgments relating to Section 3 are as under:-*

13.13.1 In **Garib Singh v. State of Punjab**, 1972 (3) SCC 418, the Supreme Court approved the following tests laid down by the Himachal Pradesh High Court in **Chet Ram v. State**, (1971) 1 Sim LJ 153, 157:

“8. ...Courts, in search of the core of truth, have to beware of being misled by half truths or individually defective pieces of evidence. Firstly, undeniable facts and circumstances should be examined. Secondly, the pattern of the case thus revealed, in the context of a whole sequence of proved facts, must be scrutinized to determine whether a natural, or probable and, therefore, a credible course of events is disclosed. Thirdly, the minutes of evidence, including established discrepancies, should be put in the crucible of the whole context of an alleged crime or occurrence and tested, particularly with reference to the proved circumstances which generally provide a more reliable indication of truth than the faulty human testimony, so that the process of separating the grain from the chaff may take place. Fourthly, in arriving at an assessment of credibility of individual witnesses, regard must be had to the possible motives for either deliberate mendacity or subconscious bias. Lastly, the demeanour and bearing of a witness in Court should be carefully noticed and an appellate Court should remember that a trial Court has had, in this respect, an advantage which it does not possess.”

(Emphasis supplied)

13.13.2 In **M. Narsinga Rao v. State of Andhra Pradesh**, (2001) 1 SCC 691, the Supreme Court held as under:

“15. The word “proof” need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word “proved” in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co.Ltd., (1911) 1 K.B. 988 observed like this:

‘Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.’

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.”

(Emphasis supplied)

13.13.3 In R. Puthunainar Alhithan v. P.H. Pandian, (1996) 3 SCC 624, the Supreme Court held that an inference from the proved facts must be so probable that if the Court believes, from the proved facts, that the facts do exist, it must be held that the fact has been proved. The inference of proof of that fact could be drawn from the given objective facts, direct or circumstantial.

13.13.4 In *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190, the Supreme Court explained the principle of Section 3 as under:

“28. ...Section 3 while explaining the meaning of the words "proved", "disproved" and "not proved" lays down the standard of proof, namely, about the existence or non-existence of the circumstances from the point of view of a prudent man. The Section is so worded as to provide for two conditions of mind, first, that in which a man feels absolutely certain of a fact, in other words, "believe it to exist" and secondly 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 the assumption of its existence. The Act while adopting the requirement of the prudent man as an appropriate concrete standard by which to measure proof at the same time contemplates of giving full effect to be given to circumstances or condition of probability or improbability. It is this degree of certainty to be arrived where the circumstances before a fact can be said to be proved. A fact is said to be disproved when the Court believes that it does not exist or considers its non-existence so probable in the view of a prudent man and now we come to the third stage where in the view of a prudent man the fact is not proved i.e. neither proved nor disproved. **It is this doubt which occurs to a reasonable man, has legal recognition in the field of criminal disputes. It is something different from moral conviction and it is also different from a suspicion. It is the result of a process of keen examination of the entire material on record by a prudent man.**”

(Emphasis supplied)

13.13.5 In *State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505, the Supreme Court held that the approach of the Court should be to find out whether the evidence of a witness has a ring of truth. The Supreme Court held as under:-

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them

to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief...”

(Emphasis supplied)

13.13.6 In **Bundhoo Lall v. Joy Coomar**, MANU/WB/0198/1882, the Calcutta High Court explained the intention of the Legislature in using the words “matters before it” instead of “evidence” in Section 3 as under:

“12. It would appear, therefore, that the Legislature intentionally refrained from using the word “evidence” in this definition, but used instead the words, “matters before it.” For instance, a fact may be orally admitted in 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 before whom the admission was made would have to take into consideration in order to determine whether the particular fact was proved or not.”

13.13.7 In **Johnson Scaria v. State of Kerala**, MANU/KE/0367/2006, the Kerala High Court held that the use of presumptions and the doctrine of burden of proof are certainly of crucial assistance in the adjudication of guilt. Who will fail if a fact is not established? Who will fail if the presumption is not drawn? Who will suffer if the presumption once drawn is not rebutted? These questions will certainly have to be considered in the factual scenario in each case. The Court summarised the law on this aspect as under:

“27. ...The expression 'proved' is defined Under Section 3 of the Indian Evidence Act and that definition applies to civil and criminal cases. Any 'prudent man' whose standards the courts are under Section 3 of the Evidence Act directed to follow, shall and the court must hence, insist on a higher degree of probability, in a criminal case (where the consequence of deprivation of life, liberty and property ensues) before the prosecutor's burden is held to be discharged. This and this alone is directed by law by the axiomatic insistence on proof beyond doubt - which is at times romanticised and called proof beyond reasonable doubt and proof beyond the shadow of a reasonable doubt. The purpose of such insistence is

only to caution courts that they must be able to enter a conclusion of guilt "without hesitation" on the materials available."

13.13.8 In *Bipin Kumar Mondal v. State of West Bengal*, (2010) 12 SCC 91, the Supreme Court observed as under:

"31. ...In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

13.14 The Model Civil Jury instructions in USA and Canada contain important guidelines for appreciation of evidence by the Jury. The same are reproduced as under:-

13.14.1 Civil Jury Instructions for the District Courts of Philadelphia, United States (2010).

"1.5 Preliminary Instructions — Evidence

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion."

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"1.11 Preliminary Instructions — Clear and Convincing Evidence

Clear and convincing evidence is evidence that produces in your mind a firm belief or conviction that the allegations sought to be proved by the evidence are true. Clear and convincing evidence involves a higher degree of persuasion than is necessary to meet the preponderance of the evidence standard. But it does not require proof beyond a reasonable doubt, the standard applied in criminal cases."

13.14.2 FEDERAL CIVIL JURY INSTRUCTIONS, STATE OF CHICAGO, UNITED STATES (2013).

"1.11 Weighing the Evidence

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.”

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“1.13 Testimony of Witnesses (Deciding What to Believe)

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, [including any party to the case,] you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;*
- the witness’s memory;*
- any interest, bias, or prejudice the witness may have;*
- the witness’s intelligence;*
- the manner of the witness while testifying;*
- [the witness’s age];*
- the reasonableness of the witness’s testimony in light of all the evidence in the case.”*

13.14.3 Civil Jury Instructions, State of Connecticut, United States (2008).

“2.5-1 Credibility of Witnesses

The credibility of witnesses and the weight to be given to their testimony are matters for you as jurors to determine. However, there are some principles that you should keep in mind. No fact is, of course, to be determined merely by the number of witnesses who testify for or against it; it is the quality and not the quantity of testimony that controls. In weighing the testimony of each witness you should consider the witness's appearance on the stand and whether the witness has an interest of whatever sort in the outcome of the trial. You should consider a witness's opportunity and ability

to observe facts correctly and to remember them truly and accurately, and you should test the evidence each witness gives you by your own knowledge of human nature and the motives that influence and control human actions. You may consider the reasonableness of what the witness says and the consistency or inconsistency of (his/her) testimony. You may consider (his/her) testimony in relation to facts that you find to have been otherwise proven. You may believe all of what a witness tells you, some of what a witness tells you, or none of what a particular witness tells you. You need not believe any particular number of witnesses and you may reject uncontradicted testimony if you find it reasonable to do so. In short, you are to apply the same considerations and use the same sound judgment and common sense that you use for questions of truth and veracity in your daily life.”

13.14.4 Civil Jury Instructions, Canadian Judicial Council (2012).

“9.4 Assessment of Evidence

[1] To make your decision, you should consider carefully, and with an open mind, all the evidence presented during the trial. It will be up to you to decide how much or little of the testimony of any witness you will believe or rely on. You may believe some, none or all of the evidence given by a witness.

[2] When you go to the jury room to consider the case, use your collective common sense to decide whether the witnesses know what they are talking about and whether they are telling the truth. There is no magic formula for deciding how much or how little to believe of a witness’s testimony or how much to rely on it in deciding this case. But here are a few questions you might keep in mind during your discussions.

[3] Did the witness seem honest? Is there any reason why the witness would not be telling the truth?

[4] Does the witness have any reason to give evidence that is more favourable to one side than to the other?

[5] Was the witness in a position to make accurate and complete observations about the event? Did s/he have a good opportunity to do so? What were the circumstances in which the observation was

made? What was the condition of the witness? Was the event itself unusual or routine?

[6] Did the witness seem to have a good memory? Does the witness have any reason to remember the things about which s/he testified? Did any inability or difficulty that the witness had in remembering events seem genuine, or did it seem made up as an excuse to avoid answering questions?

[7] Did the witness seem to be reporting to you what he or she saw or heard, or simply putting together an account based on information obtained from other sources, rather than personal observation?

[8] Did the witness's testimony seem reasonable and consistent? Is it similar to or different from what other witnesses said about the same events? Did the witness say or do something different on an earlier occasion?

[9] Do any inconsistencies in the witness's evidence make the main points of the testimony more or less believable and reliable? Is the inconsistency about something important, or a minor detail? Does it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because the witness said something different, or because s/he failed to mention something? Is there any explanation for it? Does the explanation make sense?

[10] What was the witness's manner when he or she testified? Do not jump to conclusions, however, based entirely on how a witness has testified. Looks can be deceiving. Giving evidence in a trial is not a common experience for many witnesses. People react and appear differently. Witnesses come from different backgrounds. They have different abilities, values and life experiences. There are simply too many variables to make the manner in which a witness testifies the only or most important factor in your decision.

[11] These are only some of the factors that you might keep in mind when you go to your jury-room to make your decision. These factors might help you decide how much or little of a witness's evidence you will believe or rely on. You may consider other factors as well.

[12] In making your decision, do not consider only the testimony of the witnesses. Take into account, as well, any exhibits that have been filed and decide how much or little you will rely on them to help you decide this case. I will be telling (or, have already told) you about how you use admissions in making your decision."

11. Applying the principles laid down by this Court in ***Ved Parkash Kharbanda*** (*supra*), this Court is of the view that a car cannot hit an electric pole and thereafter, turn turtle and fall into the ditch unless the speed of the car is high and there is lack of due care and caution. The natural presumption which can be drawn under Section 114 of the Indian Evidence Act, 1872 is that the car was not being driven with due care and caution. The rashness and negligence of the car is clear from the circumstances. The statement of PW2 has passed the test of judicial belief notwithstanding the minor contradictions whereas the contrary statement of R1W1 does not pass the test of judicial belief. The findings of the Claims Tribunal are clearly perverse and are liable to be set aside.

12. The appeal is allowed and the impugned Award dismissing the claim petition on the ground that there was no rashness and negligence is set aside. It is held that the accident occurred due to rash and negligent driving of the driver of car No. DL-1CN-7636. The case is remitted back to the Claims Tribunal for fresh adjudication on computation of the compensation after hearing both the parties.

13. The parties shall appear before the Claims Tribunal on 30th October, 2018.

14. The record of the Claims Tribunal be returned forthwith.

15. Learned counsel for both the parties have noted down the next date of

hearing and they the waive the requirement of a fresh notice to be issued by the Claims Tribunal.

16. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

SEPTEMBER 28, 2018

J.R.MIDHA, J.

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