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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(110)

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Date of Decision:- 16.11.2022.

Bajaj Allianz General Insurance Co. Ltd.

.....Appellant

Versus

Poonam and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Ashwani Talwar, Advocate
with Mr. Satpal Dhamija, Advocate for the appellant.

ALOK JAIN, J. (Oral)

The present appeal has been filed against the MACT Award dated 04.08.2022 whereby respondent Nos.1 to 3 have been awarded compensation of ₹ 40,28,800/- along with interest @ 9% p.a. from the date of filing the petition till its realization.

Counsel for the appellant-Insurance Company, has argued that the award is bad in the eyes of the law for the reason that the witness alleged to be the eye-witness has given contradictory statements before the MACT viz-a-viz statement before the Court of criminal proceeding and secondly the alleged eye-witness recorded his statement after passage of time and hence the testimony of the said witness could not have been relied upon. No other ground has been raised by the counsel for the appellant.

A perusal of the record shows that the deceased Dinesh Kumar

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met with an accident on 06.10.2017 while he was going from Chandigarh to his house at Zirakpur on his motorcycle when a car moving ahead of him suddenly applied the brakes due to which his motorcycle struck on the backside of the car and the deceased sustained serious head injury. The deceased was serving in the Indian Army and was working as Civilian Switch Board Operator and the first-class legal heirs of the said deceased preferred the claim petition.

The ground raised herein is with regard to the testimony of PW2-Arjun Singh and only contention is that the evidence before the MACT is not in line with the testimony before the Criminal Court.

It is settled law that the preponderance of evidence in a summary trial before the MACT is much less than that before the Criminal Court. More so, the MACT has to adjudicate on the evidence available with it on its file and cannot be swayed away by the finding much less acquittal of the Driver. The only parameter to be proved before the MACT is with regard to the involvement of the offending vehicle being driven in a rash and negligent manner, which caused the death.

In the instant case the action stood proved by virtue of the police investigation and the post mortem report showed that the deceased sustained injuries in the road side accident. Merely because the driver was acquitted in the criminal proceeding on the basis of testimony of the alleged eye-witness cannot be a ground to absolve the insurance company from its liability to support the family. In fact, the Hon'ble Madras High Court in the case of *Ambalavanan Vs. Managing Director, Tamil Nadu State Transport Corporation Ltd., (2020 ACC 681)* has been held as under:

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“12. The Tribunal had misconstrued itself stating that the concerned jurisdictional court has dismissed the criminal case against the driver of the bus and acquitted him, thereby proceeded to dismiss the claim petition filed by the appellant, but the concerned jurisdictional court had dismissed the criminal case only on the primary ground that prosecution failed to prove the negligent act of the driver of the bus and on that basis, the respondent, before the jurisdictional court contended that there was no accident happened and on that basis, the jurisdictional court observed that police authorities have failed to prove the alleged accident and since the appellant had not produced the trip sheet of the offending vehicle, dismissed the claim petition.”

However, in the present case it is not denied that the accident never took place, in fact the cause of death was the accident which took place due to the rash and negligent driving of the offending vehicle. More so, it is settled principle of law that in a claim petition, the claimant has to establish the case on the touchstone of preponderance of probabilities and it is not a criminal trial where the offence has to be proved beyond reasonable doubt. The fact that the driver has been acquitted in the criminal case does not by itself absolve the insurance company to discharge its liability to compensate the claimant, who have lost their immediate relative. This Court finds support from the ratio of law laid down in the case of **Anita Sharma Vs. New India Assurance Co. Ltd. (2021) 1 SCC 171**, wherein it has been held:

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“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646. wherein this Court reiterated that:

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

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Accordingly, the ground raised by the appellant stand negated.

No other ground was raised. In the light of the above, finding no merit in the appeal, the same is dismissed.

Since the main appeal has been dismissed, no order is required to be passed in any other application and the same is also disposed of as such.

(ALOK JAIN)
JUDGE

November 16, 2022.

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Whether speaking/reasoned:- Yes/No

Whether Reportable:- Yes/No