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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 29.08.2023***

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MAC.APP. 371/2023 & CM APPL. 39286/2023**UNITED INDIA INSURANCE CO LTD**

..... Appellant

Through: Mr.Amit Kumar Singh,
 Mrs.K.Enatoli Sema,
 Ms.Chubalemla Chang,
 Mr.Prang Newmai, Advs.

versus

KAILASH CHANDRA GAIROLA AND ORS

..... Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CM APPL. 39288/2023**

1. This application has been filed by the appellant seeking condonation of 71 days delay in filing CM.APPL. 44678/2023.
2. For the reasons stated in the application, the delay is condoned and the application is allowed.
3. The application stands disposed of.

CM APPL. 44678/2023

4. This is an application filed by the appellant to place on record certain additional documents.
5. For the reasons stated in the application, the same is allowed and the additional documents are taken on record.

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6. The application stands disposed of.

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7. This appeal has been filed by the appellant/Insurance Company challenging the Award passed by the learned Motor Accidents Claims Tribunal (West-02), Tis Hazari Court, Delhi (hereinafter referred to as 'Tribunal') on 22.02.2023 in MACT Case No. 76610/2016 titled *Sh. Kailash Chandra Gairola & Anr. v. Sanjay Kumar Madan & Ors..*

8. It is the case of the claimants, that is, the respondent nos.1 and 2 herein, that the deceased-Smt. Kusum Gairola was travelling as a pillion rider with Sh. Ashish Chaudhary (PW-4) from Noida to Mohan Nagar, and upon reaching Vasundhara Farm House, Vasundhara Chowki, Ghaziabad, UP, they were hit from behind by a car bearing registration no. DL-02-CAG-3593 (hereinafter referred to as the 'Offending Vehicle'). Upon impact, both the riders fell down. While Sh. Ashish Chaudhary suffered minor injuries, the deceased suffered serious injuries. They were both taken to Narender Mohan Hospital from the accident site, whereafter, the deceased, during the course of her treatment, succumbed to her injuries on 30.06.2014.

9. By way of the Impugned Award, the learned Tribunal has held that the deceased has died as a consequence of the accident caused on 04.06.2014 by the offending vehicle being driven in a rash and negligent manner. The learned Tribunal has awarded compensation of Rs. 26,77,792/- along with interest at the rate of 6% per annum, from the date of filing of the DAR/claim



petition, that is 01.05.2015, till the payment of the awarded amount, in favour of the claimants.

10. The appellant challenges the Impugned Award by contending that the offending vehicle was not involved in the accident in question and has been falsely claimed to be involved in the accident at a later stage by the claimants in collusion with the owner and driver of the offending vehicle along with Sh. Ashish Chaudhary (PW-4) and Sh. Hari Om (PW-3).

11. The learned counsel for the appellant submits that initially an FIR bearing no. 868/2014 was registered on 07.06.2014 at Indirapuram Police Station, Ghaziabad, against unknown persons and unknown vehicle. Subsequently, an untraced report was filed by the Police on completion of the investigation. He submits that only later, on 07.05.2015, which is almost after 10-11 months from the date of the accident, a charge-sheet bearing no. 240/2015 was filed against the respondent no. 3 herein.

12. The learned counsel for appellant submits that PW-4 had met with the Police for the first time on 07.06.2014 and had told the Police that he was not aware of the description and registration number of the offending vehicle. It was only on 17.03.2015 that he went to the concerned Police Station and disclosed the description and registration number of the offending vehicle.

13. He submits that PW-3 in his testimony has clearly stated that the Police inquired from him about the said accident only in March 2015, that is, after 8-9 months of its taking place. He



submits that therefore, the claim of the PW3 to be an eye-witness to the accident cannot be believed. He submits that there is apparent collusion between claimants and above-mentioned witnesses.

14. He submits that the investigation was re-opened on a complaint made by the husband of the deceased, that is, the respondent no. 1, after 11 months. He states that there is nothing to suggest as to how the respondent no. 1 got to know about the description or the registration number of the offending vehicle, as he was not the eye-witness to the said accident nor had any witness(s) come forward with the same.

15. He submits that the claimants in collusion with the owner and driver of the offending vehicle, that is respondent nos. 3 and 4 herein, along with PW-4 and PW-3, have falsely implicated the insured offending vehicle at a later stage so as to get the compensation.

16. I have considered the submissions made by the learned counsel for appellant.

17. At the outset, it need not be re-emphasised that in a claim petition arising out of motor vehicle accident, the Claimants do not have to prove their case beyond all reasonable doubt, but on the touchstone of preponderance of probabilities. In ***Bimla Devi and Others v. Himachal Road Transport Corporation and Others***, (2009) 13 SCC 530, the Supreme Court has opined the same by observing 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 manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

18. *In Mangla Ram v. Oriental Insurance Company Limited and Others*, (2018) 5 SCC 656, the Supreme Court has held that the claimants are to establish their case on the touchstone of preponderance of probability, and the standard of proof beyond reasonable doubt should not be applied.

19. More recently, in *Anita Sharma and Others v. New India Assurance Company Limited and Another*, (2021) 1 SCC 171, has reiterated the above principles as under:-

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

20. Applying the above tests to the facts of the present case, though it is true that in its initial probe, the police reported that



the identity of the offending vehicle is unknown, PW3 and PW4 came forward as eye-witnesses to the accident and established not only the identity of the offending vehicle but also the manner of the accident. A chargesheet was filed on 07.05.2015 against the respondent no.3. Merely because the PW-3 and PW-4 came out later to depose as eye-witnesses, is not sufficient to doubt their testimony. It is not shown that they have any connection with the deceased or the Claimants. It is also not established why they would depose falsely in favour of the Claimants. In fact, PW-4 was also injured in the accident. He states that earlier he did not divulge the identity of the offending vehicle to the police as he did not wish to get embroiled in a criminal investigation. Unfortunately, this is a sad state of our society where instead of acting like an ideal citizen and helping the police, people generally like to avoid being embroiled in criminal investigation as a witness.

21. PW-4 explained the reasons for his reluctance to disclose the identity of the offending vehicle at the time of the accident, as under:-

“Court Question: Why you did not disclose the registration number of the offending vehicle as you sustained only minor injuries?”

Answer: I did not want to get involved in police case.

When I was driving the motorcycle, I was not aware as to how the driver of the vehicle coming from behind was driving. Voltd- It was a forceful impact on our vehicle. It is wrong to suggest that I did not know which vehicle had hit my motorcycle from behind. It is further wrong to suggest that the alleged offending vehicle was got involved with connivance and



collusion with the owner and driver of the alleged offending vehicle. It is wrong to suggest that no accident took place with the alleged offending vehicle. It is wrong to suggest that police had enquired from me so many times and every time I could not disclose the registration number of the offending vehicle. It is correct that husband of the deceased Kusum Gairola had also enquired from me about the registration number of the offending vehicle and I did not disclose the same to him. It is wrong to suggest that I became unconscious immediately after the accident and therefore, I did not know the registration number and description of the offending vehicle. It is wrong to suggest that I had disclosed the registration number of the alleged offending vehicle to the police after about 8-9 months to help the LRS of victim to claim compensation. It is wrong to suggest that I am deposing falsely.”

22. PW-3, who was an eye-witness to the said accident and had also assisted in taking the injured and deceased to the hospital, in his cross-examination dated 23.08.2019, deposed that he was only contacted by the Police after a gap of 8-9 months from the date of the accident, and that he himself did not follow up with the Police to find out the case status. I may reproduce the relevant extracts from his statement, as under:-

“I used to keep mobile phone with me. My mobile number is 9911889288. AT the time of accident, I was having the said mobile phone with me. Police never recorded my statement. Vol. Only oral inquiries were made telephonically. I cannot tell the exact date of call made by the police, however, it was made after about 8/9 months of accident. I had given my mobile number to the person who was accompanying the deceased on the date of accident. I was never called by the police in Police Station. Today, I came to the court on



the request of the claimant. However, I received summons of this case to appear as witness on the last date of hearing. After the accident, I never approached the police to know about the status of the case. I went to the hospital with the injured/deceased. Neither any entry qua my arrival in hospital was made nor my name was mentioned in any document in the hospital. Petitioner Kailash is not known to me prior to the accident. It is wrong to suggest that no accident took place involving vehicle No. DL-02-CAG-3593. It is wrong to suggest that I was not present at the spot. It is further wrong to suggest that I am deposing falsely only to help the petitioner in the present claim case. It is wrong to suggest that I am deposing falsely.”

23. In **Anita Sharma** (supra), the Supreme Court highlighted that:

“15. It is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses....

16. It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, would not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to the police.

17. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants’ hardship in tracing witnesses and collecting information for an accident which took place....”

24. The testimony of PW-3 and PW-4 cannot be discarded in the present case merely because of their delay in reporting about the involvement of the Offending Vehicle in the accident. The



alleged collusion between the claimants/respondent no. 1 & 2 and PW-4 and PW-3 could not be established by the appellant. On the other hand, it appears that the police was lax in its investigation into the accident. However, for that reason alone, the claim cannot be denied.

25. In view of the above, I find no merit in the present appeal. The same is dismissed. The application is also disposed of.

26. The statutory amount deposited by the appellant be returned to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 29, 2023/rv/rp

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