



2025:DHC:7482



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

% **Date of Decision: 06.08.2025**

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+ **MAC.APP. 784/2017 & CM APPL. 3271/2020**

POOJA AGGARWAL & ANR

.....Appellants

Through: Mr. Shekhar Aggarwal, Advocate.

versus

VED PAL @ RINKU & ORS (FUTURE GENERAL INSURANCE
CO LTD)

.....Respondents

Through: Mr. Rajeev M. Roy, Adv. for R-2.

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+ **MAC.APP. 785/2017 & CM APPL. 3268/2020**

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CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Appeals have been filed on behalf of the Appellants under Section 173 of the Motor Vehicle Act, 1988 seeking to challenge the award dated 10.07.2017 [hereinafter referred to as "Impugned Award"] passed by



the learned Additional District Judge (North East), PO MACT (Pilot Court), Karkardooma Courts, Delhi.

1.1 By the Impugned Award, the claim petitions filed by the Appellants (Petitioners before the learned Tribunal) have been dismissed.

2. The findings of learned Tribunal are that the Appellants failed to prove that the accident, which resulted in death, was caused due to rash and negligent driving of Respondent No.1. The learned Tribunal also gave a finding that the Petitioners have failed to prove that the deceased died on account of injuries sustained in the accident.

3. Briefly, the facts in the present Appeals are that the deceased, one Mr. Ashok Aggarwal was travelling along with his wife, son, daughter-in-law and grandson at around 02:30 p.m., when they reached at National Highway No.2, a Swaraj Tractor bearing No.855FE, which was being driven by a driver at high speed and in a rash and negligent manner, suddenly without prior indication tried to turn the tractor and stopped it. As a result of this sudden turn, the car collided with the tractor. A fire also erupted and all the occupants received serious injuries and died on the spot.

4. It is the case of the Appellants/Claimants that they are daughters of the deceased. Learned Counsel for the Appellants submits that evidence of the eye-witness as well as the driver of the tractor i.e. Respondent No. 1 was placed on record. It was not disputed by the Respondent No.1/driver of the tractor that his vehicle was involved in the accident and further a criminal case was registered against him.

5. Learned Counsel for the Appellants further submits that even the eye-



witness had described the accident in detail that had happened. Despite the same, and giving a finding that the complainant, who lodged the FIR, was not examined, the learned Tribunal has dismissed the claim petitions.

6. Learned Counsel for the Appellants submits that the FIR was lodged by one Mr. Narender Singh who was summoned as a witness. However, since Mr. Narender Singh did not appear before the learned Tribunal, the learned Tribunal did not rely upon the evidence produced and instead dismissed the claim petitions.

7. Learned Counsel for the Respondent No.2/Insurance Company submits that the best evidence was of the person who had lodged the FIR and there is no reason as to why he did not appear. In addition, it is stated that there is no reason that the eye-witness did not file a complaint despite having witnessed the accident.

8. The examination of the eye-witness as well as the Respondent No.1/driver does set out the following undisputed facts:

- (i) That an accident did occur between the car and tractor trolley;
- (ii) That the tractor trolley was admittedly being driven by Respondent No.1/driver;
- (iii) That the impact of the accident was so severe that the Santro car in which all the deceased were being driven, burst into flames, and all the occupants died of burn injuries;
- (iv) That the driver of the tractor fled after the accident;
- (v) That in addition to the claim petitions, an FIR was also registered



against the driver of the offending vehicle.

9. In his evidence, eye-witness, Mr. Virpal/PW2 has stated that on 02.10.2012, while he was driving along with a friend on a Motorcycle, towards Mathura from his residence at Dankaur, he saw a tractor along with a trolley coming from Mathura side at a high speed and a person who was standing in a kachcha path who indicated to stop the tractor and the driver of the tractor immediately applied the brakes in the middle of the road without any indication and without observing the rules of the traffic. It is further stated in his evidence that the Santro car was coming from behind of the tractor, collided with the tractor trolley, due to the impact of which, the car caught fire. The Police and Fire Brigade arrived at the spot. However, all persons died on the spot. He further stated that the driver of the tractor trolley fled away after causing the accident. The relevant extract of evidence of PW-2 is set-out below:

“EVIDENCE OF EYEWITNESS BY WAY OF AFFIDAVIT

Sh. Virapal S/o Sh. Teja aged about 42 years R/o. Village Chachula, Post Office Dankaur, P.S. Dankaur, U.P., do hereby solemnly affirm and declare as under:-

*1. That on 01.10.2012 I was going along with my friend on motor cycle and was proceeding **towards Mathura from my residence Dankaur.** When we reached at near before Babri Mod Manchari side at about 2.00 or 2.30 P.M. **then I saw a Tractor along with Trolly was coming from Mathura side in a high speed and a person who was standing in a Kachcha Path who indicate to stop the Tractor and the driver of the Tractor immediately applied the brake in the middle of the road without any indication negligently and without caring for the rules of the traffic due to that a Black color Centro [sic: Santro]Car** who was also coming from Mathura side and stuck against the Tractor-Trolly. Due to impact the **Centro [sic: Santro] Car locked and the four five person who were sitting in the car received major injuries. But due to forceful impact the Centro Car started to bum heavily.** We stopped our motorcycle and reached on the spot and the lot of public person was also gathered. Somebody call the*



Police. Police with Fire Brigade reached on the spot but the people, who were sitting in the car has been died in this accident.

2. That the police came on spot who asked the factum of accident four five persons including me and my friend regarding the factum of accident and my name and address was taken by the police.

3. **That this accident was caused due to the sole negligent driving of the driver of Tractor.**

4. **That the driver of the Tractor runaway from the spot.**

[Emphasis Supplied]

9.1 The PW-2 was examined and cross-examined and, in his cross-examination, he specifically denied that the tractor and trolley were in a stationary position and the car hit the tractor from behind. He also affirmed that the accident took place in his presence. The witness also affirmed that there were no speed breakers on the road and that the tractor trolley was not in a stationary position. The eye-witness withstood the cross-examination. The relevant extract of his cross-examination is set out below:

“Statement of Sh. Vir Pal, s/o Sh. Teja (recalled for cross-examination after 30.1.2017)

ON SA

XXXXX by Sh. M.K. Vats, Ld. Counsel for respondent no. 1 and 3.

*I have **not seen the driver of the offending vehicle. It is wrong to suggest that the tractor and the trolley was in stationery position and the car hit the tractor from behind.** I do not remember the number of offending vehicle. **The accident took place in my presence.** It is wrong to suggest that I am deposing falsely.*

XXXXX by Sh. Sujit Kesari, ld. Counsel for Insurance company

I cannot ready and understand English. I cannot tell the contents of the affidavit. I am not a summoned witness and I have been brought by the petitioner to depose in the court as I know regarding the accident. The accident took place in my presence. I do not remember the number of car of the accident. I cannot tell the speed of the car. Vol. It was medium but I cannot tell the what medium means regarding the speed. The accident took place as tractor applied the brake suddenly and car which was coming from behind of the tractor hit the trolley. There was no



*speed breaker on the road near the accident spot. Again said, I do not remember the same. **The tractor trolley was loaded with badarpur. The accident took place at Babri Mod. I do not remember whether there was choraha near the site on the accident or not. I was coming on the motorcycle with other person from the opposite side of the road.** My statement was recorded by the police but not by officials of fire brigade. I did not make call to the police at 100 number. I have not appeared in any other court as any witness including-the criminal case. The accident took place in the middle path of the road at about 5-6 feet in the side of the divider. It is wrong to suggest that I was not present at the site at the time of accident and I only reached to the spot after the accident; I am deposing at the request of the petitioner as requested by him. Many other persons were also present at the spot but. I cannot the exact number of the persons. It is wrong to suggest that my affidavit is false and I am not the eyewitness of the accident. It is wrong to suggest that I am deposing falsely.”*

[Emphasis Supplied]

10. The relevant examination of the Respondent No.1, who was driver of the offending vehicle [R1W1], wherein he admitted that he had valid driving licence and that the tractor was insured. He further stated therein that there is no breach of the terms and conditions of the insurance policy.

10.1 However, what is important to note is that the driver of the vehicle stated that the trolley was loaded with building construction material and that he was standing on the road due to some problem in his vehicle and the Santro car came from behind and hit the trolley. In his cross-examination, Respondent No.1/driver has revealed that after the accident he fled away from the spot and he also affirmed that the Santro car caught fire. The relevant extract of his cross-examination is set out below:

“08.05.2017

RIW1 Statement of Sh. Ved Pal S/o Sh. Munshi Rani R/o Village Allawalpur, Tehsil and District Palwal, Haryana.,

On SA

*I am **respondent No. 1/ driver of offending vehicle** number I do not*



remember today. I have my DL bearing. No. 1322/P/2009 issued on 31.03.2009 valid upto 30.03.2029 for motorcycle, scooter tractor only. The photocopy of the same is Ex. R1W1/1. The copy of RC of the said vehicle is Ex. R1W1/2. The copy of insurance policy is Ex. R1W1/3.

XXX by Sh. Sujit Kesari, Id. Counsel for respondent No, 3.

I had no other DL except the aforesaid R1W1/1. It is wrong to suggest that there is no endorsement Ex. R1W1/1 to drive the commercial vehicle i.e. tractor with trolley and therefore there is breach of terms and condition of the insurance policy Ex. R1W1/3 and provisions of MV Act. Ex. R1W1/3 is not the insurance policy and is only cover note. At the time of accident, the tractor trolley was loaded with crusher the material which is used for construction of the building). It is correct that no accident was caused by my tractor which is standing on the side of the road due to the nut break and santro car after 10-15 minutes came from, behind and hit the trolley.

XXXX by Sh. Lokesh Kumar, Id. Counsel for petitioner.

The case was registered against me and I was arrested by the police when I surrender in the PS. I was not caught by the police at the spot and **I flew away from the spot after the accident as the mob has gathered there. After the hitting, the santro car was burnt due to fire which took place after the hitting, the santro car was burnt due to fire which took place after the hitting. The tractor was purchased 3-4 months ago.** It is wrong to suggest that there was no number plate on the tractors and therefore I do not remember the number of the tractor. **I have been acquitted in the criminal case u/s 279/304 AIPC in FIR No. 33/I2 which was registered due to the accident in; question and certified copy of the judgment is Ex.R1W1/4.** It is wrong to suggest that I have caused the accident due to rash and negligent driving and I am deposing falsely that the tractor was standing in the side of the road due to nut break.”

[Emphasis Supplied]

11. From a plain reading of the evidence and testimony before the learned Tribunal, it is not fathomable as to how the learned Tribunal reached a finding that there is no negligence or that the Appellants have failed to prove that the deceased died on account of the accident. The learned Tribunal has held that there is no criminal record of Respondent No.1 to show negligence but has failed to take into account the witness [PW 2] testimony or that the Respondent/Driver ran away and did not appear during the trial either.



Paragraphs 14 and 15 of the Impugned Award in this behalf are set out below:

*“14. In the case in hand, **there is nothing on record like criminal record to show the negligence of respondent no. 1.** In fact the petitioner failed to prove any accident causing death due to the rash and negligent driving of respondent no.1. Therefore, in view of the material on records and testimony of witnesses, this **Tribunal is of the considered view that the petitioners have failed to prove that deceased namely Manju Aggarwal, Amit Aggarwal and Ashok Aggarwal died on account of injuries sustained in accident taking place on 02.10.2012 at 02.30 pm, NH-2, Near Babri Mor, Hodal, PS Hodal, Distt. Palwal due to rash and negligent driving of vehicle bearing registration no. DL-IPB-8878** by respondent no.1 and insured with respondent no.2. The issue No. 1 is decided accordingly against the petitioners.*

Issue No. 2:- (Petitions No.14623/15,14625/15, 14612/15)

Whether petitioner is entitled to compensation? If so to what amount and from whom? OPP

15. In view of aforesaid discussion and findings on issues no. 1, the petitioner is not entitled for any compensation. This issue i.e. issue no.2 is accordingly decided against the petitioner.”

[Emphasis Supplied]

12. It is settled law that the standard of proof in a case of negligence is not the same as in a criminal case. The matters have to be decided on preponderance of possibilities.

12.1 The Supreme Court in *Anita Sharma v. New India Assurance Co. Ltd.*¹ has held that the Claimants have to merely establish their case on the touch stone of preponderance of probability. The Court while relying on the decisions of *Kartar Singh v. State of Punjab*² and *Sunita v. Rajasthan SRTC*³ reiterated that cross examination is an acid test of the truthfulness of the statement made by a witness. In addition, it was held that the strict principles of evidence and the standards of proof beyond reasonable doubt as

¹ (2021) 1 SCC 171.

² (1994) 3 SCC 569.

³ (2020) 13 SCC 486.



in a criminal trial are inapplicable in MACT claim cases. It is apposite to set out the relevant extract of *Anita Sharma* case herein below:

“....

21. *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 analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.*”

[Emphasis Supplied]

12.2 In the *Sunita* case, the Supreme Court held that strict criminal standards of proof do not apply in motor accident claims, where the test is preponderance of probabilities and not beyond all reasonable doubt. Once a witness has been examined, the other side gets a chance to cross-examine. Cross-examination is the key test of credibility, and since the Respondents were given that opportunity but failed to discredit the witness, they cannot later allege prejudice. It is apposite to set out the relevant extract of *Sunita* case herein below:

“30. Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross-examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (AD 2) evidence from the viewpoint of him not being named in the list of eyewitnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation (as set out in Parmeshwari [Parmeshwari v. Amir Chand, (2011) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] and reiterated in Mangla Ram [Mangla Ram v. Oriental Insurance Co.



Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819]) that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross-examine the witness concerned. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross-examination, for which opportunity was granted to the respondents by the Tribunal.

31. The importance of cross-examining a witness has been elucidated by this Court on several occasions, notably in Kartar Singh v. State of Punjab [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] , where a five-Judge Bench of this Court elaborated: (SCC p. 686, paras 278-79)

"278. Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness;

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.

279. The identity of the witness is necessary in the normal trial of cases to achieve the above objects and the right of confrontation is one of the fundamental guarantees so that he could guard himself from being victimised by any false and invented evidence that may be tendered by the adversary party."

32. The High Court has not held that the respondents were successful in challenging the witnesses' version of events, despite being given the opportunity to do so. The High Court accepts that the said witness (AD 2)



was cross-examined by the respondents but nevertheless reaches a conclusion different from that of the Tribunal, by selectively overlooking the deficiencies in the respondent's case, without any proper reasoning.

34. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non-examination of some "best" eyewitness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. **This Court, in *Dulcina Fernandes* [*Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13], faced a similar situation where the evidence of the claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident.** This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, **Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.**"

[Emphasis Supplied]

12.3 The Supreme Court further in the *Sunita* case while relying on the judgment in the case of *Dulcina Fernandes v. Joaquim Xavier Cruz*⁴ has held that even in cases where a person has been acquitted in a criminal trial, the Court can still hold a person to be negligent for the purposes of the MV Act as follows:

"12. CW 2, who was at the relevant time working as the Head Constable of Main Eurtorim Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and that after investigation he was charge-sheeted and sent up for trial. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prima facie, materials showing negligence were found to put him on trial.

13. From the evidence of CW 2 it also transpired that the deceased was not medically examined to ascertain whether he had consumed alcohol

⁴ (2013) 10 SCC 646



and was, therefore, driving the scooter under the influence of liquor. In fact, according to CW 2, he had reached the spot within 15 minutes of the incident. In his cross-examination CW 2 had specifically denied that the scooter driven by the deceased had dashed against the pick-up van which was stationary i.e. parked on the road. The statements made by CW 2 in the course of his deposition have considerable significance to the issues arising in the case, namely, whether the deceased was driving the scooter under the influence of alcohol and whether there was any negligence on his part leading to the accident. The said aspects of the evidence of CW 2 do not appear to have been taken note of or to have received any consideration of the learned Tribunal.

14. At the same time it is possible to take the view that the evidence of CW 2, properly read and considered, can lead to a conclusion contrary to what has been arrived at by the learned Tribunal, namely, that the accident had occurred on account of the negligence of the deceased. The High Court having failed to notice the above lacunae in the award of the learned Tribunal and correct the same, we are satisfied that the present is a fit case for our interference. We accordingly set aside the findings of the learned Tribunal as affirmed by the High Court in respect of Issues 1 and 4 and hold that the accident had occurred due to the rash and negligent driving of the pick-up van by the first respondent.

[Emphasis Supplied]

13. In addition, the learned Tribunal did not consider the fact that the driver fled from the spot and did not appear before the learned Tribunal at all.

13.1 The Coordinate Bench of this Court in *United India Insurance v. Deepak Goel*⁵ has observed that where the driver had fled away after causing the accident from the spot, then an FIR shall be sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident. It is apposite to set out the relevant extract of *Deepak Goel* case herein below:

“21. Nonetheless, in a case, where FIR is lodged, chargesheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available

⁵ (2014) SCC OnLine Del 362



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from his side before the learned Tribunal. Thus, the claimants have prove negligence of the driver of the offending vehicle.”

[Emphasis Supplied]

13.2 Since an FIR was duly lodged in the present case, this argument of the Respondent No. 2/Insurance Company also fails.

14. In view of the aforgoing discussion, the present Appeals are allowed. The Impugned Award is set aside. All pending Applications stand closed.

15. The parties shall appear before the learned Tribunal on 29.08.2025.

16. Given that time that has elapsed since the accident and the pendency of the Appeals, the learned Tribunal is requested to expedite the hearing in the matter.

17. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 6, 2025/ha