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

% ***Reserved on : 17th January 2026***
***Pronounced on : 17th April 2026***
***Uploaded on : 20th April 2026***

\+ **MAC.APP. 888/2013**

NATIONAL INSUANCE CO. LTD. .....Appellant

Through: Mr. Pankaj Seth, Advocate for appellant along with Ms. Shruti Jain, Advocate.

versus

SHEHNAJ BEGUM & ORS .....Respondents

Through: Mr. S.N. Parashar, Advocate with Mr. Ritik Singh, Advocate for respondent nos. 1 to 3.

**CORAM:**
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

1. This appeal has been filed challenging the award dated 31st May 2013 passed by the Motor Accident Claims Tribunal ["***Tribunal***"], Tis Hazari Courts, Central, in ***Claim Petition No. 557/2012*** ["***impugned award***"], whereby compensation of *Rs. 18,01,864/-* along with 9% interest was awarded in a fatal accident case.

2. The Insurance Company asserts that the accident was not caused due to the sole negligence of the respondent no.4/ driver of the offending vehicle, and further submits that neither the eyewitnesses nor the Investigation Officer ("***IO***") were examined.

3. Moreover, the Tribunal erred in applying minimum wages in absence of proof of occupation and income, and the claimants were not

entitled to loss of dependency. There were other issues relating to the computation of income on account of *future prospects,* deduction towards *personal expenses*, *loss of consortium*, *loss of love and affection*, and *funeral expenses*, and the award of penal interest.

***Incident***

4. On 7th October 2012, deceased persons were traveling on a *Rickshaw* and, near Pratap Nagar Metro Pillar, Old Rohtak Road, were hit by a truck bearing no. *DL 1GB 6352* ['*offending vehicle*'], driven by *Mohd. Ashraf*/respondent no. 4. and owned by *Mr. Chandan Kumar*/ respondent no. 5, and insured by appellant/Insurance Company.

5. *Sanjar Alam* [injured] passed away due to the injuries and is survived by his widow *Shehnaj Begum*, *Manjilla Begum* (sister), *Shahista Begum* (sister), all of whom are the claimants. *Sanjar Alam* was brought dead to the hospital; An FIR was lodged and a *post-mortem* was conducted. Since, there were two deceased in the accident, the claim petitions were disposed of by a common order.

***Impugned Award***

6. On the issue of negligence, Tribunal noticed the testimony of **PW-1** and **PW-2**, who though were not eyewitnesses, deposed essentially on the nature of the accident.

7. The driver and the owner denied negligence on part of the driver but did not put any suggestion to the claimant's witnesses nor lead any evidence. An FIR had been registered. As per the MLC, unknown

deceased had been brought to the hospital with injuries arising out of the motor vehicle accident. As per the *post-mortem* report, *Sanjar Alam*, died due to '*ante-mortem injuries caused by blunt force impact'*. As per the Mechanical Inspection Report, the offending vehicle had fresh damaged parts on its front. The Tribunal, therefore, held that the accident was caused due to the negligence of the driver of the offending vehicle.

8. As regards the compensation, deceased was 22 years of age, working as a rickshaw puller, contributing about *Rs. 9,000/-* per month, and was survived by his widow and two minor sisters. His wife was eight months pregnant at the time of the filing of the petition; however, the child died after five days after birth.

9. Minimum wages of *Rs. 7,254/-*, as applicable to an '*unskilled*' worker, were taken. *Future prospects* of 50% were added. Since there was an issue relating to dependency of minor sisters, and there was no proof regarding who was supporting them, *loss of dependency* was not granted to them. 1/3$^{rd}$ was deducted as *personal expenses* of the deceased, there being only a wife [*respondent no.1*]. At the time of the accident, relevant multiplier was taken as '*18*'. The compensation awarded was *Rs. 18,01,864/-* along with *Rs. 10,000/-* towards *loss of estate*, *Rs. 1,00,000/-* towards *loss of consortium*, *Rs. 1,00,000/-* towards *love and affection*, and *Rs. 25,000/-* towards *funeral expenses*.

10. For ease of reference, a tabulation of the said compensation is as under:

| S.No | Heads | Amount Awarded By Tribunal |
|---|---|---|
| 1. | Income of deceased | Rs.7,254/- ['unskilled'] |
| 2. | Multiplier | 18 |
| 3. | Loss of Dependency | Rs.15,66,864/- |
| 4. | Loss of Love and Affection | Rs.1,00,000 /- |
| 5. | Loss of Consortium | Rs.1,00,000 /- |
| 6. | Loss of Estate | Rs.10,000 /- |
| 7. | Funeral Expenses | Rs.25,000 /- |
| **Total Compensation** | | **Rs.18,01,864/-** |
| **Interest** | | **9%** |

***Submissions made by parties***

11. Appellant/Insurance company raised the issue that the rickshaw was hit from the opposite side in the middle of the road, therefore, it could not be concluded that it was the negligence of respondent no.4. It was stated that no eyewitnesses were examined, nor was the IO examined, and therefore such a conclusion could not have been drawn.

12. Reliance was placed on the decision in ***Oriental Insurance Co. Ltd. v. Meena Variyal,*** (2007) 5 SCC 428, to contend that a summary procedure does not mean that a Tribunal should ignore basic principles of law in claims for compensation. Further, there was a challenge to the application of minimum wages, since there was no evidence that the deceased was gainfully employed.

13. On the deduction, towards *personal expenses*, it was contended that 50% ought to have been deducted, considering that the wife/respondent no.1 was the only dependent.

14. Penal interest at *12%* was awarded for the default period, for which reliance was placed on ***National Insurance Company Ltd. v Keshav Bahadur and Ors***. (2004) 2 SCC 370.

15. Counsel for the respondent, however, stated that as per the decision in ***National Insurance Co. Ltd. v. Pushpa Rana*** 2007 SCC OnLine Del 1700, since there was no rebuttal and no complaint by the driver, the reliance on the FIR was wholly legitimate.

16. *Mr. Pankaj Seth*, counsel for appellant/Insurance Company, contented that principle of "*res ipsa loquitur*" ought to be applied and assessment should be made on the basis of the principle of *'preponderance of probabilities'*, rather than merely relying upon the principle laid in ***National Insurance Co. Ltd. v. Pushpa Rana*** (*supra*), on the basis of the FIR and the chargesheet. It was submitted that the Tribunal had not applied its mind and had only made a cursory assessment based on the FIR.

***Analysis***

17. In this regard, it is important to assess the extent to which the Tribunal is obliged, or ought to be persuaded, by the filing of an FIR and the filing of a chargesheet pursuant thereto. For the purpose of determining negligence a Tribunal navigates through some basic foundational principles to address pleas asserted by the parties on

negligence. A more detailed examination of these foundational principles is being provided here under.

18. At the outset, there is no doubt that negligence has to be proved, as also stated in ***Meena Variyal*** *(supra)*, and the relevant principles are extracted as under:

> "***10.*** *Before we proceed to consider the main aspect arising for decision in this appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently,*

> *satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed?.*
>
> (emphasis added)

***Preponderance of Probability***

19. However, an accident may have witnesses and, even if it does, they may not come forward to give evidence. In such cases, the investigation may also be constrained except for providing a site plan and a mechanical inspection report. If there is no eyewitness, the only material which the Tribunal, or in fact the prosecution in the criminal proceedings, can rely upon is the statement of of any co-passengers who may have survived or third-party eyewitnesses.

20. However, where nobody has survived in the accident and there is no passerby to give evidence, there remains only reliance on a statement made on behalf of the legal heirs of the deceased, which has limited evidentiary value as far as the assessment of the negligence is concerned. In such circumstances, the Tribunal is required to assess negligence on the basis of the surrounding material placed on record, which necessarily involves an evaluation on the touchstone of probability rather than strict proof. The principle of *preponderance of probabilities* has been well articulated in the following judgments.

20.1 ***Bimla Devi v. HRTC*** (2009) 13 SCC 530:

> "***11.*** *While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report vis-`-vis the averments made in a claim petition.*
>
> *……*
>
> ***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. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.*
>
> ***16.*** *The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.*"
>
> (emphasis added)

20.2 ***Dulcina Fernandes v Joaquim Xavier Cruz*** (2013) 10 SCC 646:

> "***7.*** *It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt*."
>
> (emphasis added)

20.3 ***Mangla Ram v Oriental Insurance*** (2018) 5 SCC 656:

> ***"24.*** *It will be useful to advert to the dictum in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal, (1980) 3 SCC 457 : 1980 SCC (Cri) 774] , wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negatived the said argument by observing that the nature of proof required to establish culpable rashness, punishable under IPC, is more stringent than negligence sufficient under the law of tort to create liability. The observation made in para 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus: (SCC pp. 458-59)*
>
> > *"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability*

*merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."*

……

***27.*** *Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis*

*done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal."*

(emphasis added)

20.4 ***Mathew Alexander v. Mohd. Shafi***, (2023) 13 SCC 510:

*"**12**. In this context, we could refer to the judgments of this Court in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal, (1980) 3 SCC 457 : 1980 SCC (Cri) 774] , wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-AIPC is more drastic than negligence under the law of torts to create liability. Similarly, in Bimla Devi v. Himachal RTC [Bimla Devi v. Himachal RTC, (2009) 13*

*SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] .*

***13**. In that view of the matter, it is for the appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have*

*to similarly establish the negligence in accordance with law.*"

20.5 ***Geeta Dubey v. United India Insurance Co. Ltd***. 2024 SCC OnLine SC 3779:

"***20.*** *Firstly, it is well settled that in claim cases, in case the accident is disputed or the involvement of the vehicle concerned is put in issue, the claimant is only expected to prove the same on a preponderance of probability and not beyond reasonable doubt. [See Sajeena Ikhbal v. Mini Babu George, 2024 SCC OnLine SC 2883]. We also deem it appropriate to extract the following paragraphs from the judgment of this Court in Bimla Devi v. Himachal Road Transport Corporation, (2009) 13 SCC 530. Repelling similar contentions raised challenging the accident and the involvement of the vehicle in question, this Court held as follows:*

*"14. Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.*

*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. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.*

*16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.*""

(emphasis added)

20.6 ***ICICI Lombard v Rajani Sahoo*** (2025) 2 SCC 599:

"***9.*** *It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.*

*10. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi [Mathew Alexander v. Mohd. Shafi, (2023) 13 SCC 510 : 2023 INSC 621] , this Court held thus : (SCC p. 514, para 12)*

*……*

***12.*** *... A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof*

*beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] ."*

*11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible*."

(emphasis added)

***Inquiry Proceeding***

21. Dovetailed with this aspect is the fact that Tribunal proceedings are not strictly governed by the rules of procedures or evidence, but are in the nature of an inquiry. For this also, reference may be made to the following opinion of the Supreme Court in ***United India Insurance Co. Ltd. v. Shila Datta***, (2011) 10 SCC 509 and ***Anita Sharma v. New India Assurance Co. Ltd***. (2021) 1 SCC 171. Relevant paragraphs of the said judgements are extracted as under:

21.1 ***United India Insurance Co. Ltd. v. Shila Datta***, (*supra*):

"***Nature of a claim petition under the Motor Vehicles Act, 1988***

***10.*** *A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accidents Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by the Tribunals:*

*(i) Proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (the claimants) under Section 166(1) or Section 163-A of the Act or suo motu by the Tribunal, by treating any report of accident (forwarded to the Tribunal under Section 158(6) of the Act as an application for compensation under Section 166(4) of the Act).*

*(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.*

*(iii) In a proceedings initiated suo motu by the Tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under Section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party-respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under Section 149(2) of the Act.*

*If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.*

*(iv) The words "receipt of an application for compensation" in Section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu registration of an application for compensation under Section 166(4) of the Act on the basis of a report of an accident under Section 158(6) of the Act.*

*(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under Section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (Vide Section 168 of the Act.)*

*(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry. (Vide Section 169 of the Act.)*

*(vii) The award of the Tribunal should specify the person(s) to whom compensation should be paid. It should also 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. (Vide Section 168 of the Act.)*

*(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide Section 168(2) of the Act.)*

*We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an*

*adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.*"

21.2 ***Anita Sharma v New India Assurance*** (*supra*):

"*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 added)

22. Therefore, what remains in situations where there is no eyewitness that the Tribunal, in its inquiry process, based on the test of *preponderance of probabilities*, assesses the facts and circumstances placed before it. Every accident has its own peculiar circumstances; it could involve the nature of the vehicles, the location of the accident, and the extent of the collision.

23. For example, in cases where there might be two vehicles of similar sizes, say two heavy vehicles, which collide in the middle of the road, there could arise a situation warranting an assessment of contributory

negligence. However, if a heavy vehicle collides with a lighter vehicle, in the middle of the road, the inquiry would lead to the question as to which of the vehicles was driving on the wrong side of the lane or carriageway. If that is also not established, an assessment needs to be made considering the location of the collision, the circumstances in which traffic moves in that particular area, and whether there was any indication of intoxication in the *post-mortem* of the deceased.

24. Other aspects which may arise include the time of the day, whether the offending vehicle was in a standing position, abandoned without flashing lights, or whether it suddenly braked. Many of these aspects would come to the fore if there is testimony of the driver of the offending vehicle, who, upon cross-examination, may reveal certain aspects relating to the nature of the accident. The predicament before the Tribunal is that if no such evidence is available, then what material it should rely upon. In such circumstances, the only material available is the first statement made to any authority, which is usually the FIR.

***FIR and Investigation***

25. In ***National Insurance Company Ltd. vs. Smt. Pushpa Rana & Ors***. (*supra*), the Court held the filing of the FIR, chargesheet and accompanying police record constitutes sufficient material to sustain a finding of negligence in motor accident claim proceedings on the touchstone of *preponderance of probabilities*. Relevant observations of this Court are extracted as under:

> *"12. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgement of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal; 2007 (5) SCALE 269. On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."*
>
> (emphasis added)

26. Once the FIR comes into play and the investigation proceeds, thereafter, there may be some material forming of the investigation which throws light on the nature of the accident and the aspect of the negligence.

27. In this regard, reference may be made to ***United India Insurance Co. Ltd. v. Deepak Goel and Ors***. 2014: DHC:470, wherein this Court, following ***Pushpa Rana*** (*supra*), reiterated that where an FIR has been registered and a chargesheet filed against the driver of the offending

vehicle, such material is sufficient to sustain a finding of negligence on the touchstone of *preponderance of probabilities*, particularly in the absence of rebuttal evidence from the driver or owner. Relevant paragraphs are extracted as under:

> ***"19.*** *Be that as it may, criminal case bearing FIR No.603/95 was registered against the respondent No. 3/driver at P.S. Singhani Gate, Ghaziabad. The police investigated the case and thereafter filed the chargesheet under Sections 279/304-A IPC against the said driver. The claimants have proved both the documents noted above before the learned Tribunal. Acquittal of the driver/respondent No.3 by the learned Judicial Magistrate vide its judgment dated 30.07.2003 would not have any adverse affect on the claim petition for the reason, he was acquitted only on the ground that eye witness had not seen the driver of the offending vehicle as he fled away from the spot. Neither any document had been placed on record nor any witness had been examined by the owner or Insurance Company to prove that the respondent No. 3 was not driving the bus bearing No.PAB 3325 on 18.08.1995 at about 12.45 pm. Moreover, respondent Nos. 2 and 3 were proceeded ex parte before the learned Tribunal, and they did not place any defence before the learned Tribunal. Thus, the learned Tribunal while deciding the claim petition had relied upon the FIR, chargesheet and the statements of the claimants.*
>
> ***20***. *In deciding the accident cases, the Tribunals or the Courts 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 preponderance of*

*evidence, but in a claim petition before the Motor Accidents Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.*

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

(emphasis added)

28. The Supreme Court in ***Ranjeet v. Abdul Kayam Neb***, 2025 SCC OnLine SC 497 has recently reiterated its position on the said issue, where it stated as under:

*"**4.** It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver.*

***5.*** *In view of the aforesaid facts, we are of the opinion that the Tribunal and the High Court both manifestly erred in law in refusing to grant any compensation to the claimants."*

(emphasis added)

29. In ***Meera Bai v. ICICI Lombard General Insurance Company Ltd. & Anr.*** 2025:INSC:600, the Supreme Court has observed that in cases where the eyewitness was not examined, reliance on FIR and charge-sheet was enough for the finding of negligence to be established. In this regard, the relevant paragraphs are as under:

> *"2. The claimants before the Tribunal have filed an appeal from the order of the High Court which allowed the appeal of the insurance company and dismissed the claim petition for reason of no eyewitness having been examined to prove the rash and negligent driving.*
> *3. On facts, it needs to be stated that the accident occurred on 29.01.2015 when the deceased was travelling pillion in a motorbike driven and owned by the second respondent. The FIR was lodged against the owner driver of the vehicle for the offence of rash and negligent driving. A charge sheet was filed against the owner driver. The owner driver filed a written statement before the Tribunal denying the rash and negligent driving on his part, however he did not mount the box to depose that it was not due to his fault that the accident occurred.*
> *4. As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established."*
>
> (emphasis added)

30. In ***Srikrishna Kanta Singh v. Oriental Insurance Co. Ltd.***, 2025 SCC OnLine SC 636, the Supreme Court observed as under:

> *"**8.** The accident occurred on 03.11.1999 upon which a First Information Report was registered produced as*

*Annexure P-4. Annexure P-4 clearly indicates that the trailer was found to have been driven rashly and negligently; the owner of which was the 1st respondent before the Tribunal and the insurer, the 3rd respondent. The charge sheet has also been filed which is produced as Annexure P-9. After investigation, the charge sheet clearly found that the accident was caused due to the negligence of the driver of the trailer and arrayed him as the accused. PW 1 who was riding pillion also spoke of the rash and negligent driving of the trailer.*

*...*

***11.*** *In a motor accident claim, there is no adversarial litigation and it is the preponderance of probabilities which reign supreme in adjudication of the tortious liability flowing from it, as has been held in Sunita v. Rajasthan State Road Transport Corporation. Dulcina Fernandes v. Joaquim Xavier Cruz is a case in which the rider, who also carried a pillion, died in an accident involving a pick-up van. There was a contention taken that the claimants who were the legal heirs of the deceased had not cared to examine the pillion rider and hence the version of the respondent in the written statement that the moving scooter had hit the parked pick-up van, was to be accepted. It was found, as in the present case, that the Police had charge-sheeted the driver of the pickup van which prima facie showed negligence of the charge-sheeted accused. Similarly in the present case also, the Police after investigation, charge-sheeted the driver of the trailer finding clear negligence on him, which led to the accident. This has not been controverted by the respondents before the Tribunal by any valid evidence nor even a pleading. In fact, the Tribunal, on a mere imaginative surmise, found that since the scooter collided with the tail-end of the trailer, it can be presumed that the driver of the scooter was not*

*cautious, which in any event is not a finding of negligence.*

***12.*** *Finding that the driver was not cautious is one thing and finding negligence is quite another thing. Prima facie, we are satisfied that the negligence was on the trailer driver as discernible from the evidence recorded before the Tribunal; standard of proof required being preponderance of probability as has been reiterated in Mangla Ram v. Oriental Insurance Company Limited"*
(emphasis added)

***Res ipsa loquitur***

31. *Res ipsa loquitur* means "*the things speak for itself*", is a well-recognised doctrine in the law of negligence. The doctrine enables a court to draw an inference of negligence from the very nature of the accident, where the occurrence is such that, in the ordinary course of events, it would not have happened without negligence. In such circumstances, the surrounding facts themselves constitute *prima facie* evidence of negligence, thereby shifting the evidentiary burden onto the person who had control over the instrumentality causing the injury to provide an explanation consistent with due care.

32. As noted in ***Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77,*** the doctrine represents an exception to the general rule that the burden of proving negligence lies upon the claimant; where the facts established are such that the natural inference arising from them is that the injury was caused by the defendant's negligence, the event itself may "*tell its own story*", warranting an inference of negligence in the absence of a satisfactory explanation.

33. The origins of the doctrine may be traced to the earlier decision in ***Byrne v. Boadle*** (1863) 2 H & C 722, where the plaintiff was injured when a barrel of flour fell from the defendant's premises onto a public street. The Court held that such an occurrence constituted sufficient *prima facie* evidence of negligence, thereby casting upon the defendant the burden of explaining that the accident had not occurred due to want of care on his part.

34. The doctrine received its classical formulation in the English decision of ***Scott v. London and St Katherine Docks Co***. (1865) 3 H & C 596, where it was observed that when the thing causing the accident is under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those having such management use proper care, the occurrence itself affords reasonable evidence of negligence in the absence of explanation by the defendant.

35. The Supreme Court has also recognised the relevance of this doctrine in accident cases. In ***Shyam Sunder v. State of Rajasthan,*** (1974) 1 SCC 690, the Supreme Court observed that negligence may, in appropriate cases, be inferred from the surrounding circumstances of the accident itself where the facts reasonably indicate rash or negligent conduct. For ease of reference, relevant paragraphs are extracted as under:

> *"**9.** The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the*

*cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies.*

***10.*** *The maxim is stated in its classic form by Erle, C.J.: [Scott v. London & St. Katherine Docks, (1865) 3 H&C 596, 601]*

*"... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."*

*The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle [Ballard v. North British Railway Co., 1923 SC (HL) 43]. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when*

*the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, The Law of Torts, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant (see Barkwayv. S. Wales Transo [(1950) 1 All ER 392, 399] ).*

***11.*** *The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability.*

*……*

***13.*** *It should be noticed that the defendant does not advance his case by inventing fanciful theories, unsupported by evidence, of how the event might have occurred. The whole inquiry is concerned with probabilities, and facts are required, not mere conjecture unsupported by facts. As Lord Macmillan said in his*

*dissenting judgment in Jones v. Great Western [(1930) 47 PLR 39] :*

*"The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible, but it is of no legal value, for its essence is that it is a mere guess. An inference, in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution, of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference from the facts actually observed and proved."*

*In other words, an inference is a deduction from established facts and an assumption or a guess is something quite different but not necessarily related to established facts.*

***14.*** *Alternatively, in those instances where the defendant is unable to explain the accident, it is incumbent upon him to advance positive proof that he had taken all reasonable steps to avert foreseeable harm.*

***15.****Res ipsa loquitur is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where res ipsa loquitur is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance [ Millner: "Negligence in Modern Law", 92] ."*

36. Similarly, in ***Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.,*** (1977) 2 SCC 745, the Supreme Court emphasised that in claims arising out of motor accidents the court must examine the circumstances in which the accident occurred and determine whether the manner of the occurrence reasonably points towards negligence. Relevant paragraphs are extracted as under:

> "***5.*** *The High Court has not gone into the question as to whether the car was being driven rashly and negligently by the owner's employee as it held that the act was not in the course of his employment. We feel that the question as to whether the car was being driven rashly and negligently would have to be decided on the facts of the case first for, if the claimants fail to establish rash and negligent act no other question would arise. We would therefore proceed to deal with this question first. The claimants did not lead any direct evidence as to how the accident occurred. No eyewitness was examined. But PW 1, the younger brother of the deceased Purshottam Udeshi, who went to the spot soon after the accident was examined. He stated that he went with one of his relatives and an employee of his brother's employer and saw that the car had dashed against a tree while proceeding from Nagpur to Pandurna. The tree was on the right hand side of the road, four feet away from the right hand side of the main metalled road. The vehicle will have to proceed on the left hand side of the road. The road was 15 feet wide and was a straight metalled road. On either side of the road there were fields. The fields were of lower level. The tree against which the car dashed was uprooted about 9 to 10 inches from the ground. The car dashed so violently that it was broken in the front side. A photograph taken at that time was also filed. According to the witness the*

*vehicle struck so violently that the machine of the car from its original position went back about a foot. The steering wheel and the engine of the car receded back on driver's side and by the said impact the occupants died and front seat also moved back. The witness was not cross-examined on what he saw about the state of the car and the tree. It was not suggested to him that the car was not driven in a rash and negligent manner. In fact there is no cross-examination on the aspect of rash and negligent driving. The Claims Tribunal on this evidence found that "it was admittedly a mishap on the right side of the road wherein the vehicle had dashed against a tree beyond the pavement so violently as not only to damage the vehicle badly but also entailing death of its three occupants, maxim "'res ipsa loquitur' applies" (see Ellor v. Selfridge [(1930) 46 TLR 236] ). The Tribunal proceeded to discuss the evidence of PW 1 and found on the evidence that it cannot help concluding that the dashing of the car against the tree was most violent and that it was for the respondents to establish that it was a case of inevitable accident. They have led no evidence. It may at once be stated that though the opposite parties had pleaded that this is a case of inevitable accident they have not led any evidence to establish their plea. The burden rests on the opposite party to prove the inevitable accident. To succeed in such a defence the opposite party will have to establish that the cause of the accident could not have been avoided by exercise of ordinary care and caution. "To establish a defence of inevitable accident the defendant must either show what caused the accident and that the result was inevitable, or he must show all possible causes, one or more of which produced the effect, and with regard to each of such possible causes he must show that the result could not have been avoided". (Halsbury's Laws of England, 3rd Edn., Vol. 28, p. 81). No such attempt was made and before us the plea of*

*inevitable accident was not raised. We have therefore to consider whether the claimants have made out a case of rash and negligent driving. As found by the Tribunal there is no eyewitness and therefore the question is whether from the facts established the case of rash and negligent act could be inferred. The Tribunal has applied the doctrine of "res ipsa loquitur". It has to be considered whether under the circumstances the Tribunal was justified in applying the doctrine.*

***6.*** *The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself' or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states: "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's*

*negligence, or where the event charged a; negligence 'tells it own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care. Applying the principles stated above we have to see whether the requirements of the principle have been satisfied. There can be no dispute that the car was under the management of the company's manager and that from the facts disclosed by PW 1 if the driver had used proper care in the ordinary course of things the car could not have gone to the right extreme of the road, dashed against a tree and moved it a few inches away. The learned counsel for the respondents submitted that the road is a very narrow road of the width of about 15 feet on either side of which were fields and that it is quite probable that cattle might have strayed into the road suddenly causing the accident. We are unable to accept the plea for in a country road with a width of about 15 feet with fields on either side ordinary care requires that the car should be driven at a speed in which it could be controlled if some stray cattle happened to come into the road. From the description of the accident given by PW 1 which stands unchallenged the car had proceeded to the right extremity of the road which is the wrong side and dashed against a tree uprooting it about 9 inches from the ground. The car was broken on the front side and the vehicle struck the tree so violently that the engine of the car was displaced from its original position one foot on the back and the steering wheel and the*

> *engine of the car had receded back on the driver's side. The car could not have gone to the right extremity and dashed with such violence on the tree if the driver had exercised reasonable care and caution. On the facts made out the doctrine is applicable and it is for the opponents to prove that the incident did not take place due to their negligence. This they have not even attempted to do. In the circumstances we find that the Tribunal was justified in applying the doctrine. It was submitted by the learned counsel for the respondents that as the High Court did not consider the question this point may be remitted to the High Court. We do not think it necessary to do so for the evidence on record is convincing to prove the case of rash and negligent driving set up by the claimants.*"
>
> (emphasis added)

37. Thus, where direct evidence regarding the manner of the accident is unavailable, the Tribunal is entitled to examine the surrounding circumstances and assess whether the occurrence is of such a nature that negligence can reasonably be inferred. In such cases, the doctrine of *res ipsa loquitur* operates as a rule of evidence enabling the Tribunal, on the touchstone of *preponderance of probabilities*, to determine whether the accident itself provides a reasonable basis to infer negligence.

***Summarizing***

38. From the above discussion relating to the nature of inquiry before the Tribunal, the operation of the doctrine of *res ipsa loquitur*, and the applicable standard of proof, three aspects emerge clearly.

39. ***First***, that the proceedings before the Motor Accident Claims Tribunal are in nature of an inquiry and are not hemmed in by rules of

procedure or evidence. The Supreme Court in ***Shila Datta*** (*supra*) [passages extracted in *paragraph 20 (a)* above], has elaborated on this aspect. Essentially, a claim under *Section 165* of the MV Act, is neither a suit nor an *adversarial lis*.

40. Tribunal holds an inquiry and makes an award to determine compensation, which ought to be just and reasonable. The procedure to be followed is summarised in the best discretion of the Tribunal. It has the power under *Section 169* of MV Act to summon persons possessing special knowledge of the matters relevant to the inquiry.

41. In ***Anita Sharma*** (*supra*), the Supreme Court emphasised that fault may not be found merely because Tribunals do not examine some of the best eyewitnesses, as in a criminal trial, but should do their best to analyse the material placed on record by the parties.

42. Having clearly sketched the contours of the procedure undertaken by a Tribunal, it brings us to the ***second issue***, which is determination of negligence. The nature of the accident and the basic facts surrounding the same are presented before the Tribunal in the form of a DAR (*Detailed Accident Report*), or through an FIR, or a recording in a police diary, along with the claim for compensation. In order to arrive at an assessment of negligence and, therefore, consequential liability in tort law, the principle of *res ipsa loquitur,* particularly in accident cases, is often brought into play.

43. Doctrine of *res ipsa loquitur* constitutes an exception to the general rule that the burden of proving negligence lies upon the claimant.

The facts, "*tell its own story*" and "*speak for itself*". The fact of the accident itself sometimes constitutes evidence of negligence. The principal function of the maxim is to prevent injustice, that would be caused to a plaintiff who would otherwise be compelled to prove the precise cause of the accident and responsibility of the defendant, when the facts are unknown to plaintiff but lie only within the knowledge of defendant. The burden then shifts to the defendant, who can, by leading evidence, rebut the inference drawn by the Court based on the doctrine.

44. A notable line has been drawn in this inference to be drawn by the Courts, distinguishing between "*mere conjecture*" and "*inference*". Conjecture leans more towards a mere guess, though plausible. However, inference in the legal sense is a reasonable deduction from evidence. A large part of defendant's defence would be to explain or provide proof that he had taken all reasonable steps to avert foreseeable harm.

45. Therefore, for application of the principle, it must be shown that the offending vehicle was under the management of the defendant and that the accident was such that, in the ordinary course of things, it would not have happened if those who were in management had used proper care. Having reached a reasonable inference based on the facts of the accident and being presented with a defence raised by defendants that they exercised care to avert foreseeable harm, the issue before the Tribunal would be how to balance the two aspects and what parameter is to be applied in measuring this balance, or in assessing which side the scales tilt.

46. This brings us to the ***third aspect,*** which is the test to be applied. It is well settled that the test or the burden of proof which applies is not that of beyond a reasonable doubt (*as in criminal cases*), but on the test of preponderance of probabilities.

47. The principle that negligence in motor accident claim proceedings is to be assessed on the touchstone of probability rather than strict proof did not emerge for the first time in ***Bimla Devi*** (*supra*), but rests on earlier jurisprudence recognising that proceedings before statutory tribunals are not governed by strict rules of evidence and that negligence in accident cases may be inferred from surrounding circumstances on a reasonable evaluation of the material placed on record. Evolution of this approach is also reflected in a previous decision of the Supreme Court in ***State of Mysore v. S.S. Makapur***, AIR 1963 SC 375, wherein it was observed that "*they can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it.*"

48. This would effectively mean that the Tribunal is required to weigh the material placed before it, including the police record, evidence, testimonies, documentary evidence, to determine which way the balance tilts, i.e. "*what is more probable*?".

49. Probability is certainly a subjective notion, but draws within its fold various unquantifiable elements like common sense, judicial experience, demeanor of witnesses, strength of the police record, location and manner of accident, nature of vehicles involved, etc. To apply the test of *preponderance of probabilities* is not to pick out, in an arbitrary and *ad hoc* manner, some fragment from the mass of facts and evidence and reach a result, but to ultimately balance the whole set.

50. The Supreme Court in ***Meena Variyal*** (*supra*) provides a caution in the same spirit, for Tribunals to approach a claim for compensation, albeit in a summary procedure, without ignoring all *'basic principles of law*'.

51. The *'basic principles of law*' are those that have been touched upon above, which can be usefully termed as the '*three fundamental pillars*' for assessment of negligence (i.e. proceeding is in nature of inquiries, application of *res ipsa loquitur* doctrine and use of *preponderance of probability* as the balancing test).

52. These jurisprudential tools are to be used by Tribunals in a sensible and rational manner, and not cut short the process, merely because the larger canvas is summary in nature. Any Court assessing motor accident cases will run that risk, since the jurisprudence provides considerable scope for applying discretion. There can be no straitjacket standard beyond what has already been stated and reiterated time and again by various Courts, and there would be no point paraphrasing it yet again with more words and explanations.

53. In the opinion of this Court, the core essence is for a Tribunal to marshal all facts and evidence before it, assess them on the basis of the principles stated above, and weigh them with *common sense* and *judicial experience*.

54. What is to be avoided is randomness, irrationality, absurd reasoning, conjecture, and illogic. Insurance Companies have often, as in this case, complained about the sketchy nature of Tribunal's assessment on the aspect of negligence. While that is a matter of the individual style of judgment writing of a particular Presiding Officer of Tribunal, essence of what is stated above cannot be lost.

55. Sometimes, as an Appellate Court, one has to read between the lines of what has been stated by the Tribunal, the conclusion not being wrong, but the explanation inadequate or only partly articulated. What, therefore, needs to be followed by the Tribunals is a simple procedure of remaining conscious of the *three fundamental pillars* while assessing negligence, joining the dots and articulating the analysis in plain and simple language.

56. The reasons that inform a judge's mind in reaching conclusion after meandering through an assessment have to be stated out there, and not left for guesswork. This does not mean unnecessary extension, amplification, and elaboration, but simply following a line, of recording the reasoning, the judicial sense which permits a judge to weigh the preponderance, and join the dots as it were.

***Conclusion***

57. Keeping the above discussion in mind, this Court is not persuaded by the plea of the appellant/Insurance Company that the accident was not caused due to the negligence of respondent no.4, driver of the offending vehicle. There were no eyewitnesses to the accident and, therefore, the principle of *res ipsa loquitur* was rightly invoked. As per the *post-mortem* report, *Sanjar Alam* died due to "*ante-mortem injuries caused by blunt force impact*", and the Mechanical Inspection Report reflects damaged parts on the front of the offending vehicle. Apart from that, an FIR had been registered against respondent no.4/ driver.

58. Moreover, notice is taken of the possibility that respondent no. 4 was most likely under the influence of liquor, considering the statement of the owner of the offending vehicle [**R2W1]**, who stated that driver *Ashraf* [respondent no.4 herein] had been instructed to not consume liquor on duty and was warned not to consume liquor on duty or take any drugs. In the cross-examination, **R2W1,** he stated that he was aware that the driver was under the influence of liquor at the time of the accident.

59. Statement of the officer from the Insurance Company by way of affidavit [**Exhibit R3W1/A**], also stated that the driver of the vehicle was under the influence of alcohol as per ***MLC No. 58261*** of Hindu Rao Hospital, where he was admitted after the accident. The MLC is exhibited as **Exhibit R3W1/6**, as per which smell of alcohol was present, which the Insurance Company relied upon as a defence for violation of policy terms and conditions. However, **R3W1**, in his cross examination, stated that he

had no personal knowledge as to whether the driver was under the influence of alcohol at the time of the accident.

60. There is no other material which could displace the finding of negligence on the part of the driver based on *preponderance of probabilities*, in the inquiry conducted by the Tribunal. The Tribunal might have been slim in its reasoning and narrative; however, no other conclusion which could have been arrived at regarding the finding of negligence.

61. Deceased persons were traveling on a *rickshaw* when they were hit by a truck. It would be difficult to accept that a truck could not have avoided a slow-moving *rickshaw* rather than the other way around. Even on the facts of the accident, principal of *res ipsa loquitur* applies with full force.

***Compensation***

62. Changes in the computation are made to following effect:

i) Since deceased was 22 years of age, *future prospects* ought to have been taken at *40%* in place of *50%*, following the principles enunciated in ***National Insurance Co. Ltd. v. Pranay Sethi***, (2017) 16 SCC 680, as there was no evidence that he was employed in permanent employment.

ii) Deduction towards *personal expenses* was taken at **'1/3rd'** by the Tribunal, whereas appellant/Insurance Company contends that it ought to have been *50%*, on the ground that only the wife was treated as a dependent. Respondent no.1/wife of deceased, by way

of affidavit [**Exhibit PW2/A**], stated that deceased was working as a *rickshaw* puller and was contributing towards the household expenses of the family. In her cross-examination, she reiterated that deceased used to provide financial support for household requirements when he visited the native place. Further, as reflected from memo of parties filed along with the claim petition, the *father* had already expired and petitioner nos.2 and 3 [*respondent no. 2 & 3 herein*] were minor sisters of deceased. In the absence of any rebuttal evidence led by driver, owner or insurer to show that the deceased was not contributing towards their maintenance, the Tribunal cannot be faulted in treating the family structure as comprising more than one dependent. In these circumstances, deduction towards *personal expenses* was rightly taken in the category applicable to two to three dependents, i.e. '**1/3rd**' of the income, consistent with principles laid down in ***Pranay Sethi*** (*supra*). Though, the Tribunal seemed to grant '**1/3rd**' as deduction despite holding that there was no proof that minor sisters were dependents, in the opinion of this Court while the deduction of '**1/3rd**' was correct the reasoning was incorrect.

iii) *Loss of love and affection* shall be '*Nil*', in view of ***United India Insurance Company Limited vs. Satinder Kaur Alias Satwinder Kaur and Others*** (2021) 11 SCC 780.

iv) *Funeral expenses* and *Loss of estate* shall be awarded at *Rs. 15,000/-* each as per the principles enunciated in ***Pranay Sethi*** (*supra*).

v) Consortium shall be awarded *Rs. 40,000/-* each to the wife and the two sisters as per ***Magma General Insurance Co. Ltd. v. Nanu Ram,*** (2018) 18 SCC 130, which will be *Rs. 1,20,000/-* [*Rs.40,000/- x 3*].

63. Accordingly, compensation is recomputed as under:

| S. NO. | HEADS | AWARDED BY THE TRIBUNAL | AWARDED BY THIS COURT |
|---|---|---|---|
| 1. | Income of deceased (A) (less Income Tax) | Rs.7254/- [unskilled] | Rs.7254/- [unskilled] |
| 2. | Add Future Prospects (B) @ 40% | 50% | 40% |
| 3. | Less Personal expenses of the deceased (C) | 1/3rd | 1/3rd |
| 4. | Monthly loss of dependency [(A +B)-C = D] | Rs.7,254/- | Rs.6,770.40/- |
| 5. | Annual loss of dependency (Dx12) | Rs.87,048/- | Rs.81,244.80/- |
| 6. | Multiplier (E) | 18 | 18 |
| 7. | Total loss of dependency (Dx12xE = F) | Rs.15,66,864/- | Rs.14,62,406/- [Round of Rs.14,62,406.4/-] |
| 8. | Medical expenses (G) | Nil | Nil |
| 9. | Compensation for loss of consortium (H) | Rs.1,00,000/- | Rs.1,20,000/- [40,000x 3] |
| 10. | Compensation for loss of love and affection (I) | Rs.1,00,000/- | Nil |
| 11. | Compensation for loss of estate (J) | Rs.10,000/- | Rs.15,000/- |
| 12. | Compensation towards funeral expenses (K) | Rs.25,000/- | Rs.15,000/- |
| **TOTAL COMPENSATION [F+G+H+I+J+K]** | | **Rs.18,01,864/-** | **Rs.16,12,406/-** |
| **INTEREST** | | **9%** | **9%** |

64. In view of the above recomputation, total compensation payable to the claimants stands reduced to *Rs.16,12,406/-* along with interest @ 9% per annum as awarded by MACT.

65. Since 100% of the awarded amount had already been directed to be deposited before the Registry of this Court *vide* order dated 30th September 2013, out of which 80% was also directed to be released to claimants, remaining deposited amount shall be adjusted against the recomputed compensation. In case any excess amount has been deposited by the appellant, same shall be refunded to the appellant along with accrued interest thereon. The claimants shall be entitled to release of the entire amount in terms of the directions contained in the impugned Award.

66. Accordingly, the appeal is partly allowed in the aforesaid terms and disposed of.

67. Pending applications (if any) are rendered infructuous.

68. Statutory deposit, if any, be refunded to Insurance Company, only if the order of deposit has been compiled with.

69. Judgment be uploaded on the website of this Court.

**ANISH DAYAL**
**(JUDGE)**

**APRIL 17, 2026**/RK/*tk*