

would be closer to the then prevalent rate of interest i.e. in the year 2015."

24. Keeping in view the aforesaid discussion, the appeal is *allowed*. The amount towards loss of estate, loss of consortium and funeral expenses as awarded by the learned Tribunal stand enhanced to Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. Each of the claimants would be entitled to loss of consortium of Rs.40,000/-. Rate of interest on the amount as has been awarded by the learned Tribunal is also enhanced to 9% per annum. As regards the future prospects, the notional income is increased by 30% being the future prospect. Said amount would be added to the notional income of the deceased, upon which deduction as done by the learned Tribunal on actual income would be done. The Insurance Company is directed to calculate the enhanced amounts as observed by this Court in preceding paragraphs keeping in view the judgments of the Hon'ble Supreme Court in the cases of *Pranay Sethi (supra)*, *Savita (supra)* and *Babita (supra)* within a period of two weeks from the date a certified copy of this order is produced before it and deposit the same before the learned Tribunal within a period of four weeks thereafter. The learned trial court shall ensure that the payment of the aforesaid amount be made to the appellants within next four weeks of the amount being deposited before it, in accordance with law.

25. Let trial court record be returned.

(2025) 4 ILRA 969
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 198 of 2024

National Insurance Co. Ltd. Lko

... Appellant

Versus

Manorama & Ors.

... Respondents

Counsel for the Appellant:

Mrs. Pooja Arora

Counsel for the Respondent:

Ravindra Kumar Dwivedi

A. Motor Accident Act, 1988 – Sections 165 & 166 – Claim proceeding – Negligent driving – Effect of failure in not proving – Ground was taken by the Insurance company to the effect that the claimants failed to prove that the vehicle having been driven negligently and rashly – Acceptability – Held, a perusal of the claim application and the written St.ment would duly indicate that there was clear negligence on the part of the driver. Consequently keeping in view the specific findings of fact as given by learned Tribunal, the said ground is rejected. (Para 21 and 25)

B. Motor Accident Act, 1988 – Claim proceeding – Occurrence of accident – Filing of charge-sheet against a particular person – Relevance – Strict proof, how far required – *Bimla Devi's case* and *Mangla Ram's case* relied upon – Held, the chargesheet indicates that on account of negligence of the driver Shri Shitla Prasad, who was the driver of the concerned vehicle, the said accident had taken place. It is also indicated that the truck concerned has been released on the orders passed by the learned court – Learned tribunal has not committed any error in arriving at a finding of the deceased having died on account of an accident involving the truck. (Para 27, 28 and 33)

Appeal dismissed. (E-1)

List of Cases cited:-

1. First Appeal From Order No. 460 of 2018; Kamleshwar Tiwari Vs Abhishek Verma & ors. decided on 06.02.2025
2. Shriram General Insurance Co. Ltd Vs Smt. Hem Lata & ors.; 2021(2) T.A.C. 366 (All.)
3. Parshuram Pal & ors. Vs Ram Lakhan and another; 2013 (98) ALR 589
4. Minu B. Mehta Vs Balkrishna Ramchandra Nayan; AIR 1977 SC 1248
5. Surinder Kumar Arora & anr Vs Dr. Manoj Bisla & ors.; AIR 2012 SC 1918
6. Bimla Devi & ors. Vs Himachal Road Transport Corporation & ors.; 2009 (13) SCC 530
7. Mangla Ram Vs Oriental Insurance Company Ltd. & ors.; 2018 (5) SCC 656
8. Dr. Anoop Kumar Bhattacharya & anr. Vs National Insurance Co. Ltd.; 2021 (12) ADJ 596

(Delivered by Hon'ble Abdul Moin, J)

1. Heard learned counsel for the appellants and Shri Ravindra Kumar Dwivedi, learned counsel for the respondents no. 1 to 3.

2. Despite notices having been served on respondents no. 4 and 5 as per the report dated 28.08.2024 nobody has put on appearance on their behalf.

3. Accordingly, the Court proceeds to hear and decide the matter finally.

4. Under challenge is the judgement and award dated 12.04.2024 passed by learned Motor Accident Claims Tribunal, District Sultanpur in Claim Petition No. 264 of 2017 in re: Manorama and others vs Shitla Prasad and others. By the said award

learned tribunal has partly allowed the claim petition filed by the claimants and has awarded certain compensation. Being aggrieved instant appeal has been filed.

5. Bereft of unnecessary details, the fact as set forth by learned counsel for the appellants is that one Shri Ram Kailash, who was working as a Khalasi on a truck bearing no. UP 44 AT 0404, died on 27.05.2017. The claimants, of which claimant no. 1 is the wife of the deceased, the claimant no. 2 is daughter of the deceased and claimant no. 3 is the mother of the deceased, filed the claim application before the learned tribunal. The case set forth by the claimants before learned tribunal was that the deceased Ram Kailash was working as a Khalasi and was in receipt of Rs 6000 per month paid towards his wages and Rs 3000 towards his fooding. He was going on the truck in question when driver of the said vehicle asked Ram Kailash to clean certain parts of concrete that had got stuck in the back wheel of the truck. Shri Ram Kailash died on account of an accident involving a truck and died on the spot. The claimants filed the post mortem report as well as FIR that had been lodged. The police filed chargesheet in which driver of the truck namely Shri Shitla Prasad had been named.

6. Learned Tribunal had framed an issue as to whether on 27.05.2017 at 11:30 AM the deceased was cleaning the back-wheel of the truck no.UP 44 AT 0404 and on account of the negligence of the driver, died.

7. Learned Tribunal has considered the said issue as per the averments made in the written statement that had been filed on behalf of the driver and owner of the vehicle (one written statement filed jointly

on their behalf) and also considered the contradiction as appeared in the said written statement of an averment having been made in paragraph 4 of the written statement that the deceased died on account of an accident involving "a truck" and the averment made in paragraph 5 that he died on account of the negligence of the truck driver and the learned Tribunal was of the view that on account of the negligence of the Driver which resulted in the accident, the truck Driver namely Shitla Prasad did not inform the police. The said incident itself indicates that it was on account of negligence of the driver himself i.e. Shri Shitla Prasad that the said accident occurred. Learned trial court has also considered the chargesheet which has been filed against the driver concerned and thus arrived at a conclusion that the accident had taken place from the said vehicle on account of negligence of the driver concerned and has awarded the compensation after considering the other issues including the quantum of compensation.

8. Learned counsel for the appellant has raised the following grounds to challenge the impugned judgment namely:

(a) that the claim application having been filed under the provisions of Section 166 of the Motor Vehicle, 1988 which itself indicates that an application for compensation arising out of accident of the nature specified under Section 165 of the Act, 1988 is to be filed by claimants and Section 165 of the Act 1988 would have to necessarily include the accident to have arisen on account of negligence of the driver and the vehicle having been driven negligently and rashly which the claimants failed to prove before the learned tribunal as emerges from perusal of the written

statement that had been filed by the owner and the driver as well as the statement of the wife of the deceased and the post mortem report which indicates that the deceased was not identified at that stretch of time. Reliance has also been placed on the pleadings in this regard, and

(b) that in the written statement that was filed by the owner and the driver it was indicated that the accident had occurred from "a truck" without specifying the vehicle which itself indicates that the accident did not took place from the truck which was being driven by the driver concerned namely Truck No. UP 44 AT 0404.

9. No other ground has been taken/urged.

10. In support of her arguments learned counsel for the appellant has placed reliance on a recent judgement of this Court passed in **First Appeal From Order No. 460 of 2018 in re: Kamleshwar Tiwari vs Abhishek Verma and others** decided on 06.02.2025, judgement of this Court passed in the case of **Shriram General Insurance Co. Ltd vs Smt. Hem Lata and others, 2021(2) T.A.C. 366 (All.)**, judgement of Division Bench of this Court in **Parshuram Pal and others vs Ram Lakhan and another, 2013 (98) ALR 589**, judgement of Hon'ble Supreme Court in the case of **Minu B. Mehta v. Balkrishna Ramchandra Nayan, AIR 1977 Supreme Court 1248**, judgement of Hon'ble Supreme Court in the case of **Surinder Kumar Arora & anr vs Dr. Manoj Bisla & ors, AIR 2012 Supreme Court 1918**.

11. Placing reliance on the judgement of **Parshuram Pal (supra)** the contention is that the chargesheet that had been submitted by the authorities could not be

made a basis for the purpose of filing of the claim petition as the same cannot be considered to be substantive evidence in order to prove the accident against a particular person.

12. Placing reliance on the Hon'ble Supreme Court in the case of **Minu B. Mehta (supra)** and **Surinder Kumar Arora (supra)** the argument is that in order to sustain an application under Section 166 of the Act, 1988 it has to be proved that there was negligence on the part of the driver of the vehicle being driven rashly and negligently which has not been indicated and proved by the claimants while filing the claim petition.

13. Placing reliance on the judgement of this Court in the case of **Smt. Hem Lata (supra)** the argument is that the prosecution witness 2 was father in law of the deceased and he had not seen the accident and as such no reliance could have been placed on the statement given by the said witness.

14. Placing reliance on the judgement of this Court in the case of **Kamleshwar Tiwari (supra)** the argument is that this Court has held that once it is not known as to how the vehicle number came to the knowledge of police and chargesheet has also been filed consequently there cannot be any occasion for grant of compensation and for allowing the claim petition.

15. On the other hand, learned counsel for the respondents has supported the award as passed by learned tribunal.

16. Heard learned counsels for the parties and perused the record.

17. Having heard learned counsels for the parties and having perused the record it emerges that one Shri Ram Kailash who was working as a Khalasi on a truck no.UP 44 AT 0404 and was in receipt of certain amount for the service being rendered by him. Shri Ram Kailash died on 27.05.2017 while working as Khalasi on the said truck. As per the claimants, on the fateful day, Shri Ram Kailash had been asked by the driver of the said vehicle to remove certain pieces of concrete (goti) that had got stuck in the backwheel of the truck. While Shri Ram Kailash was cleaning the said concrete he died on account of being involved in an accident. The post mortem report indicates that the identity of the deceased was not known.

18. The truck had been seized on the same day i.e. 27.05.2025 at around 11:40 AM as would be apparent from a perusal of the seizure report (page 120). The accident has occurred at 11:30 AM as would be apparent from perusal of the claim petition as well as the judgement of the learned tribunal to which there is no dispute on the part of the appellants.

19. Learned Tribunal after considering the alleged contradictions in averments made in the written statements that had been filed jointly by the driver and the owner of the vehicle involved has harmonized the averments made in paragraphs 4 and 5 of the written statement to hold that though in one part of the written statement, it had been indicated that the accident occurred on account of involvement of "a truck" but learned tribunal also considered the categorical averment made in paragraph 5 of the written statement that the accident had

occurred on account of negligence of the driver of the truck.

20. As already indicated above, the averments made in the written statement have been harmonized by the learned tribunal to arrive at the conclusion that it was the truck driver who was involved in the said accident and the accident occurred on account of his negligence and has thereafter awarded the compensation by means of the impugned judgement and award. The award has been challenged by the appellant insurance company on the grounds as indicated above which now the Court proceeds to consider.

21. The grounds as urged by the learned counsel for the appellant are as under:

(a) that the claim application having been filed under the provisions of Section 166 of the Motor Vehicle, 1988 which itself indicates that an application for compensation arising out of accident of the nature specified under Section 165 of the Act, 1988 is to be filed by claimants and Section 165 of the Act 1988 would have to necessarily include an accident to have arisen on account of negligence of the driver and the vehicle having been driven negligently and rashly which the claimants failed to prove before the learned tribunal as emerges from perusal of the written statement that had been filed by the owner and the driver as well as the statement of the wife of the deceased and the post mortem report which indicates that the deceased was not identified at that stretch of time. Reliance has also been placed on the pleadings in this regard;

22. In this regard, a perusal of the claim application would indicate that the

claimants had specifically averred of the accident having occurred on 27.05.2017 from the same truck on which the deceased was working as a Khalasi, rather a categoric averment has been made in the claim application that on account of the negligence of the driver, while the deceased was cleaning the backwheel, Shri Ram Kailash died on the spot.

23. In the written statement, although in one part of the written statement, the driver and the owner have indicated that the deceased died on account of an accident involving "a truck" yet in paragraph 5 of the written statement the negligence of the driver concerned has clearly been brought out.

24. Hon'ble Supreme Court in the case of **Minu B. Mehta (supra)** and **Surinder Kumar Arora (supra)** has held that there has to be an accident involving the negligence of the vehicle concerned.

25. A perusal of the claim application and the written statement would duly indicate that there was clear negligence on the part of the driver. Consequently keeping in view the specific findings of fact as given by learned Tribunal, the said ground is rejected.

26. So far as ground (b) i.e. in the written statement that was filed by the owner and the driver, it was indicated that the accident had occurred from "a truck" without specifying the vehicle which itself indicates that the accident did not took place from the truck which was being driven by the driver concerned namely Truck No. UP 44 AT 0404, the argument is that no evidence was led in support of the accident in as much as neither PW1 nor PW2 indicated about the accident having

occurred in front of them or were eyewitnesses, suffice to state that when the owner and driver of the vehicle have themselves indicated about the accident having occurred and the written statement has been read harmoniously by the learned Tribunal and from the post mortem report and the seizure report are all indicative of the fact that the accident took place from the vehicle in question itself i.e. the truck no. UP 44 AT 0404 on account of the negligence of the Driver, accordingly, the said ground is also rejected.

27. In this regard it would be apt to refer to the judgement of Hon'ble Supreme Court in the case of **Bimla Devi and others vs Himachal Road Transport Corporation and others, 2009 (13) SCC 530** wherein Hon'ble Supreme Court has held that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants and that the claimants are only required to establish the case on the touchstone of preponderance of probabilities.

28. For the sake of convenience, the relevant observations of the judgement of **Bimla Devi (supra)** are reproduced below:

"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."

(Emphasis added)

29. In this regard, it would also be pertinent to mention that in the charge sheet that has been filed by the authorities the name of the Driver namely Shitla Prasad of the offending vehicle has clearly come out which itself indicates about the offending vehicle and the driver who caused the accident which resulted in the death of Sri Ram Kailash which aspect of the matter can also not be ignored keeping in view the law laid down by Hon'ble Supreme Court in the case of **Mangla Ram vs. Oriental Insurance Company Limited & Others 2018 (5) SCC 656** wherein Hon'ble Supreme Court has held that filing of chargesheet against a particular person prima facie points towards his complicity in driving the vehicle negligently and rashly.

30. For the sake of convenience, the relevant observations of Hon'ble Supreme Court are reproduced below:

"27. Another reason which weighted 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 file by

the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes, noted that the plea 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 or probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgements 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 cases, 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)

31. A Division Bench of this Court in the case of **Dr. Anoop Kumar Bhattacharya & Another Vs. National Insurance Co. Ltd.** 2021 (12) ADJ 596 has held that the documents such as the F.I.R., the Site map and the charge-sheet, which form part of the police record, even though they may not establish the occurrence, when considered holistically and prudently, could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant.

32. For the sake of convenience, the relevant observations of **Dr. Anoop Kumar Bhattacharya (supra)** are reproduced below:

"29. We may now revert to the original question whether Tribunal was correct in altogether excluding from evidence the documents such as the FIR,

the site plan and the charge-sheet, which form part of the police record.

30. We have no doubt in our mind that the answer to the aforesaid question must be a resounding 'No'. The Tribunal opted to ignore the FIR, the charge-sheet and the site plan on the ground that they do not establish either that the driver of the offending truck was involved in the accident or that he was guilty of rash and negligent driving. In our opinion, the Tribunal would have been correct had the standard of proof in claim proceedings been that of beyond reasonable doubt as is the case with criminal proceedings. Even in a criminal proceedings, these documents may be considered to corroborate the evidence led in the Court and not to be completely disregarded or ignored. In any case, corroborative value of the police record cannot be ignored completely though decision may not be based solely upon them. Moreover, the standard of proof in the claim proceedings is not that of proof beyond reasonable doubt but that of preponderance of probabilities. The Tribunal on assessment of evidence before it had to satisfy itself that it was more likely than not that the events as alleged in the claim petition had transpired. To our mind, the documents such as the FIR, the site map and the charge-sheet, which form part of the police record, even though they do not establish the occurrence when considered holistically and prudently could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant. Was the FIR promptly lodged or was it lodged after an undue delay? Does the site plan conform to the recital contained in the FIR? Do injuries sustained corroborate the recital contained in the FIR? Does the charge-

sheet bolster the allegations contained in the FIR? These are the factors which when considered fairly and prudently could help to assess if the case set up by the claimants was more probable or not. As such, we consider it an error to altogether ignore the said documents on the ground that they were not conclusive proof of the occurrence more so since that is not the goal of claim proceedings in the first place."

(Emphasis added)

33. As already indicated above, from perusal of the chargesheet dated 25.06.2017, which the Court has perused from the original record, it clearly emerges that the chargesheet indicates that on account of negligence of the driver Shri Shitla Prasad, who was the driver of the concerned vehicle, the said accident had taken place. It is also indicated that the truck concerned has been released on the orders passed by the learned court. This is indicative of the connivance and involvement of the driver Shitla Prasad in the said accident and thus keeping in view the law laid down by Hon'ble Supreme Court in the case of **Mangla Ram (supra)** it is apparent that learned tribunal has not committed any error in arriving at a finding of the deceased having died on account of an accident involving the truck.

34. Accordingly, considering the judgements of **Bimla Devi (supra)**, **Mangla Ram (supra)** and **Dr. Anoop Kumar Bhattacharya (supra)** the judgements of **Smt. Hem Lata (supra)** and **Kamleshwar Tiwari (supra)** may not detain the Court.

35. Likewise the Division Bench judgement of this Court in the case **Parshuram Pal (supra)** over which

reliance has been placed by learned counsel for the appellant is also not of any help to the appellant keeping in view the judgement of **Bimla Devi (supra)** in this regard which incidentally has not been considered by division bench of this court in the case of **Parshuram Pal (supra)**.

36. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the appeal is **dismissed**.

37. Let trial court records be returned.

(2025) 4 ILRA 976
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 602 of 2011

And

First Appeal from Order No. 670 of 2011

U.P.S.R.T.C. Faizabad .. Appellant
Versus
Smt. Meena Srivastava & Ors.
...Respondents

Counsel for the Appellant:

J.B. Singh, Akhilesh Kumar Srivastava

Counsel for the Respondent:

Vivek Kumar Pandey, Amit Tripathi, M.A. Siddiqui, Rakesh Kumar Srivastava

A. Motor Accident Act, 1988 – Claim proceeding – Occurrence of incident – Non production of Station superintendent to proof the route of Bus – Testimony of driver – Relevance – Held, the non production of the station superintendent may not detain this Court considering the testimony of the driver wherein he specifically St.d that on 06.09.2007, the bus returned through Sultanpur and was