

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

also parked in Sultanpur at the roadways bus station. (Para 30)

B. Practice and procedure – Ground of challenge, as raised in appeal, was neither raised before the Tribunal nor described in memo of appeal – Effect – New ground was raised that no ticket was found from the deceased – Permissibility – Held, the said ground may not detain this Court considering that once the learned Tribunal has specifically indicated about the factum of the accident having occurred on the said date which involved Shri Pradeep Kumar Srivastava, the deceased, and having resulted in his death, consequently, the said ground is also rejected. (Para 33 and 34)

C. Motor Accident Act, 1988 – Claim proceeding – Occurrence of accident – Proof of driver's involvement in accident – Statement of driver – Filing of charge-sheet – Relevance – *Bimla Devi's case, Mangla Ram's case* and *Dr. Anoop Kumar Bhattacharya's case* relied upon – Held, even though the bus driver may not have specifically averred to the factum of the accident on 06.09.2007 yet in the charge sheet which has been filed against the driver, as has been considered by the learned Tribunal, it clearly emerges that the police authorities were of the view that the driver was involved in the said accident. (Para 35 and 39)

D. Motor Accident Act, 1988 – Award of compensation – Tribunal awarded compensation on the basis of salary of son of deceased, though the salary slip of the deceased was filed – Validity challenged – Held, the learned Tribunal adopted a strange procedure inasmuch as it has placed reliance on the salary slip of the son of the deceased who had been appointed on compassionate grounds – Award of compensation by the learned Tribunal on the basis of the salary of the son of the deceased is not found to be legally sustainable in the eyes of law. (Para 42 and 44)

Corporation's Appeal dismissed and Claimant's Appeal disposed of. (E-1)

List of Cases cited:-

1. FAFO No.434 of 2016; Mohd. Siraj Vs Motor Accident Claim Tribunal, Lucknow decided on 21.11.2024
2. Bimla Devi & ors. Vs Himachal Road Transport Corporation & ors.; 2009 (13) SCC 530
3. Mangla Ram Vs Oriental Insurance Company Ltd. & ors. 2018 (5) SCC 656
4. Dr. Anoop Kumar Bhattacharya & anr. Vs National Insurance Co. Ltd.; 2021 (12) ADJ 596

(Delivered by Hon'ble Abdul Moin, J)

1. Heard Shri Akhilesh Kumar Srivastava, learned counsel for the appellant as well as Shri Amit Tripathi, learned counsel for the respondents.

2. The connected appeal i.e. FAFO No.670 of 2011 has been filed praying for enhancement of the awarded amount.

3. Learned counsel appearing for the contesting parties state that the facts involved in both the appeals are common.

4. Accordingly, the Court proceeds to hear and decide both the appeals together by way of a common judgment. For the sake of convenience, the facts of the FAFO No.602 of 2011 are being taken.

5. Under challenge is the judgment and order dated 10.03.2011 passed by the learned Motor Accident Claims Tribunal / court No.2, Faizabad in Claim Application No.257 of 2009 in Re: Smt. Meena Srivastava and Others Vs. U.P. State Roadways Transport Corporation and Others. By the said judgment, learned

Tribunal has awarded a sum of Rs.12,85,000/- in favour of the claimants along with interest @ 6% per annum.

6. Bereft of unnecessary details, the facts set forth by learned counsel for the contesting parties are that an accident occurred on 06.09.2007 when one Shri Pradeep Kumar Srivastava, the husband of claimant No.1 and the father of the claimants No.2 & 3 / respondents No.1 to 3 in the appeal, died on account of accident. The accident is said to have occurred when the deceased was alighting from a bus No. UP 42 T3542 around 07:00 in the evening in front of Seth Petrol Pump, Sultanpur. As per the claimants, the leg of the deceased got stuck in the bus while alighting and the bus started off without noticing that the leg of the passenger was stuck in the bus and after driving for some time, when certain persons stopped the bus then it was noticed that Shri Pradeep Kumar Srivastava was seriously injured. He was shifted to the hospital where he was declared brought dead.

7. Upon filing of the claim application, the corporation put in appearance and denied the incident. The sheet anchor of the denial on the part of the Corporation was that the bus was not operating on the route in question rather the route of the bus was Faizabad - Allahabad and thus it was contended that once the place at which the incident occurred in Sultanpur, i.e. opposite of the petrol pump, did not fall within the ambit of the route which had to be taken by the bus, thus, there was no occasion for the bus to have been involved in an accident and as such there is no question of any claim being awarded against the Corporation.

8. The learned Tribunal framed various issues of which issue no.1 was as to whether on 06.09.2007 at 07:00 P.M., Shri Pradeep Kumar Srivastava while alighting from the Bus No. UP 42 T3542 fell down and his leg got stuck in the door of the bus and he was dragged along with bus and thereafter he died on account of the injuries sustained by him.

9. Another issue with which the connected appeal i.e. FAFO No.670 of 2011 is concerned is as to the compensation to which the claimants are entitled to.

10. Shri Akhilesh Kumar Srivastava, learned counsel for the appellant had vehemently argued on issue No.1, which has been decided in favour of the claimants, wherein the learned Tribunal has held that an accident occurred from the bus in question on the fateful day i.e. 06.09.2007 in which Shri Pradeep Kumar Srivastava died.

11. The argument of Shri Srivastava is that the learned Tribunal has failed to consider the issue on the basis of the documents that were led by the Corporation namely a certificate issued by the station superintendent indicating the route of the bus, which indicated that the bus was not operating on the route on which the accident had occurred rather was operating on the Faizabad - Allahabad route.

12. Shri Srivastava has also argued that no bus ticket was recovered from the possession of the deceased and thus it cannot be said that the deceased was a bona fide passenger of the bus from which the alleged accident itself is said to have occurred.

13. Another argument of Shri Srivastava is that the bus driver's testimony in which he did not indicate anything about the accident has not been discarded and has not been considered in this regard to hold that an accident in fact occurred on the fateful day i.e. 06.09.2007.

14. No other argument has been urged.

15. On the other hand, Shri Amit Tripathi, learned counsel appearing for the respondents / claimants has argued that C.P.W.- 2 Shri Vijay Kumar (witness), who has appeared to depose before the learned Tribunal, had specifically indicated that he was present on the spot on 06.09.2007 at around 07:00 P.M. and he had witnessed the said accident in detail in which on account of negligence on the part of the bus driver in having started driving the bus although the leg of Shri Pradeep Kumar Srivastava was stuck in the door of the bus which resulted in Shri Pradeep Kumar Srivastava sustaining serious injuries and having subsequently died.

16. It is contended that the statement of Shri Vijay Kumar could not be rebutted by the Corporation nor any lacunae was found in the said statement and the learned Tribunal has correctly proceeded to hold that the accident took place on the fateful day.

17. So far as the ground that no ticket was found from the person of the deceased, it is argued that the said plea was never taken either before the learned Tribunal or in the instant appeal which has been filed by the Corporation and consequently, it is too late in the day to take the said plea for the first time.

18. Even otherwise, it is submitted that considering the judgment of the learned Tribunal as well as the statement of Shri Vijay Kumar (C.P.W.-2), the accident in fact occurred on the fateful day and thus the learned Tribunal has correctly proceeded to award the compensation in favour of the claimants.

19. So far as the argument of Shri Srivastava that the bus driver's testimony has not been discarded, learned counsel for the claimant has placed reliance on the judgment of this Court passed in **FAFO No.434 of 2016 in Re: Mohd. Siraj Vs. Motor Accident Claim Tribunal, Lucknow on 21.11.2024** wherein this Court, on the basis of the judgment of **Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others 2009 (13) SCC 530**, has specifically held that the strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants and that the claimants are only required to establish their case on the touchstone of preponderance of probability.

20. As regards the route of the bus being Faizabad - Allahabad and no accident could have occurred in Sultanpur, as is argued by learned counsel for the appellant, the argument of Shri Tripathi is that the statement of the bus driver, as indicated in the judgement of the learned Tribunal, would itself indicate that the bus driver has accepted that on 06.09.2007 he had returned back through Sultanpur and that on the fateful day, the bus in the question was also parked at the roadways bus stand at Sultanpur, which has prevailed upon the learned Tribunal to hold that the accident took place from the bus in question at Sultanpur.

21. Learned counsel for the claimant has also placed reliance on the charge sheet which has been filed against the concerned driver and has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Mangla Ram vs. Oriental Insurance Company Limited & Others 2018 (5) SCC 656** to contend that the Hon'ble Supreme Court has held that filing of a charge sheet against a particular person would prima facie points towards his complicity in driving the vehicle negligently and rashly.

22. Reliance has also been placed on a Division Bench judgment of this Court in the case of **Dr. Anoop Kumar Bhattacharya & Another Vs. National Insurance Co. Ltd. 2021 (12) ADJ 596** to contend that the Division Bench of this Court 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.

23. Learned counsel for the claimant has also argued on the third issue as has been framed by the learned Tribunal, i.e. the amount of compensation to which the claimants are entitled to, in his appeal i.e. FAFO No.670 of 2011 which pertains to enhancement of the compensation.

24. It is contended that although the salary slip of the deceased, who was working as Junior Engineer in the U.P. Power Corporation, was filed which indicated his salary as Rs.54,143/- yet the learned Tribunal was of the view that as the said salary slip had not been proved, as

such, no reliance could be placed upon the same and in turn the learned Tribunal has placed reliance on the salary slip of the son of the claimant who had been given compassionate appointment on account of the death of his father namely Shri Pradeep Kumar Srivastava (deceased) and his salary has been considered for the award of compensation. Placing reliance on the salary of the son of the deceased, the salary of the deceased has been determined at Rs.20,000/- per month which is in stark contrast to the actual salary that has been indicated in the salary slip of Rs.54,143/- and thus, it is contended that the learned Tribunal has patently erred in law in awarding compensation on such basis.

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

26. From the argument as raised by learned counsels for the parties and a perusal of the record, it emerges that an accident is said to have occurred on 06.09.2007 which resulted in the death of Shri Pradeep Kumar Srivastava.

27. Upon filing of the claim application by the wife and the sons of the deceased, the learned Tribunal had framed an issue as to whether on 06.09.2007, an accident had occurred with Bus No. UP42T3542 on account of the negligence of the bus driver.

28. The said issue has been decided in favour of the claimants.

29. The said findings have been challenged by means of the instant appeal by the Corporation on the grounds that (a) the accident is said to have occurred in Sultanpur while as per the bus route, Sultanpur did not fall on its route as the bus

was having a route of Faizabad -Allahabad; (b) the deceased was not found to have any bus ticket; (c) the bus driver's testimony has not been discarded.

30. So far as the ground (a) is concerned, the Corporation in support of the bus being operated on Faizabad - Allahabad route had placed reliance on the certificate issued by the station superintendent indicating the route of the bus in question. Incidentally, the station superintendent was never produced as a witness before the learned Tribunal. Moreover, the non production of the station superintendent may not detain this Court considering the testimony of the driver wherein he specifically stated that on 06.09.2007, the bus returned through Sultanpur and was also parked in Sultanpur at the roadways bus station.

31. Even otherwise, a witness namely Shri Vijay Kumar has clearly deposed of the accident having taken place on 06.09.2007 at 07:00 P.M. and he having witnessed the entire accident in which the leg of the deceased got stuck in the door of the bus and he was dragged for some time which resulted in the deceased getting grievously injured and subsequently having died.

32. However, the said issue may not detain the Court much longer considering the specific finding of fact as has been given by the learned Tribunal of the accident having occurred on the fateful day with the bus in question considering the testimony of the driver and the witness namely Shri Vijay Kumar. Thus, the said ground raised by the learned counsel for the appellant is rejected.

33. So far as the ground (b) is concerned that no ticket was found from the deceased, it would be suffice to state that both before the learned Tribunal as well as before this Court, no ground in this regard has been taken. The Court has carefully gone through the grounds as have been taken by the Corporation while filing the instant appeal which run from ground A to O but the said ground does find place in the appeal also.

34. Even otherwise, the said ground may not detain this Court considering that once the learned Tribunal has specifically indicated about the factum of the accident having occurred on the said date which involved Shri Pradeep Kumar Srivastava, the deceased, and having resulted in his death, consequently, the said ground is also rejected.

35. So far as the ground (c) is concerned that the bus driver's testimony has not been discarded, it would be suffice to state that the bus driver in his statement has categorically stated about the bus having returned through Sultanpur and having been parked at Sultanpur Roadways Bus Depot. Even though the bus driver may not have specifically averred to the factum of the accident on 06.09.2007 yet in the charge sheet which has been filed against the driver, as has been considered by the learned Tribunal, it clearly emerges that the police authorities were of the view that the driver was involved in the said accident.

36. In this regard, it would be apt to refer to the judgment of the Hon'ble Supreme Court in the case of **Bimla Devi (supra)** wherein the Hon'ble Supreme Court has held as under:-

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular 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."

37. Likewise, the Hon'ble Supreme Court in the case of **Mangla Ram (supra)** has held as under:-

*"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)

38. The Division Bench of this Court in the case of **Dr. Anoop Kumar Bhattacharya (supra)** has held as under:-

"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)

39. Accordingly, considering the judgments passed by the Hon'ble Supreme Court in the case of **Mangla Ram (supra)** as well as in the case of **Bimla Devi (supra)** as well as the Division Bench judgment in the case of **Dr. Anoop Kumar Bhattacharya (supra)**, the ground (c) taken by the appellant is also rejected.

40. Keeping in view the aforesaid discussion, the appeal filed by the appellant - Corporation i.e. FAFO No.602 of 2011 is **dismissed**.

41. So far as the appeal filed by the claimants is concerned, the said appeal

revolves around issue No.3 which pertains to the compensation as has been awarded in favour of claimants.

42. A perusal of the discussion on issue No.3 would indicate that although a salary slip was filed on behalf of the claimants indicating that the deceased was employed in the U.P. Power Corporation as a junior engineer and as per his salary slip, he was in receipt of an amount of Rs.54,143/- as salary yet the learned Tribunal was of the view that the said salary slip could not be relied on as the same has not been proved. The learned Tribunal adopted a strange procedure thereafter inasmuch as it has placed reliance on the salary slip of the son of the deceased who had been appointed on compassionate grounds. On the basis of deceased's son's salary slip, the learned Tribunal has opined that the salary of the deceased would be Rs.20,000/- and thereafter, the learned Tribunal has proceeded to award the compensation.

43. The analogy adopted by the learned Tribunal in order to arrive at the salary of the deceased is not found to be legally sustainable in any view of the matter inasmuch as the deceased, who was aged about 54 years, was at the fag end of his service while his son has only been appointed on account of the death of Shri Pradeep Kumar Srivastava (deceased) and was an infant in the service and by no stretch of imagination could the salary of a young employee, the son of the deceased, would be comparable with the salary of an officer who was at the fag end of his service.

44. Thus, the award of compensation by the learned Tribunal on the basis of the salary of the son of the deceased is not

found to be legally sustainable in the eyes of law.

45. Accordingly, the case is remitted to the learned Tribunal to consider the award of compensation in accordance with law. As the claim application is of the year 2009 and a substantial period has already lapsed, as such, the learned Tribunal is directed to decide the said claim application pertaining to award of compensation in accordance with law and the relevant rules within a period of six months from the date a certified copy of this order is brought on record of the learned Tribunal.

46. With the observations as made above, the appeal i.e. FAFO No.670 of 2011 stands **disposed of**.

47. Also, considering the long pendency of the claim application before the learned Trial and thereafter before this Court and considering the order of this Court dated 05.07.2011 whereby half of the amount, as awarded before the learned Tribunal, was directed to be deposited before the learned Tribunal, the claimants are permitted to withdraw the amount which was deposited before the learned Tribunal in accordance with law and the relevant rules which would be subject to the order(s) being passed by the learned Tribunal in pursuance to the directions made above.

48. The records be returned back as per procedure.

(2025) 4 ILRA 984
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.04.2025

BEFORE

**THE HON'BLE SAUMITRA DAYAL SINGH,
 J.
 THE HON'BLE SANDEEP JAIN, J.**

Government Appeal No. 43 of 2025

State of U.P. ...Appellant
Versus
Pushpendra alias Gabbar ..Respondent

Counsel for the Appellant:
 Ashutosh Kumar Sand

Counsel for the Respondent:
 Mukesh Kumar Pandey

A. Criminal Appeal against acquittal - When interference may be offered by the High Court in appeal against acquittal - High Court must be satisfied that the finding recorded by the learned trial court suffers from the vice of perversity. Once that satisfaction is reached, the High Court must further reappraise the evidence through a prism that may allow for a singular conclusion of guilt to arise upon such reappraisal of evidence. It must also be strong enough to be described as nearly absolute, as may not only discard the presumption of innocence that the accused enjoys at the beginning of the trial but also dispel the confirmation of such innocence offered by the order of acquittal. Such conclusion must be free from any benefit of doubt that may arise to the accused on the strength of evidence led at the trial. Where a finding of fact may be recorded either dehors the evidence or contrary to the evidence, or where conclusions may have been drawn contrary to the law, that finding and/or conclusion may be described as perverse. (Para 38, 39, 40)

B. Evidence Act, 1872 - Minor inconsistencies - It is not the law that prosecution witness must maintain their consistent stand by way of an empirical truth, to establish the credibility of the prosecution witnesses or version. The settled principle in that regard is that evidence must carry a ring of truth. Minor inconsistencies are