

respondent no. 3 therein i.e the insurance company which is the appellant. Moreover, the learned Commissioner has held that owner & the insurance company jointly and severally liable to pay the awarded amount.

18. Accordingly, considering the aforesaid finding as recorded by the learned Commissioner along with the judgment of the Apex Court in the case of **Premi Devi (supra)**, the said ground is also rejected.

19. Keeping in view the aforesaid discussion, no case for interference in the impugned award is made out. Accordingly, the appeal is dismissed.

(2025) 5 ILRA 1602
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.05.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

First Appeal From Order No. 664 of 2017

Oriental Insurance Company Ltd.
...Appellant
Versus
Dayawati Gupta & Ors. ...Respondents

Counsel for the Appellant:
 Subhash Chandra Gulati

Counsel for the Respondents:
 Priyam Mishra, Anil Kumar Tiwari,
 Sadanand

Civil Law-The Motor Vehicles Act,1988-Sections 169(2) & 173 - The Evidence Act,1872-Section 114(g)--- The eye witness has been produced and nothing could be extracted from him, which may create any doubt about veracity of his evidence and indicate that he had not seen the accident--- Once an eye witness has been produced, who proved the accident, merely because a person

who was in the car has not been produced cannot be a ground for not believing the testimony of the eye witness---The tribunal determined the income of the deceased on the basis of evidence produced before it. Since no contrary evidence could be produced or shown, no illegality or error in the income of the deceased determined by the tribunal--- The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed-- Merely because the application moved by the appellant for summoning and providing copies of the income tax return on the date of judgment was dismissed by the tribunal, it cannot be said that the power has not been exercised by the tribunal because the Court has also to see that process of law may not be misused to delay or stall the proceedings---**Petition dismissed.** (E-15)

List of the cases referred-:

1. Oriental Insurance Co. Ltd. versus Premlata Shukla & ors.; 2007(3) T.A.C. 11 (S.C.)
2. Mangla Ram versus Oriental Insurance Co. Limited & ors.Law Finder Doc Id # 999611 (2018 AIR SC 1900)
3. Anita Sharma & ors.versus The New India Assurance Co. Limited & anr.Law Finder Doc Id # 1779856; (2021 AIR SC 302).
4. Parashuram Pal & ors.versus Ramlakhan & anr.F.A.F.O. No.956 of 2013
5. Shriram General Insurance Co. Limited versus Smt. Hem Lata & ors.
6. Malarvizhi & ors.versus United Insurance Co. Limited & anr.2020 (1) T.A.C. 328 (S.C.)
7. Gopal, Krishnaji Ketkar versus Mahomed Haji Latif & ors. AIR 1968 Supreme Court 1413

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Mrs.Pooja Arora,Advocate holding brief of Sri Subhash Chandra Gulati,learned counsel for the appellant and Sri Priyam Mishra,learned counsel for the claimant-respondents. None appeared on behalf of other respondents, even in the revised list and they had also not appeared on the earlier dates also.

2. The instant first appeal from order under Section 173 of the Motor Vehicles Act,1988 has been filed against the judgment and award dated 06.05.2017 passed by Motor Accidents Claim Tribunal/Additional District Judge,Court No.8, Raebarely in Motor Accident Claim Petition No.163/16 (Smt. Dayawati Gupta and others versus Smt. Shashibala Gupta and Others).

3. Learned counsel for the appellant submitted that the impugned judgment and award passed by the tribunal is not sustainable in the eyes of law for the reasons that P.W.2 who is an alleged eye witness, though a member of inquest report has not informed the number of the offending vehicle at the time of inquest, therefore, he cannot be said to be an eye witness and his presence on spot is doubtful and either of the persons who were sitting alongwith the deceased has not been produced as a witness to prove the accident and rash and negligent driving. It has further been submitted that a person sitting in the vehicle of the deceased could have been the best witness to prove the accident and rash and negligent driving in view of Section 114(g) of the Evidence Act. Thus the accident cannot be said to have been proved. She further submitted that despite any cogent evidence in regard to the income of the deceased, the income has been determined as Rs.50,000/-, which could not have been done. The application

for summoning of the income tax returns of the appellant and providing copies thereof was illegally rejected by the tribunal, therefore, sufficient opportunity has not been afforded to the appellant in regard to determination of the income of the deceased, whereas the tribunal exercises the power of a civil court for the purpose of taking evidence etc. under Section 169(2) of the Motor Vehicles Act 1988, therefore it could have been summoned. He relied on *Malarvizhi and others versus United India Insurance Company Limited and Another; 2020 (1) T.A.C. 328 (S.C.)*, *Oriental Insurance Company Limited versus Premlata Shukla and Others; 2007(3) T.A.C. 11 (S.C.)*, *Gopal, Krishnaji Ketkar versus Mahomed Haji Latif and Others; AIR 1968 Supreme Court 1413*, *Parashuram Pal and Others versus Ram Lakhan and Another passed by a Division Bench of this Court in F.A.F.O. No.956 of 2013 and a Coordinate Bench decision of this Court in the case of Shriram General Insurance Company Limited versus Smt. Hem Lata and Others; 2021 (2) T.A.C. 366(All.)*

4. Per contra, learned counsel for the claimant-respondents submitted that the impugned judgment and award has rightly been passed in accordance with law by the tribunal. There is no illegality or infirmity in it for the reasons that once an eye witness was produced, who proved the accident and nothing could be extracted from him in the cross examination, which may doubt his veracity or presence on spot, merely because a person who was sitting in the car has not been produced, therefore it cannot be said that the accident could not be proved and doubt cannot be raised about the presence of the eye witness. He further submitted that the application for summoning and providing copies of the

income tax returns was moved on the date of judgment, which was rightly dismissed by the tribunal. He further submitted that the accident and rash and negligent driving of the driver of the offending vehicle was proved by the claimant-respondents and nothing could be brought on record contrary to it. The rash and negligent driving of the driver of the offending vehicle is itself proved because there is no dispute in regard to site plan, according to which the offending vehicle had dashed the vehicle of the deceased while it was coming from the opposite direction after breaking the divider. He further submitted that the income of the deceased has rightly been determined because the copies of the Form 16 were placed on record, which shows that the income of the deceased was much more than the income determined by the tribunal, which could not be disputed by the appellants or any contrary evidence could be placed on record. Thus, the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed. He relied on *Mangla Ram versus Oriental Insurance Company Limited & Others; Law Finder Doc Id # 999611 (2018 AIR SC 1900) and Anita Sharma and Others versus The New India Assurance Company Limited and Another; Law Finder Doc Id # 1779856; (2021 AIR SC 302)*.

5. Having heard learned counsel for the parties, I have perused the records.

6. The claim petition was filed by the claimant-respondent nos.1 to 4 alleging therein that the husband of the claimant-respondent no.1 and father of 2 and 3 and mother of 4 i.e. the deceased Suresh Kumar alongwith Smt. Dayawati, Smt. Neelam, Smt. Kamla Devi and maternal-grand-son Babu was coming back from his permanent

residence in Village Makdoompur, Police Station Dalmau, District Raebarely to his present residence MIG,5/55 Pragatipuram Colony, Police Station Mill Area, District Raebarely by Maruti Wagon Car No.U.P. 33 S 4169. As he reached near Chhajlapur on Luknow-Raebarely Road in front of house of MLA Sri Ram Lal Akela, Ford Eco Sport Vehicle No.U.P.33 AA 7077 coming from the opposite direction, which was being driven rashly and negligently, breaking the divider came on the wrong side and dashed the vehicle of the deceased with great force, on account of which all the persons in the car suffered serious injuries. The deceased suffered very serious injuries, on account of which he died on the spot. The vehicle was also badly damaged. The police after taking the possession of the dead body got the inquest done and thereafter the post mortem was got done. The first information report of the accident was lodged by the brother of the deceased Dinesh Kumar. The date of birth of the deceased was 25.02.1967. The father of the husband of the claimant-respondent no.1 died prior to his death. The deceased was working in Life Insurance Company on the post of Chief Insurance Advisor. The age of the deceased at the time of his death was 49 years and he was earning about Rs.1,25,190/- per month and accordingly Rs.15,02,276/- yearly. The deceased used to spend whole of his income on his wife, children and mother. In case, he would have been alive, his income would have enhanced, therefore, the compensation claimed by the claimant-respondents may be awarded.

7. The claim petition was contested by the defendant nos.2 and 3 i.e. respondent nos.5 and 6 by filing a common written statement denying the averments made in the claim petition, However, it has

been admitted that the defendant-respondent no.5 is the registered owner of the Eco Sport, Vehicle No.U.P.33 AA 7077 and the defendant-respondent no.6, who is the grand son of the defendant-respondent no.5 was the driver at the time of accident. It has also been stated that he was having a valid and effective driving license and was a good driver. The registration and fitness of the vehicle was valid on the date of accident. No accident had ever occurred on account of rash and negligent driving of the defendant-respondent no.6. The vehicle was validly insured from the Oriental Insurance Company, which was effective also. The driver of the vehicle No.U.P. 33 S 4169 driving, rashly and negligently, came from the opposite side and dashed into the divider and hit the vehicle of the answering defendant-respondents. The defendant-respondent no.6 had suffered many injuries, whereas he was not at fault. The income of the deceased has been shown exaggerating it and no certificate of age and income has been filed. However, in case any liability is determined by the court, then the same would be of the Oriental Insurance Company Ltd. Accordingly, he prayed for dismissal of the claim petition.

8. The defendant no.3/respondent no.7 New India Insurance Company Limited filed a written statement stating therein that the claimants have not filed the accident report, medical bill and vouchers, cash memo, post mortem report, first information report, site plan, technical examination report, charge sheet etc. The driver of the vehicle was not having a valid and effective driving license at the time of accident. The accident had occurred on account of negligent driving of driver of both the vehicles. The compensation has been claimed exaggerating the same. Thus

claim petition is liable to be dismissed with cost.

9. The defendant no.4/appellant filed a written statement stating therein that the accident had occurred on account of head on collision of Eco Sport vehicle No. U.P.33 AA 7077 and Wagon-R vehicle No. U.P. 33 S 4169, in which the driver of the vehicle No.U.P. 33 S 4169 died. The accident had occurred on account of negligence and fault of both the drivers, therefore, the liability of payment of compensation is of both the Insurance Company. The insurance of Vehicle No.U.P.33 AA 7077 on the date and time of the accident was denied. However, it was stated that if it is proved by evidence then only the liability of payment would occur. On account of valid driving license of driver of Vehicle No.U.P. 33 AA 7077, there is no liability of payment of compensation. It was further stated that since the registration etc. of Vehicle No.U.P. 33 AA 7077 was not valid, therefore, there is no liability of payment of compensation by the defendant no.4/appellant. No papers of income of the deceased have been filed and the compensation has been claimed exaggerating it. Thus claim petition is liable to be dismissed.

10. On the basis of pleadings of the parties, 6 issues were framed, which are extracted herein-below:-

1- क्या दिनांक 23.10.2015 को समय 10.00 रात्रि को याचिनी का मृतक पति श्रीमती दयावती, श्रीमती नीलम, श्रीमती कमला देवी व नाती बाबू के साथ अपने मूल निवास ग्राम मकदूमपुर थाना डलमऊ जिला रायबरेली से अपनी गाडी वैगनआर सं० यू०पी० 33 एस 4169 से अपने वर्तमान निवास एम०आई०जी० 5/55 प्रगतिपुरम कालोनी थाना मिल एरिया जिला रायबरेली वापस आ रहे थे जैसे ही लखनऊ रायबरेली मार्ग पर छजलापुर के पास विधायक श्री राम लाल अकेला के घर

के सामने थे कि विपरीत दिशा से एक फोर्ड इको स्पोर्ट संख्या यू0पी0 33 ए ए 7077 का चालक बहुत तेजी व लापरवाहीपूर्वक लहराता हुआ गलत दिशा में आकर उपरोक्त गाड़ी में जोरदार टक्कर मार दिया जिससे याचिनी के पति को अत्यधिक चोटें आयी और उनकी मौके पर मृत्यु हो गयी?

2. क्या मृतक की दुर्घटना में योगदायी उपेक्षी थी?

3. क्या प्रश्नगत वाहन दुर्घटना की तिथि पर विपक्षी संख्या 4 के पास वैध रूप से बीमित था?

4. क्या दुर्घटना के समय वाहन के सभी प्रपत्र वैध थे।

5. क्या दुर्घटना के समय प्रश्नगत वाहन के चालक के पास वैध एवं प्रभावी चालन अनुज्ञप्ति थी?

6. क्या याची प्रतिकर के रूप में कोई धनराशि प्राप्त करने के अधिकारी हैं यदि हां तो कितनी और किस पक्षकार से?

11. Thereafter the documentary evidence was filed by the claimant-respondent nos.1 to 4. However, no documentary evidence was filed by the defendants. In oral evidence Akhilesh Kumar Gupta has been examined as P.W.1, Dinesh Kumar Gupta as P.W.2 and Sri Suraj Kumar as P.W.3. No oral evidence was adduced by the defendants. After hearing learned counsel for the parties, the tribunal allowed the claim petition and awarded a compensation of Rs58,85,000/- alongwith interest at the rate of 7%per annum simple interest. It has further been provided that out of the compensation awarded, Smt. Dayawati claimant-respondent no.1 will get 60%, the claimant-respondent no.2 Akhilesh Kumar Gupta and claimant-respondent no.3 Vipul Kumar Gupta 10% each and claimant-respondent no.4 Smt. Phool Sundari 20%. Being aggrieved by the aforesaid judgment and award this appeal has been filed.

12. The accident occurred on 23.10.2015 at 10:00 in the night, while the deceased Suresh Kumar was coming with his family members as disclosed above by Maruti Wagon-R car in front of house of

MLA Sri Ram Lal Akela near Chhajlapur on Lucknow-Raebarely road with Ford Eco Sport coming from the opposite direction, which dashed the vehicle of the deceased after breaking the divider and coming on the wrong side. The deceased died on spot on account of injuries suffered by him. Others also suffered injuries in the accident. They were taken to hospital, where the deceased was declared dead. An F.I.R. was lodged on 24.10.2015 at 5:15 at Police Station Industrial Area, District Raebarely in regard to the aforesaid incident at 10:00 in the night on 23.10.2015. The claim petition was filed with the aforesaid allegations.

13. The learned tribunal, while deciding issue nos.1 and 2 'together', considered the evidence of P.W.1 and P.W.2. P.W.1 Akhilesh Kumar Gupta, who is son of the deceased and P.W.2 Dinesh Kumar Gupta, who is brother of the deceased proved the accident. Both of them stated that the incident had occurred on 23.10.2015 at 10:00 in the night at Raebarely-Lucknow road near Chhajlapur in front of the house of MLA Sri Ram Lal Akela, while the deceased Suresh Kumar Gupta driving Wagon-R U.P.33 S 4169 carefully was coming back from his permanent house at Dalmau, Raebarely to his house at Pragatipur Raebarely, Police Station Mill Area alongwith Smt. Dayawati, Smt. Neelam, Smt. Kamla Devi and maternal grand son Babu. When he reached at the spot in question, a Ford Eco Sport U.P.33 AA 7077 coming from the opposite direction, being driven rashly and negligently by its driver, breaking the divider went on to the wrong side and dashed the vehicle of the deceased. The deceased suffered very serious injuries in the accident and died on the spot. P.W.2, who is resident of Makdoampur, P.S.

Dalmau, District Raebarely has stated that while he was coming back from Pragatipur to his house on the aforesaid time and place, he saw that Suresh Kumar Gupta driving his vehicle Wagon-R U.P. 33 S 4169 carefully was coming on his side on road. When he reached on the aforesaid place, Eco Sport vehicle No.U.P.33 AA 7077, coming from the opposite direction and being driven rashly and negligently by its driver had overtaken him and breaking the divider went on the wrong side and heavily dashed the vehicle of the deceased from the front, on account of which Suresh Kumar Gupta suffered very serious injuries and the driver of the Eco Sport vehicle No.U.P.33 AA 7077 and persons sitting in the vehicle of the deceased also suffered serious injuries. He called the police and ambulance and gave information about the accident. On information, police and ambulance came on the spot and Suresh Kumar Gupta and the injured were taken to the District Hospital, Raebarely. His statement was also recorded by the police. He had lodged the F.I.R. Inquest and post mortem of the deceased were done before him. In the cross examination also, he supported the aforesaid evidence given in examination-in-chief and nothing could be extracted from him, which may create any doubt about his testimony or his presence on spot at the time of accident. The evidence of P.W.2 i.e. eye witness is in consonance with the site plan placed on record of the trial court, which indicates that the vehicle No.U.P. 33 S 4169 was coming on its left side and the vehicle No.U.P.33 AA 7077, coming from the opposite direction, came on the wrong side after breaking the divider and hit the vehicle of the deceased. The divider is shown in site plan. This site plan has not been disputed by any of the parties. The technical examination report of both the

vehicles also indicates that the vehicles were damaged. Thus, this Court does not find any illegality or error in the finding recorded by the tribunal after considering the evidence of P.W.1 and P.W.2, who have proved the accident.

14. The evidence of the eye-witness P.W.2 has been disputed on the basis of an opinion recorded in the inquest report, in which P.W.2 was also a member. The opinion recorded is that "Suresh Kumar Gupta ki Martiu ghatna may aayi choton key karan hona pratit hota hae, phir bhi mritu ka sahi karan janney key liye P.M. kara liya jaye theek rahega". But it cannot be a ground for disbelieving evidence of an eye witness because firstly it was only an opinion and it was only for consent for post mortem. However, once the appellant relies on an opinion recorded in copy of inquest report etc., he cannot dispute other documents on the ground that they are photocopies. They appear to be certified copies. Site plan was also relied heavily at the time of arguments.

15. Section 114(g) of the Indian Evidence Act, 1872 provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Thereafter in illustrations in paragraph (g), it has been provided that the Court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. Learned counsel for the appellant failed to indicate as to how once an eye witness has been produced who proved the accident and rash and negligent driving of the driver of the vehicle, which is in consonance with

the site plan, how non-production of any person who was sitting in the car would give power to the court to presume that his/her non-production is unfavourable to the claimant-respondents.

16. The Hon'ble Supreme Court, in the case of *Oriental Insurance Company Ltd. versus Premlata Shukla and others(supra)*, has held that the factum of an accident could also be proved from the first information report and once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn around and contend that the other contents contained in the rest part thereof has not been proved. Both the parties have relied thereupon. Once a part of it is relied upon by both the parties, the learned tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law would not arise.

17. The Hon'ble Supreme Court, in the case of *Mangla Ram versus Oriental Insurance Company Limited and others(supra)*, has held 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 touch stone 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 no.2 prima facie points towards his

complicity in driving the vehicle negligently and rashly.

18. The Hon'ble Supreme Court, in the case of *Anita Sharma and others versus The New India Assurance Company Limited and Another(supra)*, has held that the failure of the respondents to cross examine the solitary eye witness or confront him with their conversion, despite adequate opportunity, must lead to an inference of tacit admission on their part.

19. A Division Bench of this Court, in the case of *Parashuram Pal and Others versus Ramlakhan and Another(supra)*, has held that it is not res-integra that in motor accident claim petition charge sheet filed by the police investigating the accident as a crime is not substantive evidence and compensation cannot be awarded only on this basis. The claimants can succeed only on the basis of substantive evidence adduced by them before the Motor Accident Claims Tribunal. It is not applicable in the present case because in the present case the accident and rash and negligent driving has been proved by an eye witness, which is supported by document.

20. A Coordinate Bench of this Court, in the case of *Shriram General Insurance Company Limited versus Smt. Hem Lata and Others(supra)*, has held that in absence of there being any other independent witness and also failure of the claimants to examine an injured eye witness, the appeal deserves to be allowed because the Court found that the eye witness P.W.2 could not show as to how this witness came into contact with Raghuveer Singh, informant of the case.

The said witness admitted that he had approached the police alongwith Raghuvver Singh-informant and executed an affidavit implicating the so called offending vehicle and he admitted that he had not noted the number of the offending vehicle and remembered it only mentally and when this is read with his submission that on 07.06.2011 at about 8-9 am, his mother had informed him death of Vinesh Kumar, it is evident that Vinesh Kumar was known to the family else there was no occasion for his mother to discuss death of a stranger. Thus the judgment was rendered in the facts and circumstances of the case. It is not applicable on the facts and circumstances of the present case because in the present case, P.W.2 has proved the accident and rash and negligent driving of the driver of the offending vehicle, which is supported by undisputed documentary evidence and nothing could be extracted from him in the cross examination, which may create any doubt about his veracity and his presence at the place of accident.

21. So far as contention of learned counsel for the appellant that any of the witnesses who were in the vehicle have not been produced who could have been the best witness is concerned, this Court is of the view that the contention of learned counsel for the appellant is misconceived and not tenable because the eye witness has been produced and nothing could be extracted from him, which may create any doubt about veracity of his evidence and indicate that he had not seen the accident. Therefore once an eye witness has been produced,who proved the accident, merely because a person who was in the car has not been produced cannot be a ground for not believing the testimony of the eye witness, who was brother of the deceased. Thus, this Court is of the view that the aforesaid accident on 23.10.2015 at 10:00

p.m.in the night at the aforesaid place by rash and negligent driving of the driver of vehicle No.U.P. 33 AA 7077 and dashing vehicle No. U.P. 33 S 4169 by going on the wrong side after breaking the divider has been proved. Thus the finding recorded by the learned tribunal in this regard does not suffer from any illegality or error. Even otherwise it is recorded in the order dated 02.01.2019 that learned counsel for the appellant fairly submitted that in compliance of Court's order the entire amount has been deposited before the tribunal and the appellant has challenged the order of the tribunal on the ground of quantum.

22.The learned tribunal, while considering the quantum of compensation, has recorded that in regard to the income of the deceased,copies of Form 16 A of 2012-13,13-14,14-15 and15-16 have been produced. P.W.3 Suraj Kumar stated that the income of any agent is not definite. It used to increase and decrease as per the work because the work of an agent is commission based and since the income tax return have not been filed by the deceased, therefore, considering the income claimed by the deceased as Rs1,25,190/-on the basis of Form 16, which could not be proved by any evidence, the tribunal determined the income as Rs.50,000/- per month. Perusal of the evidence of P.W.3 indicates that he has not been examined in cross-examination as to how much work the deceased had and on the said work how much commission he could have received. Thus the tribunal determined the income of the deceased on the basis of evidence produced before it. Since no contrary evidence could be produced or shown, this Court does not find any illegality or error in the income of the deceased determined by the tribunal.

23. The tribunal further recorded that his wife,two sons and mother were dependant on him, therefore he must have

been spending 1/4th part of his income on himself. Accordingly, after deducting the same, determined the income and allowed the compensation. This Court does not find any illegality or error in the compensation calculated by the tribunal also and it could also not be contradicted in any manner.

24. Section 169(2) of the Motor Vehicles Act 1988 provides that the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974). The power of the tribunal as provided under the statute cannot be disputed but it is to be examined in accordance with law and merely because the application moved by the appellant for summoning and providing copies of the income tax return on the date of judgment was dismissed by the tribunal, it cannot be said that the power has not been exercised by the tribunal because the Court has also to see that process of law may not be misused to delay or stall the proceedings.

25. The Hon'ble Supreme Court, in the case of *Malarvizhi and Others versus United Insurance Company Limited and Another(supra)*, has held that the tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. This case is not applicable on the facts and circumstances of the present case as discussed above.

26. The Hon'ble Supreme Court, in the case of *Gopal, Krishnaji Ketkar versus Mahomed Haji Latif & Others(supra)*, has held that even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue because there is a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. It is not applicable in the present case because an eye witness has been produced, who has proved the accident and income has also been determined rightly as discussed above.

27. In view of above and considering the overall facts and circumstances of the case, this Court does not find any illegality or error in the impugned judgment and award passed by the tribunal. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

28. The appeal is, accordingly, **dismissed**. No order as to costs.

(2025) 5 ILRA 1610

APPELLATE JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 01.05.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal From Order No. 895 of 2016

And

First Appeal From Order No. 896 of 2016

**National Insurance Co. Ltd. ...Appellant
Versus
Shiva Vishwakarma Minor ...Respondent**