



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2025

[@ SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2025

@ DIARY NO.44210 OF 2019]

KUNCHAM LAVANYA & ORS.

...APPELLANTS

A1: KUNCHAM LAVANYA

A2: KUNCHAM NARSING RAO

A3: KUNCHAM RAJANI

A4: KUNCHAM BHARATH KUMAR

A5: KUNCHAM HARISH

A6: KUNCHAM RAJESH

VERSUS

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. & ANR.

...RESPONDENTS

R1: BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

R2: D. RAVINDRA REDDY

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Delay(s) condoned. I.A.s No.37402/2020 and 37405/2020 are allowed.

2. Leave granted.

3. The present appeal takes exception to the Final Judgment and Order dated 07.03.2019 in M.A.C.M.A.¹ no.77 of 2017 (hereinafter referred to as the 'Impugned Order') passed by a learned Division Bench of the High Court for the State of Telangana at Hyderabad (hereinafter referred to as the 'High Court'), whereby the appeal preferred by the respondent no.1-insurance company was allowed by setting aside the award dated 26.10.2015 passed by the Motor Accidents Claims Tribunal-*cum*-I Additional Chief Judge, City Civil Court, Secunderabad (hereinafter referred to as the 'MACT'), in M.V.O.P. No.458 of 2011, to the extent of imposition of liability on the respondent no.1-insurance company.

BRIEF FACTS:

4. On 20.03.2011, Mr. K. Yadagiri (the deceased) was riding his *Bajaj* scooter bearing Registration No. AP 28 AG 8602 and going from

¹ Motor Accident Civil Miscellaneous Appeal.

Habsiguda to his residence *via* Taranaka. At about 9:30 PM, when he reached Taranaka (HUDA Complex), his scooter was hit on the backside by a red coloured *Hyundai Verna* car bearing Registration No. AP 29 AE 3763 that was in high speed and being driven negligently. Due to the accident, Mr. K. Yadagiri suffered multiple injuries and was taken to Gandhi Hospital through a 108 ambulance where he later succumbed to his injuries. In this regard, First Information Report No.156/2011 (hereinafter referred to as the 'FIR') under Section 304A of the Indian Penal Code, 1860 came to be registered on the next day, i.e., 21.03.2011.

5. The appellants-claimants being the widow and children of the deceased filed M.V.O.P. No.458 of 2011 before the MACT claiming a compensation of Rs.23,00,000/- (Rupees Twenty-Three Lakhs). The appellants examined three witnesses and submitted twelve documents. The respondent no.1-insurance company did not examine any witness but submitted a single document *viz.* the insurance policy. The MACT also examined the Investigating Officer as a Court Witness. After appreciating the material before it, the MACT allowed the petition with costs against the respondents jointly and severally and awarded a compensation of Rs.33,63,350/- (Rupees Thirty-Three Lakhs Sixty-Three

Thousand Three Hundred and Fifty) with interest at 7.5% *per annum* from the date of filing of the petition, i.e., 07.09.2011 till realization.

6. The respondent no.1-insurance company filed M.A.C.M.A. No.77 of 2017 before the High Court contending, *inter alia*, that the registration number of the offending vehicle was unknown on the date when the FIR was lodged. The High Court *vide* the Impugned Order allowed the appeal and set aside the Award *qua* the insurance company. While doing so, the High Court noted, *inter alia*, that PW2 (an eye-witness) maintained a studied silence for two and a half months even though he had written down the registration number of the offending vehicle, and hence his testimony was unreliable and the appellants-claimants had failed to establish that the offending vehicle was involved in the accident.

SUBMISSIONS BY THE APPELLANTS:

7. Learned counsel for the appellants submitted that the High Court erred in disbelieving the testimony of PW2, solely due to the delay in recording his statement and that he was brought to the MACT for recording of evidence by the claimants and was not a summoned witness. It is submitted that the police investigation corroborated his version and his statement was also backed by another eyewitness, Mr. I.

Vasudeva Reddy (*paan*-shop owner). It was submitted that in ***Goutam Joardar v State of West Bengal, (2022) 17 SCC 549***, the Court has held that delay in recording testimony alone does not discredit the witness. Further, it is common practice in Civil Courts, especially in some States that many a times, to avoid delay, the Courts ask the parties to call the witness(es) themselves instead of issuing summons therefor. Thus, there was nothing unusual if witnesses were not summoned. The fact remained that the identity of the eye-witness was revealed through police investigation and he was already a witness for the prosecution in the criminal case arising out of the FIR. Thus, it was wrong for the High Court to conclude that he was a planted witness at the behest of the claimants.

8. It was argued that the High Court erred in concluding that the appellants failed to establish that the *Verna* car was the particular offending vehicle, despite testimonies from two eye-witnesses and the registration number provided by PW2. The mechanical inspection report as well as the investigation conducted by the police further substantiated that the *Verna* car in question, had been involved in the accident. The Investigating Officer also came to the witness box and was examined and confirmed that as per his investigation, the offending vehicle was the *Verna* car bearing Registration No. AP 29 AE 3763. Reliance upon the

statement of the other eye-witness (Mr. I. Vasudeva Reddy), recorded during the trial of the criminal case, which was not part of the record of the MACT, was absolutely unjustified, especially when he was not even examined as a witness in the MACT proceedings.

9. It was further submitted that the High Court disregarded the ruling of this Court in ***Mangla Ram v Oriental Insurance Co. Ltd., (2018) 5 SCC 656***, wherein it was held that negligence must be determined on the basis of preponderance of probabilities, not beyond reasonable doubt. Even if acquittal occurred in a criminal case, the findings of negligence in the motor accident claim remained valid. The filing of charge-sheet against respondent no.2 *prima facie* pointed towards his complicity in driving the vehicle negligently and rashly. The High Court ignored the statement of respondent no.2-owner of the offending vehicle, who admitted to his driver's guilt. On these grounds, learned counsel prayed for allowing the appeal and sought setting aside of the Impugned Order.

SUBMISSIONS BY THE RESPONDENT NO.1:

10. Learned counsel for the respondent no.1-insurance company argued that the High Court has appreciated the evidence in the correct

perspective and the same does not require interference of this Court. It was submitted that PW2 (U.K. Atriya) deposed that he was a bystander at a *paan*-shop when he witnessed the insured vehicle collide with the deceased's scooter at 80-100 kilometres/hour at 9:15 PM on 20.03.2011. He deposed that he saw the offending driver who caused the accident stop for a while before fleeing. And yet, admittedly he failed to identify the offending driver in the criminal trial as also in the enquiry before the MACT.

11. It was further submitted that PW3 (I. Vasudeva Reddy), the *paan*-shop owner, did not see the registration number of the offending vehicle but he did see the offending driver. He unequivocally stated that the offending driver was different from the driver of the insured vehicle. Thus, it was proved that the driver of the insured vehicle did not cause the accident.

12. Insofar as the identity of the offending vehicle is concerned, it was argued that PW2 fabricated the entire story of how he informed the police about the insured vehicle being the offending vehicle. He admitted that he remained silent about the accident, until about two and a half months later when randomly a police officer visited the *paan*-shop. Incredibly, he had the registration number of the offending vehicle written

on a piece of paper at that moment, which is how he informed the said police officer about the involvement of the insured vehicle in the accident. It was submitted that this story has no probative value because of its manifest improbability. And, learned counsel submitted, the alleged piece of paper was never led into evidence.

13. It was further submitted that the High Court correctly rejected the appellants' reliance on PW3's testimony because he admitted in his examination-in-chief to have not noticed the registration number of the offending vehicle. It was also pointed out that the appellants have incorrectly submitted only PW-3's cross-examination without his examination-in-chief in the instant appeal. Furthermore, the insured vehicle was inspected on 08.06.2011. The report records only a bent bumper with no other damage, which belies the possibility of a violent collision at 80-100 kilometres/hour as deposed by PW2. No inspection report of the scooter is on record to establish its collision with the insured vehicle.

14. It was further argued that the vehicle's owner did not appear before any forum the MACT, neither before the High Court nor before this Court. While the appellants claim that he admitted to the accident, they have not disclosed before the MACT, the High Court or this Court,

his evidence in the criminal trial. Therefore, it was submitted, that this matter falls under Categories 1 and 4 of fake claims identified before this Court by the Special Investigation Team; *vide* Order dated 16.12.2021 - ***Safiq Ahmed v ICICI Lombard General Insurance Company, (2021) 9 SCR 560.***

15. It was submitted that the appellants cannot rely on the presence of the chargesheet in this case as: *firstly*, they never submitted the chargesheet or the outcome of the criminal trial before this Court, and; *secondly*, the criminal trial against the driver of the insured vehicle is bound to fail when PW2 failed to identify him as the offending driver, and PW3 had positively described the offending driver as someone other than the driver of the insured vehicle. We were urged to dismiss the appeal.

ANALYSIS, REASONING AND CONCLUSION:

16. We have bestowed anxious consideration to the *lis*. At first blush, the odds seem evenly placed. Both sides have raised arguable issues. Be that as it may, this Court is tasked upon to balance the law with the factual position, moreso in the present case where the real factual position may not be very clearly discernible due to various factors. This

leaves the Court to adopt a practical view of what has emerged in the depositions of the witnesses.

17. The very fact that the case was registered against an unknown vehicle initially would indicate that the offending vehicle was not identified. However, since an FIR is not expected to be encyclopaedic² and is only for the purpose of putting into motion criminal law such that thorough and full-fledged investigation by the police ensues, it is the duty of the investigating agency to find out the identity of the culprit which in the present case would be the offending car and driver and take action in accordance with law. Thus, the mere fact that initially the FIR records the vehicle as unknown would not be fatal for the prosecution/claimants to later come up with the specific identity of the vehicle/driver, with the obvious caveat that the connection of the accident with the said vehicle has to be based on cogent and reliable evidence. In the present case, the factor in favour of the Insurance company is that the conduct of the so-called eye-witness (PW2/U.V. Atriya), who was a consumer at a *paan*-shop, gives his statement to the police about two and a half months after the accident disclosing the registration number of the offending vehicle. This raises serious doubts on the authenticity thereof as he states that he had noted it on a piece of paper and when he again visited the spot after 15 days, he came to know that the injured had passed away but

² Para 20 of *Superintendent of Police, CBI v Tapan Kumar Singh*, (2003) 6 SCC 175.

even after lapse of the said 15 days, he neither informed the *paan*-shop owner nor produced/handed over the chit of paper to the police on which he claims the registration number of the offended vehicle was noted.

18. Thus, PW2's evidence to the effect that he went to the *paan*-shop after about two and a half months and found the police enquiring about the accident when ultimately he disclosed his knowledge of the offending vehicle and its registration number has to be taken with, if nothing more, at the very least, a pinch of salt. Additionally, the fact that in the claim proceedings before the MACT, the *paan*-shop owner was not cited as a witness also raises doubts, for the reason that the connection of the consumer of the *paan*-shop (i.e. PW2) was only through the *paan*-shop and without the *paan*-shop owner testifying that the witness who claims to have noted the number was a customer at his shop, the so-called customer/eye-witness may not be able to pass the test of reliability especially in the wake of the background facts and circumstances of the present case.

19. However, on the other hand, a person has died, and the police upon investigation submitted a charge-sheet against the driver of the said *Verna* car. There is available on record. In the inspection report dated 21.06.2011 prepared by the Motor Vehicle Inspector which is

available on record discloses a bent on the front right side of the bumper of the car to indicate that it dashed against something, which could have been the scooter of the deceased.

20. The MACT's Award had fastened liability jointly and severally on the owner of the vehicle and the insurance company which has been set aside *vide* the Impugned Order to the extent of imposition of liability on the respondent no.1. The owner has neither appeared before the MACT nor before the High Court and not even before this Court despite valid service of notice. In the backdrop of the discussions in the preceding paragraphs, in our considered opinion, the respondent no.2 has to take responsibility.

21. The Court is left with no option but to presume that the owner of the alleged offending vehicle which was the cause of the accident had no defence to offer before any of the three fora, including this Court. Moreover, it transpires from the record that during the police investigation when the owner of the vehicle was confronted, he telephoned the driver, who, as per the police version, admitted to the accident in question having occurred.

22. In fact, respondent no.2 had given a statement to the police to the effect that he was not aware of the driver of his car having caused an accident resulting in the car dashing the deceased's *Bajaj Chetak* scooter, until the police arrived at his house. When the owner telephoned the driver, he confessed to his guilt and was immediately handed over, along with the vehicle, to the police.

23. In the conspectus of the emerging background, the insurance company cannot be said to have been successful in establishing that it was not liable to pay for the accident, committed by the offending vehicle which was insured, by taking the plea of violation of any terms and conditions of the insurance policy by the driver.

24. Accordingly, the appeal is allowed. The Impugned Order of the High Court is set aside and the order of the MACT is restored. Given the peculiarities of the case coupled with the over-arching need to render substantive justice, we feel it would be just and proper to clarify that this Judgment is passed in the peculiarities of the case at hand. Observations in this Judgment shall not aid or prejudice any party in the criminal proceedings.

25. No order as to costs.

26. I.A. No.37409/2020 is allowed; the documents annexed are taken on record.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
APRIL 07, 2025