A ANITA SHARMA & ORS.

v.

THE NEW INDIA ASSURANCE CO. LTD. & ANR.

(Civil Appeal Nos. 4010-4011 of 2020)

B DECEMBER 08, 2020

[SURYA KANT AND ANIRUDDHA BOSE, JJ.]

Motor Vehicle Accident – Victim-deceased was travelling in a car along with his friend, respondent no. 2 and two other occupants C *– Respondent no. 2 (owner of the car) was driving the car at night, when a truck came from the opposite side and struck the car as a result of which all the occupants suffered injuries – They were all rushed to the hospital – Victim was discharged – However, he kept experiencing one after another medical complication and eventually died due to injuries – Victim-deceased's dependents filed a claim* D *petition for Rs. 60,94,000/- and alleged that victim died due to the rash and negligent driving of respondent no. 2 – The Tribunal relied upon the statement of the eye-witness, AW-3, according to whom respondent no. 2 was driving car at a very fast speed when it overtook a vehicle and collided head-on against the oncoming truck* E *– The Tribunal assigned liability for the accident upon the respondents and partly allowed the claim petition with a compensation of Rs.16,08,000/- – The High Court set aside the Tribunal award and dismissed the claim petition – The High Court disbelieved AW-3 and found him unreliable witness – According to the High Court, AW-3 had failed to report the accident to the* F *jurisdictional police and he was apparently introduced by the claimants only to seek compensation – Also, it was held that the assertion of AW-3 that he took the injured to the hospital was not proved – Further, the FIR was lodged by the owner-cum-driver, respondent no. 2, who would not have done so had he been at fault* G *or driving rashly – On appeal, held: Some material facts have escaped notice of the High Court – The FIR was not registered by the owner-cum-driver of the car as assumed by the High Court – It was registered by one person 'P', who had not witnessed the accident and lodged on basis of the hearsay information – Further, the informant had some closeness with the owner-cum-driver of the car* H *– His version is hearsay and may be influenced by respondent no.2*

and thus, cannot be relied upon – The contents of the FIR as well as the statement of AW-3 leave no room to doubt that the injured were taken to the hospital by private persons (and not by the Police) – There is nothing on record to suggest that the Police reached the site of the accident or carried the injured to the hospital – AW-3 is neither related to the deceased nor was he remotely connected to the family of the deceased – The statement of AW-3, therefore, acquires significance as, according to him, he brought the injured in his car – It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR – The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to police – Further, failure of the respondents to cross-examine the solitary eye-witness, AW-3 must lead to an inference of tacit admission on their part – Also, the fact that respondent no. 2 chose not to depose in support of what he had pleaded in his written statement, further suggests that he himself was at fault – The High Court failed to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases – The standard of proof in such matters is one of preponderance of probabilities, rather than beyond reasonable doubt – Therefore, the judgment of the High Court is set aside and the appellants are entitled to compensation as awarded by the Tribunal, besides 40% addition in the annual income of the deceased towards 'future prospects'.

Partly allowing the appeal, the Court

HELD: 1. The two questions which fall for determination are whether the accident was caused due to rash and negligent driving of the car driver and whether AW-3 is a reliable witness or not? [Para 10][1124-F-G]

2. AW-3 is neither related to the deceased nor was he remotely connected to the family of the deceased. He hailed from a different State and lived in a faraway place. There is nothing to suggest that the witness had any business dealings with the deceased or his family. He has deposed that he was travelling in his own car on the date of the incident on the same route when the owner-cum-driver of the car carelessly overtook him at a very

high speed. He has further deposed that a truck coming from the opposite side collided with the car. Various persons gathered at the place of accident and four persons trapped inside the car were taken out, three of whom were unconscious and the fourth was its driver. The witness has further deposed that he took all the four injured persons to the District Hospital. [Para 13][1125-F-H]

3. While the contents of the FIR as well as the statement of (AW-3) leave no room to doubt that the injured were taken to the Hospital by private persons (and not by the police), it is quite natural that the police would also have reached the Government hospital at Ghazipur and, therefore, it was mentioned that respondent no. 2 was brought-in by Sub-Inspector. [Para 15][1126-D-E]

4. It is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses. Hence, it is highly likely that the name of AW-3 or other persons who accompanied the injured to the hospital did not find mention in the medical record. There is nothing on record to suggest that the police reached the site of the accident or carried the injured to the hospital. The statement of AW-3, therefore, acquires significance as, according to him, he brought the injured in his car to the hospital. AW-3 acted as a good samaritan and a responsible citizen, and the High Court ought not to have disbelieved his testimony based merely on a conjecture. It is necessary to reiterate the independence and benevolence of AW-3. Without any personal interest or motive, he assisted both the deceased by taking him to the hospital and later his family by expending time and effort to depose before the Tribunal. [Para 16][1126-E-H]

5. It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to Police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW-3 to lodge a report once again to the police at a later stage either. [Para 17][1127-A-B]

6. The failure of the respondents to cross examine the solitary eye-witness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did not even suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of cross-examination of a crucial witness. [Para 19][1128-A-B]

7. This Court is concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. [Para 22][1130-B-D]

8. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that respondent no.2 chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof. [Para 23][1130-F-H; 1131-A-B]

Parmeshwari v. Amir Chand **(2011) 11 SCC 635 : [2011] 1 SCR 1096;** *Kartar Singh v. State of Punjab* **(1994) 3**

A **SCC 569 : [1994] 2 SCR 375;** *Sunita v. Rajasthan State Road Transport Corporation* **(2019) SCC Online SC 195;** *Dulcina Fernandes v. Joaquim Xavier Cruz* **(2013) 10 SCC 646 : [2013] 10 SCR 480 – relied on.**

National Insurance Co Ltd v. Pranay Sethi **(2017) 16**
B **SCC 680 : [2017] 13 SCR 100 – referred to.**

Case Law Reference

[2011] 1 SCR 1096	**relied on**	**Para 18**
[1994] 2 SCR 375	**relied on**	**Para 20**
C **[2013] 10 SCR 480**	**relied on**	**Para 22**
[2017] 13 SCR 100	**referred to**	**Para 25**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4010-4011 of 2020.

D From the Judgment and Order dated 23.07.2018 of the High Court of Rajasthan Bench at Jaipur in S.B. Civil Miscellaneous Appeal No. 4880 of 2012 and S.B. Civil Miscellaneous Appeal No. 37 of 2013.

Aditya Singh, J.P.N. Shahi, Rameshwar Prasad Goyal, Advs. for the appearing parties.

E The Judgment of the Court was delivered by

SURYA KANT, J.

1. Leave Granted.

2. These two appeals, which have been heard through video
F conferencing, are directed against the judgment dated 23.07.2018 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur whereby the first appeal preferred by the New India Assurance Co. Ltd. (Respondent No. 1) against the Motor Accident Claims Tribunal's (hereinafter, "Tribunal") award dated 01.09.2012 was allowed and the
G Claim Petition was rejected, whereas the appeal filed by the appellant-claimants for enhancement of compensation was consequently dismissed.

Facts:

3. Sandeep Sharma (deceased), was a resident of District Sikar in Rajasthan. He was travelling in a car bearing registration no. UP 65
H AA 7100 from Ghazipur to Varanasi (Uttar Pradesh) on the night of

25.03.2009 along with his friend Sanjeev Kapoor (Respondent No. 2) and two other occupants. Sanjeev Kapoor, who was also its owner, was driving the car when at about 10:20PM near village Atroli, a truck coming from the opposite side struck the car as a result of which all the occupants suffered injuries. Sandeep along with the other injured-occupants was rushed to the District Hospital in Ghazipur at around 11:55PM, but was subsequently referred to the Institute of Medical Sciences and S.S. Hospital, BHU, Varanasi on 26.03.2009 considering the severity and multiplicity of his injuries. Although he was discharged on 16.04.2009 and brought back to Rajasthan, it appears that Sandeep kept experiencing one after another medical complications, and remained hospitalized at the Jain Hospital in Jaipur and later the Joshi Nursing Home at Sikar. His injuries eventually got the better of him and Sandeep Sharma passed away on 10.12.2009.

4. At the time of death, the deceased was aged 34 years and was an income tax assessee with an Employees Provident Fund (EPF) account. He was employed in Mumbai at Kelvin Ess Vee Textiles as a Sales Officer on regular basis. He left behind a widow, two minor children and a mother; all of whom were dependent on him.

5. Sandeep's dependents filed a claim petition for Rs 60,94,000 (Rupees sixty lakhs and ninety-four thousand) on 26.08.2010 alleging, *inter alia*, that he died as a result of the injuries suffered in the above-mentioned accident of 25.03.2009, which occurred due to the rash and negligent driving of Sanjeev Kapoor who was the owner-cum-driver of the car in which Sandeep was travelling. Sanjeev Kapoor (hereinafter, "owner-cum-driver") and the insurer of the car - New India Assurance Co. Ltd. (hereinafter, "insurance company") were impleaded as party respondents.

6. The owner-cum-driver in his written statement admitted that the deceased had suffered multiple injuries in the accident while travelling in the car with him but he disowned responsibility for the accident by asserting that it was the truck which was coming from the opposite side at a very fast speed, and was being driven in a rash and negligent manner. Since all the four occupants of the car had been injured, they were unable to note the registration details of the truck which made a hasty get-away towards Ghazipur.

7. The insurance company in its separate written statement took the preliminary objection that as per the police investigation and first

information report, the accident was caused by an unknown truck which hit the car No. UP-65-AA-7100 and, therefore, the claim petition filed against the owner of the car or its insurer was contrary to law. The factual averments made in the Claim Petition were denied for want of knowledge.

8. In reaching its verdict, the Tribunal relied upon the statement of the eye-witness Ritesh Pandey (AW-3), according to whom Sanjeev Kapoor was driving the car at a very fast speed when it overtook a vehicle and collided head-on against the oncoming truck. The Tribunal, thus, assigned liability for the accident upon the respondents and partly allowed the Claim Petition with a compensation of Rs. 16,08,000 (Rupees sixteen lakhs and eight thousand).

9. Both the insurance company and the appellant-claimants filed their respective appeals before the High Court. Through judgment dated 23.07.2018, the High Court set aside the Tribunal's award and dismissed the claim petition for the reasons that *first,* Ritesh Pandey (AW-3) had failed to report the accident to the jurisdictional police. He was apparently introduced by the claimants only to seek compensation. *Second,* the FIR had been lodged by the owner-cum-driver, Sanjeev Kapoor, who would not have done so had he been at fault or driving rashly. *Third,* the assertion of Ritesh Pandey (AW-3) that he took the injured to hospital was not proved from the record of the Government Hospital, Ghazipur which revealed that Sandeep Sharma was brought to the hospital by Sub-Inspector Sah Mohammed.

CONTENTIONS:

10. We have heard learned counsel for parties and have perused the Original Record of the Tribunal and the High Court. The two questions which fall for determination are whether the accident was caused due to rash and negligent driving of the car driver—Sanjeev Kapoor and whether Ritesh Pandey (AW-3) is a reliable witness or not?

ANALYSIS:

11. At the outset, it may be mentioned that some material facts which have a direct bearing on the fate of this case, have escaped notice of the High Court. The FIR was not registered by Sanjeev Kapoor (owner-cum-driver of the car) as assumed by the High Court. Instead, as a matter of fact, the FIR No. 120/09 (Exh 1) was registered on the

basis of information furnished by one, Pradeep Kumar Aggarwal, son of Bal Krishan Das Aggarwal – a resident of District Varanasi. The contents of this report reveal that Sanjeev Kapoor was travelling in the Wagon R Car No. UP-65-AA-7100 along with three other occupants. While returning from Ghazipur to Varanasi, a truck which was being driven rashly and at a fast speed, struck against the car and then sped away towards Ghazipur. The number of the truck could not be noticed as it was dark. The car was badly damaged. Various people gathered at the spot who took out the injured from the car. It is specifically mentioned that all the injured were taken to the hospital for treatment where Rahul Singh @ Chotu Singh passed-away whereas Sandeep Sharma was referred to BHU Varanasi for treatment. The FIR was lodged on 27.03.2009 and a slightly illegible part thereof indicates that Sanjeev Kapoor and the informant were known to each other. The informant himself had not witnessed the accident and apparently lodged the FIR based on hearsay information.

12. Importantly, the owner-cum-driver though denied responsibility of the accident through his written statement but chose not to enter the witness box in his defence. The insurance company, on the other hand, relied upon the contents of the FIR and the 'Investigation Report' to aver that the accident took place due to rash and negligent driving of the truck driver alone. But we find that the 'investigation report' (Exh. 2) dated 05.05.2009 merely recites that the registration number of the offending truck could not be ascertained despite best efforts.

13. At this juncture, we may refer to the statement of Ritesh Pandey (AW-3). This witness is a resident of Ghazipur in Uttar Pradesh. He is neither related to the deceased nor was he remotely connected to the family of the deceased. He hailed from a different State and lived in a faraway place. There is nothing to suggest that the witness had any business dealings with the deceased or his family. He has deposed that he was travelling in his own car on the date of the incident on the same route when the owner-cum-driver of the Wagon R car carelessly overtook him at a very high speed. He has further deposed that a truck coming from the opposite side collided with the car. Various persons gathered at the place of accident and four persons trapped inside the car were taken out, three of whom were unconscious and the fourth was its driver - Sanjeev Kapoor. The witness has further deposed that he took all the four injured persons to the District Hospital, Ghazipur where some of

A them were referred to Institute of Medical Sciences and S.S. Hospital, BHU, Varanasi.

14. Most importantly, the only question asked to this witness in cross-examination is whether the truck could be spotted and whether he was able to note the registration number of the truck. The witness has
B candidly admitted that he could not see the registration number of the truck. No other question was asked to this witness in the cross-examination. While the Tribunal believed Ritesh Pandey (AW-3) and accepted the claim petition in part, the High Court, for the reasons which are already briefly noticed, has disbelieved him on the premise that the deceased was brought to the hospital by SI Sah Mohammed and not by
C Ritesh Pandey (AW-3). The entire case, thus, effectively hinges upon the trustworthiness of the statement of this witness.

FINDINGS:

15. It is not in dispute that the accident took place near Ghazipur
D and that numerous people had assembled at the spot. Some bystander would obviously have informed the police also. While the contents of the FIR as well as the statement of Ritesh Pandey (AW-3) leave no room to doubt that the injured were taken to the Hospital by private persons (and not by the police), it is quite natural that the police would also have reached the Government hospital at Ghazipur and, therefore, it was
E mentioned that Sandeep Sharma was brought-in by SI Sah Mohammed.

16. It is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses. Hence, it is highly likely that the name of Ritesh Pandey or other persons who accompanied the injured to the hospital did not find
F mention in the medical record. There is nothing on record to suggest that the police reached the site of the accident or carried the injured to the hospital. The statement of AW-3, therefore, acquires significance as, according to him, he brought the injured in his car to the hospital. Ritesh Pandey (AW-3) acted as a good samaritan and a responsible citizen,
G and the High Court ought not to have disbelieved his testimony based merely on a conjecture. It is necessary to reiterate the independence and benevolence of AW-3. Without any personal interest or motive, he assisted both the deceased by taking him to the hospital and later his family by expending time and effort to depose before the Tribunal.

H

17. It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to Police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW-3 to lodge a report once again to the police at a later stage either.

18. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State. Close to the facts of the case in hand, this Court in ***Parmeshwari v. Amir Chand***[1]**,** viewed that:

> *"12. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1.* ***Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim****.*
>
> *xxx*
>
> *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."*
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> *(emphasis supplied)*

[1] (2011) 11 SCC 635

A 19. The failure of the respondents to cross examine the solitary eye-witness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did not even suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of cross-examination of a crucial witness.

B 20. The importance of cross-examination has been elucidated on several occasions by this Court, including by a Constitution Bench in ***Kartar Singh v. State of Punjab***[2], which laid down as follows:

> *"278. Section 137 of the Evidence Act defines what cross-*
> C *examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence.* ***It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief****, the objects of which are:*
> D
> *(1) to destroy or weaken the evidentiary value of the witness of his adversary;*
>
> *(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;*
>
> E *(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness;*
>
> ***and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring***
> F ***his character****.*
>
> *279. The identity of the witness is necessary in the normal trial of cases to achieve the above objects and the right of confrontation is one of the fundamental guarantees so that he could guard himself from being victimised by any false*
> G *and invented evidence that may be tendered by the adversary party."*
>
> *(emphasis supplied)*

H [2] (1994) 3 SCC 569

21. Relying upon ***Kartar Singh (supra)***, in a MACT case this Court in ***Sunita v. Rajasthan State Road Transport Corporation***[3] considered the effect of non-examination of the pillion rider as a witness in a claim petition filed by the deceased of the motorcyclist and held as follows:

> ***"****30. Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (A.D.2) evidence from the viewpoint of him not being named in the list of eye witnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation [as set out in Parmeshwari (supra) and reiterated in Mangla Ram (supra)] that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case.* ***What is essential is that the opposite party should get a fair opportunity to cross examine the concerned witness. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross examination, for which opportunity was granted to the respondents by the Tribunal****.*
>
> *xxx*
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> *32. The High Court has not held that the respondents were successful in challenging the witnesses' version of events, despite being given the opportunity to do so. The High Court accepts that the said witness (A.D.2) was cross examined by*

[3] (2019) SCC Online SC 195.

A *the respondents but nevertheless reaches a conclusion different from that of the Tribunal, by selectively overlooking the deficiencies in the respondent's case, without any proper reasoning."*

(emphasis supplied)

B 22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be C mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in ***Dulcina Fernandes v. Joaquim*** D ***Xavier Cruz***[4] wherein this Court reiterated that:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was ***required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.*** *(Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])"*

E

(emphasis supplied)

F 23. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of G the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the

H [4] (2013) 10 SCC 646.

witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof.

24. Further, little reliance can be placed on the contents of the FIR (Exh.-1) , and it is liable to be discarded for more than one reasons. *First*, the author of the FIR, that is, Praveen Kumar Aggarwal does not claim to have witnessed the accident himself. His version is hearsay and cannot be relied upon. *Second*, it appears from the illegible part of the FIR that the informant had some closeness with the owner-cum-driver of the car and there is thus a strong possibility that his version was influenced or at the behest of Sanjeev Kapoor. *Third*, the FIR was lodged two days after the accident, on 27.03.2009. The FIR recites that some of the injured including Sandeep Sharma were referred to BHU, Varanasi for treatment, even though as per the medical report this took place only on 26.03.2009, the day after the accident. Therefore the belated FIR appears to be an afterthought attempt to absolve Sanjeev Kapoor from his criminal or civil liabilities. Contrarily, the statement of AW-3 does not suffer from any evil of suspicion and is worthy of reliance. The Tribunal rightly relied upon his statement and decided issue No. 1 in favour of the claimants. The reasoning given by the High Court to disbelieve Ritesh Pandey AW-3, on the other hand, cannot sustain and is liable to be overturned. We hold accordingly.

25. Adverting to the claimants' appeal for enhancement of compensation, we are of the view that no effective argument could be raised on their behalf as to how the compensation assessed by the Tribunal was inadequate, except that in view of the authoritative pronouncement of this Court in ***National Insurance Co Ltd v. Pranay Sethi***[5]**,** the claimants are entitled to an increase of 40% towards annual dependency on account of 'future prospects' given the undisputed age of the deceased. Their appeal to that extent deserves to be allowed.

CONCLUSION:

26. In light of the above discussion, the judgment under appeal of the High Court is set aside and the appellants are held entitled to compensation as awarded by the Tribunal, besides 40% addition in the

[5] (2017) 16 SCC 680.

A annual income of the deceased towards 'future prospects'. The Motor Accident Claims Tribunal, Sikar (Rajasthan) is directed to re-calculate the compensation amount accordingly. The appellants are held entitled to interest @ 8.5%, as per the Tribunal's award, on the entire amount of compensation. The Tribunal shall re-calculate the compensation within one month and the insurance company shall deposit the same within one
B month thereafter. No order as to costs.

Ankit Gyan Appeal partly allowed.