Before Anil Kshetarpal, J.

UNITED INDIA INSURANCE CO. LTD.—*Appellant*

versus

GURMEET SINGH AND OTHERS—*Respondents*

FAO No.2999 of 2020 (O&M)

October 06, 2021

Constitution of India, 1950—Indian Penal Code, 1860—S.279, 337, 427 and 304-A—Code of Criminal Procedure, 1973—S.173—Indian Evidence Act, 1872—S.101 and 103—Motor Accident Claims Tribunal—Dismissal of claim—MACT had ordered a compensation of Rs.15,79,664/- to be paid by Insurance Company—Investigating Officer not examined, claimant had no information about the vehicle involved in the accident—On considering the evidence, there were large number of unanswered questions—Nothing on record to prove involvement of the Scorpio vehicle—Held, an act of staging an accident with the insured vehicle or replacing a uninsured vehicle to get compensation from the insurance company needs to be nipped in the bud—Entire claim dismissed.

Held, that when claimant Gurmeet Singh was cross-examined as to the source of information regarding the alleged incident and the involvement of Scorpio vehicle owned by respondent No.2, in the accident, he admitted that he does not know what is the source of information. No other evidence regarding the source of information has been produced. The Investigating Officer has also not been examined (Para 5.5)

Further held, that a careful reading of these clauses indicate the degree of certainty which is required to treat a fact as proved. Basically, the test is whether a prudent man under the peculiar circumstances of the case assume the existence of a certain fact as true or disbelieve it. The proof of effect of the evidence adduced depends not upon the accuracy of the statements but upon the probability of their existence. According to the Indian Evidence Act, 1872, the anvil of testing "proved" "disproved" and "not proved" is the same in both civil and criminal cases which is that of a prudent person. The Judge is required to test every evidence in this light before relying upon it, in both civil and criminal proceedings. (Para 5.10)

Further held, that the difference lies only in the standard of proof which is higher in criminal cases i.e., the facts must be proved beyond all reasonable doubt, but in civil cases, the party only has to convince the Court of preponderance of probabilities in his favour.

(Para 5.11)

Further held, that construing all these provisions, they form a part of one thread, the plaintiff/claimant has an undisputed burden to establish the foundational facts of the case and bring evidence for all the facts which he relies upon to convince the Court that in the mind of a reasonable man, such facts shall be believed to be true. It is only then that the doctrine of preponderance of probabilities will come into picture and the Court after being reasonably satisfied, will not demand strict proof of evidence or further evidence to prove the same fact, in case of civil proceedings. However, such fact may be required to be proved by way of additional evidence or corroboration in criminal cases. Therefore, the difference lies in the probative force attached to the evidence and not in the test of its proof (degree of proof).

(Para 5.13)

Further held, that, while dealing with cases arising from motor vehicle accidents, no doubt, the Presiding Judges is required to adopt a compassionate approach in order to alleviate the sufferings of the claimants, however, in the same breath, it is equally the responsibility of the Presiding Judge to ensure that the process of justice is not abused and the Insurance Company is not made liable for the payment of compensation even in cases where the accident has been either staged or the insured vehicle has been replaced in the place of an uninsured vehicle actually involved in the accident or where the accident occurred due to a hit and run case and the offending vehicle cannot be found. It is the bounden duty of the Presiding Judge to ensure fair play and good faith of the claimant while being guided by the principles of justice, equity and good conscious. The principle of equity requires that a party claiming relief must come with clean hands. Further, equity should never lead to injustice.

(Para 5.16)

Further held, that in the present case, the pleadings and evidence, available on record, do not prove the involvement of the Scorpio vehicle even on the standard of proof of mere preponderance of probabilities. There are a large number of unanswered questions which have been noted above. The learned counsel representing the

claimants has failed to furnish any satisfactory explanation on those material questions.

(Para 5.17)

Harsh Aggarwal, Advocate, *for the appellant.*

Kamalpreet Bawa, Advocate, for respondents.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

By this order, two above-referred connected appeals arising from a common award passed by the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal") while directing the Insurance Company to pay compensation of Rs.15,79,664/- shall stand disposed of. One appeal has been filed by the Insurance Company with a prayer to set aside the award of the Tribunal whereas in the other appeal, the claimants pray for modification of the award by way of enhancement in the compensation.

FACTS:-

(1) Some facts are required to be noticed. As per the case of the claimants, Gurmeet Singh and Sarabjit Kaur are the parents of late Charandeep Singh and on the unfortunate day, Pargat Singh and Charandeep Singh were travelling from Village Bhinder Kalan to Jagraon on a motorcycle bearing No.PB-29J-6108. Pargat Singh was driving the vehiclewhereas Charandeep Singh was on the pillion. Their friends Jobanpreet Singh and Jhirmat Singh were following them on a separate motorcycle. When they reached near Pardesi Dhaba at G.T. Road, Moga at about 9:00 AM, a Scorpio car (a sports Utility Vehicle) bearing registration No.PB- 3AL-0127, which was being driven rashly and negligently by respondent No.1 (Jashandeep Singh) came from the back side at a very high speed and hit the motorcycle from behind. Charandeep Singh and Pargat Singh, along with their motorcycle, fell down on the road. Pargat Singh received simple injuries whereas Charandeep Singh sustained grevious injuries on his head and abdomen and their motorcycle also got damaged. The driver of the Scorpio vehicle stopped and came to Pargat Singh and disclosed his name as Jashandeep Singh son of Malkiat Singh and confessed his guilt and offered him to reach at a settlement. Since Jobanpreet Singh, Jhirmat Singh were busy in taking care of Pargat Singh and Charandeep Singh, in the meantime, the driver of the Scorpio vehicle ran away from the

spot while leaving his vehicle at the spot. Jhirmat Singh and a few other persons, after arranging a vehicle, took the injured to Civil Hospital, Jagraon, but as Charandeep Singhhad sustained serious injuries, he was immediately referred and taken to DMC Hospital, Ludhiana on 21.02.2019 itself. On the next day, i.e. 22.02.2019, the parents of Charandeep Singh got him discharged in order to take him to PGI, Chandigarh, but Charandeep Singh died on the way. An FIR No.33 dated 23.02.2019, alleging the commission of offences by respondent No.1 under Section 279, 337, 427, 304-A IPC was registered.

(1.1) Respondents No.1 and 2 while filing their written statement claimed that the claimants have not come to the Court with clean hands and the accident did not occur due to the negligence of the driver of the Scorpio vehicle but rather it had occurred due to their own negligence as threepersons namely Gurmeet Singh, Sarabjit Kaur and Charandeep Singh were riding on a single motorcycle and lost balance due to triple riding and stuck against the Scorpio vehicle. The injured persons were got admitted in Civil Hospital, Jagraon by respondent No.1. The Insurance Company contested the petition and pleaded that the petition has been filed by the claimants in collusion with respondent No.1 and 2. Some other objections were also taken.

ISSUES:-

(2) The Tribunal, after appreciating the pleading, framed the following issues:-

> "1. Whether Charandeep Singh had died in a motor vehicular accident on 21.02.2019 in the area of nearPardesi Dhaba, Moga-Jagraon G.T. Road, Jagraon caused by respondent No.1 while driving Scorpio No.PB-03AL-0127 in a rash and negligent manner? OPP
>
> 2. Whether the claimants are entitled to compensation. If so,to what amount and from whom? OPP
>
> 3. Whether the claims have no locus-standi to file the present petition? OPR
>
> 4. Whether the respondent No.1 was not holding a valid andeffecting driving licence at the time of alleged accident? OPR
>
> 5. Relief."

EVIDENCE:-

(3) The claimants, in order to prove their case, examined Gurmeet Singh, the father of the deceased as CW-1 whereas Pargat Singh was examined as CW-2. Hakam Singh, Senior Supervisor, Record Office, DMC Hospital, Ludhiana, was examined as CW-3.

(3.1) In defence, Amarjit Kaur, Pharmacist, Civil Hospital, Jagraon, was examined as RW-1, who brought the summoned record of Civil Hospital, Jagraon, dated 21.02.2019, to prove that Pargat Singh, Charandeep Singh and Jobandeep Singh were admitted in the emergency of Civil Hospital, Jagraon. She proved entry (Ex.R-1) to prove this fact.

(3.2) The Tribunal, as already noticed, accepted the claim petition and assessed the compensation at Rs.15,79,664/- along with interest at the rate of 6% per annum from the date of institution of the petition till its realization. The Tribunal held that the respondents are jointly and severally liable after recording a finding that respondent No.1 had caused the accident due to rash and negligent driving.

SUBMISSIONS OF LEARNED COUNSELS:-

(4) This Bench has heard the learned counsel for the parties at length and with their able assistance perused the paper book and the record of the Tribunal which had been requisitioned. The learned counsel representing the Insurance Company has filed his written arguments but learned counsel representing the claimants did not submit his written arguments although an opportunity was given to him.

(4.1) The learned counsel representing the Insurance Company contends that the claimants neither proved the involvement of the vehicle nor proved that respondent No.1 was rash and negligent in driving theinsured vehicle. He has critically referred to the statement of Pargat Singh, the alleged eye-witness, to bring home his contention.

(4.2) Per contra, the learned counsel representing the claimants has defended the petition while submitting that before the Tribunal, the claimants are required to prove their case on the preponderance of probabilities and since the accident is admitted by respondent No.1 and 2, therefore, there is no ground to interfere.

DISCUSSION:-

(5) Before this Bench analysis the arguments of learned

counsels, it is important to note that Pargat Singh had appeared in the evidence as CW-2. His cross-examination is interesting to read. The entire cross-examination is extracted as under:-

> "It is correct that no postmortem of deceased was conducted. It is also correct that the date of cremation of deceased is not mentioned in the claim petition or in my affidavit. I do not know if there was any conversation of compromise between claimants and respondents No.1 and 2.
>
> It is correct that intimation with regard to happening of alleged accident was given to the police after the lapse of 2 days. I also suffered injuries in the said accident due to which I became unconscious. I did not produce any documentary evidence with regard to injuries allegedly suffered by me or regarding my unconsciousness. After getting conscious I was present atCH Jagraon and I regained consciousness after about ½ an hour. I was discharged from hospital on the same evening of alleged accident. Thereafter, I did not inform the claimants or police about the alleged accident. Voluntarily said that I was not feeling well at that time.
>
> After about 2 days of alleged accident I along-with claimant No.1 and some other relatives of claimants went to police station for informing about the alleged accident. Apart from visiting police station I never accompanied with police officials any where.
>
> The alleged accident took place on main highway near Pardesi Dhaba Jagraon. I did not notice the offending vehicle or the driver at the time of alleged accident. Voluntarily said that I came to know about the same when I admitted in the hospital then I regained the occurrence. I had mentioned in my affidavit Ex.CW2/A that from whom I came to know the details of offending vehicle and the name of driver of the said vehicle. Attention of witness drawn towards his affidavit Ex.CW2/A where it is not so recorded. It is wrong to suggest that I am narrating false story of alleged accident allegedly happened with vehicle in question in collusion with claimants and respondents no. 1 and 2. It is wrong to suggest that no such alleged accident ever took place and only due to this reason no

postmortem was got conducted and even the FIR was got registered after inordinate delay.

I was not known to respondent no. 1 earlier. I had seen the photograph of respondent no.1 which was sent to me by my friend before the registration of FIR and I have seen the respondent no.1 for the very first time today in the court after the occurrence. It is wrong to suggest that I have filed a false affidavit CW2/A.

I am having one driving license issued in my name and photocopy of the original as Ex.R1. It is wrong to suggest that no such alleged accident ever took place. It is wrong to suggest that present petition is the outcome of collusiveness between myself, claimants and respondents no.1 and 2. It is wrong to suggest that I am deposing falsely.

XXXX deferred as Proxy counsel submitted that Sh. Vinay Kashyap Advocate for respondent no.1 and 2 is not available today.

CW 2 On SA.

Statement of Pargat Singh, aged about 21 years, son of Jagraj Singh, resident of village Bhinder Kalan, Tehsil Dharamkot, District Moga.

(Recalled for cross-examination by Sh. Vinay Kashyap Advocate for respondents no.1 and 2)

Opportunity given. Nil."

(5.2) It is further important to note that the claimants have not produced a copy of the final report, if any, prepared by the Police u/s 173 Cr.P.C. after completing the investigation. The claimants have only produced a copy of the FIR dated 23.02.2019. The accident took placed at 9:00 AM on 21.02.2019, whereas, the FIR was registered on 23.02.2019 at 21:15 hrs., i.e. after an unexplained delay of 2 days and 12 hours.

(5.3) Furthermore, it is the stand of Pargat Singh, which is also statedin the claim petition, that respondent No.1 ran away from the spot after leaving his vehicle. However, there is no explanation as to where that vehicle vanished after respondent No.1 had run away leaving the vehicle behind. There is neither any evidence to prove that the Scorpio vehicle suffered any damage nor there is any evidence to prove the

damage suffered by the motorcycle, as claimed. No report of any mechanical expert has been produced. As already noticed, the claimants have not produced the challan or final report submitted by the Investigating Officer in the Court. There is also no evidence to prove that respondent No.1 is being prosecuted for the alleged offence. Still further, on a careful reading of the evidence of Pargat Singh, it is apparent that he has failed to disclose as to who informed him about the involvement of the offending vehicle (Scorpio). In the examination-in-chief, he did not disclose the source of his information. During cross-examination, he stated that he has made a statement to that effect in his affidavit Ex.CW2/A which was tendered in lieu of his examination-in-chief. When his attention was drawn to the affidavit where any such fact is not so recorded, he did not furnish any explanation on the relevant aspect. He has further admitted that he did not notice the vehicle at the time of accident because the offending Scorpio vehicle is alleged to have caused the accident while hitting from behind. He has admitted that he gained consciousness after about half an hour and thereafter, he was discharged from the Hospital on the same evening but he did not give information regarding the accident either to the Police or the claimants. He has admitted that apart from visiting the Police Station, he never accompanied the Investigating Officer anywhere. He has also admitted that the photograph of respondent No.1 was sent to him by his friend before the registration of the FIR. In these circumstances, the evidence of Pargat Singh, the alleged sole eye-witness, without corroboration in material particulars, cannot be relied upon.

(5.4) Moreover, Ms. Amarjit Kaur, Pharmacist of Civil Hospital, Jagraon, has proved the hospital record Ex.R-1/331, wherein, it is recorded as under :-

> "The accident happened suddenly. We do not want any police action."

(5.5) Moreover, when claimant Gurmeet Singh was cross-examined as to the source of information regarding the alleged incident and the involvement of Scorpio vehicle owned by respondent No.2, in the accident, he admitted that he does not know what is the source of information. No other evidence regarding the source of information has been produced. The Investigating Officer has also not been examined. Furthermore, it is proved on the file that Jobanpreet Singh, apart from Pargat Singh and Charandeep Singh, was also admitted in Civil Hospital, Jagraon on 21.02.2019. It is the case of the claimants that

Jobanpreet Singh and Jhirmat Singh were travelling on a separate motorcycle which did not met with any accident. There is no explanation as to why Jobanpreet Singh was also admitted in Civil Hospital, Jagraon, along with Pargat Singh and Charandeep Singh. As per the claimants, the alleged accident took place in front of a Dhaba (eating point) at 9:00 AM but no witness from that place has been examined to prove the occurence.

(5.6) Furthermore, the Tribunal has relied upon the judgment passed in ***Girdhari Lal*** *versus* ***Radhey Sham and others***[1]. In this case, the High Court, after examining the file, found that delay in lodging the FIR is not in itself sufficient to disbelieve the case of the claimants particularly when a criminal case was pending in the Court against the driver of the offending vehicle. Hence, the aforesaid judgment is not applicable tothe facts of the present case.

(5.7) The Tribunal has also relied upon the judgment passed by the Hon'ble Supreme Court in ***Jacob Mathew*** *versus* ***State of Punjab and anothers***[2]. This is the famous case of fixing criminal liability on the members of medical fraternity for their alleged criminal medical negligence in the treatment of a patient and is not relevant in the facts of the present case.

(5.8) The learned counsel representing the respondent-claimants has relied upon the judgment passed by the Hon'ble Supreme Court in ***Sunita*** *versus* ***Rajasthan State Road Transport Corporation***[3]. This Court has carefully read the judgment wherein after examining the facts of the case, it was held that in motor accident claim cases, the Tribunal is required to examine the case on the preponderance of probabilities andshould not insist upon proving the case on strict standard of proof i.e. beyond all reasonable doubt. This Court does not dispute the aforesaidproposition.

(5.9) The Indian Evidence Act, 1872, defines the expressions proved, disproved and not proved in Section 3 which are extracted as under:-

> "**"Proved"**. — A fact is said to be proved when, after considering the matters before it, the Court; either believes it to exist, or considers its existence so probable

[1] 1993(2) PLR 109
[2] 2005(6) SCC 1
[3] AIR 2019 (SC) 994

> that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
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> **"Disproved"**. — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.
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> **"Not proved"**. — A fact is said not to be proved when it is neither proved nor disproved."

(5.10) A careful reading of these clauses indicate the degree of certainty which is required to treat a fact as proved. Basically, the test is whether a prudent man under the peculiar circumstances of the case assume the existence of a certain fact as true or disbelieve it. The proof of effect of the evidence adduced depends not upon the accuracy of the statements but upon the probability of their existence. According to the Indian Evidence Act, 1872, the anvil of testing "proved" "disproved" and "not proved" is the same in both civil and criminal cases which is that of a prudent person. The Judge is required to test every evidence in this light before relying upon it, in both civil and criminal proceedings.

(5.11) The difference lies only in the standard of proof which is higher in criminal cases i.e., the facts must be proved beyond all reasonable doubt, but in civil cases, the party only has to convince the Court of preponderance of probabilities in his favour.

(5.12) Further, Section 101 of the Indian Evidence Act, 1872, provides that every party desirous of a judgment in his favour on the basis of certain facts, must establish the existence of those facts. Section 103 also provides that the burden of proving a particular fact lies on the person who wishes the Court to believe in it.

(5.13) Construing all these provisions, they form a part of one thread, the plaintiff/claimant has an undisputed burden to establish the foundational facts of the case and bring evidence for all the facts which he relies upon to convince the Court that in the mind of a reasonable man, such facts shall be believed to be true. It is only then that the doctrine of preponderance of probabilities will come into picture and the Court after being reasonably satisfied, will not demand strict proof of evidence or further evidence to prove the same fact, in case of civil proceedings. However, such fact may be required to be proved by way of additional evidence or corroboration in criminal cases.

Therefore, the difference lies in the probative force attached to the evidence and not in the test of its proof (degree of proof).

(5.14) The Hon'ble Supreme Court in ***M Siddiq (D) through Lrs*** *versus* ***Mahant Suresh Das & Ors.***[4] the case famously known as the Ram Janmabhumi Temple's case has expounded the aforesaid doctrines in the following manner:-

> "720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. In Miller v. Minister of Pensions, Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms:
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> "(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities todeflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice."
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> 721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarisedby Denning, L.J. in Bater v. Bater, where he formulated the principle thus:
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> "... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter."
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> 722. The definition of the expression "proved" in Section 3

[4] 2020(1) SCC 1

of the Evidence Act is in the following terms:

"3. ... "**Proved**".-A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

723. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:The test of a prudent person, who acts under the supposition that a fact exists. In the context and circumstances of a particular case.

724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in N.G. Dastane v. S. Dastane272 held:

"The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilitiesconcerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the courtapplies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range ofprobabilities the court has often a difficult choiceto make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status wide range of probabilities thecourt has often a difficult choice to make but it is this choice which ultimately determines where the preponderance weeded out at the first stage, the improbable at the second. Within the of promissorynote: 'the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue; or as said by Lord Denning, 'the degree of probability depends on the subject-matter'. In proportion asthe offence is grave, so ought the proof to be clear, All ER at p. 536'. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a

> preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is (emphasis supplied) parties demand a closer scrutiny thanthose like the loan on a discharged."
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> 725. The Court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.
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> 726. In State of U.P. v. Krishna Gopal, this Court observed:
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> "26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge.""

(5.15) Similarly, in ***Ch. Razik Ram*** *versus* ***Ch. Jaswant Singh Chouhan And Ors.***[5] the Hon'ble Supreme Court observed as under:-

> *"*15. Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious, penal con sequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus the trial of an election petition being in the natureof an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the Respondent against whom the charge of corrupt practice is leveled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and everyingredient of the charge

[5] 1975(4) SCC 769

by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is n" difference between the general rules of evidence in civil and criminal cases, and the definition of "proved" in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainly amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. 'Proof means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of thenature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter afar higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by a mere balance of probabilities and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt not being the doubt of a timid, fickle or vacillating mind as to the veracity of the charge, it must hold the same as notproved.

16. We have reiterated the above principles not as a ceremonial refrain of what has been said by this Court again and again but to emphasis their Importance as a guide in the matter. A court embarking upon anappreciation of evidence, without this rudder and compass, is apt to find itself at sea, mistaking every flotsam for shore, suspicion for proof and illusion for reality. Since these principles were not constantly kept in mind, the approach of the High Court in this case to the issues involved, and the treatment of evidence, appears to have gone awry. It is therefore, necessary to reappraise the evidence from the standpoint indicated above."

(5.16) On a careful reading of the aforesaid extracts, it is evident that the doctrine of preponderance of probabilities of evidence does not mean that the Civil Court/Tribunal is not required to apply the basic test that whether a particular fact is proved or not. Even if the standard of proof in civil cases is lower, such requirement is not dispensed with. In the recent past, there has been many attempts to stage an accident with an insured vehicle to get compensation from the Insurance Company. The Presiding Judges are required rise to the occasion and ensure that such attempts are nipped in the bud. While dealing with cases arising from motor vehicle accidents, no doubt, the Presiding Judges is required to adopt a compassionate approach in order to alleviate the sufferings of the claimants, however, in the same breath, it is equally the responsibility of the Presiding Judge to ensure that the process of justice is not abused and the Insurance Company is not made liable for the payment of compensation even in cases where the accident has been either staged or the insured vehicle has been replaced in the place of an uninsured vehicle actually involved in the accident or where the accident occurred due to a hit and run case and the offending vehicle cannot be found. It is the bounden duty of the Presiding Judge to ensure fairplay and good faith of the claimant while being guided by the principles of justice, equity and good conscious. The principle of equity requires that a party claiming relief must come with clean hands. Further, equity should never lead to injustice.

(5.17) However, in the present case, the pleadings and evidence, available on record, do not prove the involvement of the Scorpio vehicle even on the standard of proof of mere preponderance of probabilities. There are a large number of unanswered questions which have been noted above. The learned counsel representing the claimants has failed to furnish any satisfactory explanation on those material questions.

RELIEF

(6) Keeping in view the aforesaid discussion, the inescapable conclusion is that the claim petition deserves to be dismissed.

(7) Consequently, while accepting the appeal filed by the Insurance Company, the appeal filed by the claimants is dismissed and accordingly,the order of the Tribunal is set aside.

(8) All the pending miscellaneous applications, if any, are also disposed of.

Dr. Payel Mehta