STATE OF MADHYA PRADESH

v.

PREETAM

(Criminal Appeal No. 2229 of 2011)

AUGUST 29, 2018

[R. BANUMATHI AND VINEET SARAN, JJ.]

Penal Code, 1860 – s.376– Prosecutrix raped by respondent-accused– Trial court convicted the respondent– High Court reversed the conviction and acquitted the respondent– On appeal, held: In the present case evidence of prosecutrix (PW-1) is supported by medical evidence and also by the evidence of PW-4, who saw the accused running away from the scene of occurrence– Delay in registration of F.I.R. was properly explained– This was not considered by High Court– Judgment of High Court set aside and that of trial court convicting the respondent restored– However, in the instant case, the occurrence was of the year 1993 i.e. about 25 years ago– Having regard to the passage of time and discretion vested with the Court as per proviso to s.376(1) (prior to 2013 amendment) to impose imprisonment for a term less than seven years, the sentence of imprisonment of seven years imposed on the respondent is reduced to four years– Criminal Law (Amendment) Act, 2013.

Penal Code, 1860 – s.375, Sixthly – Rape – Consent of victim – When not relevant – Held: Under s.375, Sixthly, a man is said to commit rape with or without the consent of prosecutrix, when she is under sixteen years of age – Prosecutrix being aged 12 years at the time of the occurrence, her consent or otherwise was of no relevance.

Evidence – Rape – Age of victim – School documents as proof for – Appreciation of.

Evidence – Rape – Absence of external injuries on the person of the rape victim – Effect of – Held: Absence of injury on the person of the rape victim does not lead to an inference that the incident had taken place with the consent of the prosecutrix – It depends upon the facts and circumstances of each case – Further, even in the absence of external injury, the oral testimony of the prosecutrix that she was subjected to rape, cannot be ignored.

A **Allowing the appeal, the Court**

HELD: 1.1 In the absence of external injury on the person of the prosecutrix, it cannot be concluded that the incident had taken place with the consent of the prosecutrix. It depends upon the facts and circumstances of each case. Absence of injury on
B **the person of the victim of rape does not lead to an inference that the accused did not commit forcible sexual intercourse. Even in the absence of external injury, the oral testimony of the prosecutrix that she was subjected to rape, cannot be ignored. In the present case, evidence of prosecutrix (PW-1) is supported by the medical evidence and also by the evidence of PW-4, who saw the accused**
C **running away from the scene of occurrence. [Paras 9-10] [630-G-H; 631-A-B]**

1.2 The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. Considering the evidence of
D **PW-8, Head master/Head teacher of Primary School and the school certificate produced by him i.e. Ex.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence. As per Section 375 IPC, a man is said to commit rape, *Sixthly* - "With or without her consent, when she is under sixteen years of age".**
E **The prosecutrix being aged 12 years at the time of the occurrence, her consent or otherwise was of no relevance to bring the offence within the meaning of Section 375 IPC. The High Court ignored the material evidence adduced by the prosecution and erred in reversing the conviction of the respondent-accused. [Paras 12, 13] [631-G; 632-A-B]**

F **1.3 The delay in registration of the FIR was properly explained, which was not considered by the High Court. The judgment of the High Court is set aside and that of the trial court is restored. [Paras 14, 15] [632-D-E]**

G **1.4 Prior to the Criminal Law (Amendment) Act, 2013 (w.e.f. 3rd February, 2013) under Section 376(1) IPC, the sentence of imprisonment for a term shall not be less than 7 years extending for life. However, as per the proviso to Section 376(1) IPC (prior to amendment) discretion is vested with the Court to impose imprisonment for a term of less than seven years for**
H **adequate and special reasons to be recorded in the judgment. In**

this case, the occurrence was of the year 1993 i.e. about 25 years ago. Having regard to the passage of time and other facts and circumstances of the case, the sentence of imprisonment of seven years imposed on the respondent-accused is reduced to a period of four years. [Para 16] 632-F-G]

B.C Deva @ Dyava v. State of Karnataka **(2007) 12 SCC 122 : [2007] 8 SCR 509 – relied on.**

Case Law Reference

[2007] 8 SCR 509	**relied on**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2229 of 2011.

From the Judgment and Order dated 06.01.2010 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 228 of 1995.

Ms. Swarupama Chaturvedi, B. N. Dubey, Ms. Devika Gulati, Ms. Vaishali Verma, Advs. for the Appellant.

Ms. Nidhi, Adv. for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of judgment and order dated 6th January, 2010 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.228 of 1995 in which the High Court reversed the verdict of the conviction under Section 376 I.P.C. and also the sentence of imprisonment of seven years and acquitted the respondent-accused.

2. Despite service of notice, the respondent has not chosen to appear and contest this appeal. Accordingly Ms. Nidhi, Advocate, has been appointed by the Supreme Court Legal Services Committee as amicus to contest the appeal on behalf of the respondent.

3. We have heard Ms. Swarupama Chaturvedi, learned counsel appearing for the appellant-State and Ms. Nidhi, learned amicus, and also perused the impugned judgment and the evidence/materials on record.

4. The facts of the case in a nutshell are as follows. On 6th March, 1993 at about 9.00 p.m. the prosecutrix (PW-1) along with

her two sisters i.e. Hirkanbai (PW-3) and Anitabai had gone outside the village to a field to attend nature's call and while returning back the respondent-accused is alleged to have forcibly taken the prosecutrix to the field and committed rape on her.

5. Since the Moti Ram (PW-2) who is father of Hirkanbai (PW-3) and also uncle *(chacha)* of the prosecutrix was not in the village, on his return a complaint was lodged on 8th March, 1993. The prosecutrix was medically examined on 9th March, 1993 by Dr. U.S. Vasnik (PW-6), who has noted that the hymen of prosecutrix was torn; swelling was present on the edges of torn hymen. Dr. U.S. Vasnik (PW-6) has opined that though vagina of the prosecutrix was admitted two fingers easily, the prosecutrix felt pain and the doctor (PW-6) has opined that the prosecutrix was subjected to sexual intercourse within 2-3 days of examination.

6. Based upon the evidence of prosecutrix (PW-1) and Mangrulal (PW-4) who went to the place of occurrence after having been told by Anita and saw the accused running from there and also on the evidence of Dr. U.S. Vasnik (PW-6), the trial court convicted the respondent-accused under Section 376 I.P.C. and sentenced him to undergo imprisonment for a period of seven years.

7. On appeal, the High Court has reversed the verdict of conviction on the grounds:- (i) There was no external injury on the person of prosecutrix (PW-1) which is indicative of her consent for the sexual intercourse and, therefore, the story of forcible rape does not find support from the medical evidence; (ii) There was delay in registration of the FIR.

8. As pointed out earlier as per PW-6-Dr. Vasnik's evidence the hymen of the prosecutrix (PW-1) was torn and swelling was present in the vagina having redness. Doctor has noticed that even though vagina admitted of two fingers, the prosecutrix felt pain which is suggestive that the prosecutrix was subjected to sexual intercourse only in the occurrence.

9. It is fairly well-settled that in the absence of external injury on the person of the prosecutrix, it cannot be concluded that the incident had taken place with the consent of the prosecutrix. It depends upon the facts and circumstances of each case. In B.C. Deva alias Dyava v.

State of Karnataka, (2007) 12 SCC 122, this Court has held that absence of injury on the person of the victim of rape does not lead to an inference that the accused did not commit forcible sexual intercourse. It was further held that even in the absence of external injury, the oral testimony of the prosecutrix that she was subjected to rape, cannot be ignored.

10. In the present case evidence of prosecutrix (PW-1) is supported by the medical evidence and also by the evidence of Mangrulal (PW-4) who saw the accused running away from the scene of occurrence. Insofar as the consent of the prosecutrix (PW-1) pointed out by the High Court is concerned, we find it difficult to agree with the view taken by the High Court. In her chief examination, Dr. U.S. Vasnik (PW-6) has stated that the age of the victim could be between 13 and 17 years. Of course in her cross-examination, Dr. Vasnik has agreed to the suggestion that the age of the victim could be 17 years.

11. In our considered view, the answer elucidated in the cross-examination of Dr. Vasnik (PW-6) cannot be taken as a final opinion on the age of the prosecutrix (PW-1). It is to be relevant to note that before the trial court the prosecution has examined Bhaulal (PW-8), Head master/Head teacher of Primary School Chor Pind Ke Par, District Balaghat. In his evidence, Bhaulal (PW-8) has stated that the date of birth of the prosecutrix (PW-1) was 16th May, 1981 which means that on the date of the occurrence i.e. 6th March, 1993, the prosecutrix (PW-1) was only aged about 12 years. The trial court has neither acted upon the evidence of Bhaulal (PW-8) nor on the school certificate on the ground that the person who has admitted the prosecutrix in the school was not examined.

12. In our considered view, the approach of the trial court was not correct. In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. In our view, considering the evidence of head master, Bhaulal (PW-8), and the school certificate produced by him i.e. Ex.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence.

13. Of course, Dr. U.S. Vasnik (PW-6) in her chief examination has stated that the age of the prosecutrix would be between 13 and 17

A years. At the most, adopting the doctor's evidence, age of the prosecutrix at the relevant point of time can only be around 15 years. As per Section 375 I.P.C. a man is said to commit rape, *Sixthly* - "With or without her consent, when she is under sixteen years of age". The prosecutrix being aged 12 years at the time of the occurrence, her consent or otherwise was of no relevance to bring the offence within the meaning
B of Section 375 I.P.C. In our considered view the High Court ignored the material evidence adduced by the prosecution and erred in reversing the conviction of the respondent-accused.

14. So far as the other ground of acquittal – delay in registration of the F.I.R. is concerned, it has come on the record that the uncle of the
C prosecutrix, Moti Ram (PW-2), was not in the village and returned back to the village only on 8th March, 1993 and on his return his daughter-Hirkanbai (PW-3), has narrated the whole incident to him as to what happened to the prosecutrix (PW-1) and a complaint was lodged on the same day i.e. 8th March, 1993. After medical examination of the
D prosecutrix (PW-1) on 9th March, 1993, F.I.R. was registered on 10th March, 1993 and the delay in registration of the F.I.R. has been properly explained, which has not been considered by the High Court.

15. The impugned judgment of the High Court reversing the conviction of the respondent to acquittal, cannot be sustained and the
E same is liable to be set aside and the judgment of the trial court convicting the respondent under Section 376 I.P.C. is to be restored. The trial court has sentenced the respondent-accused to undergo imprisonment for a period of seven years.

16. Prior to the Amendment Act 13 of 2013 (w.e.f. 3rd February,
F 2013) under Section 376(1) I.P.C. the sentence of imprisonment for a term shall not be less than 7 years extending for life. However, as per the proviso to 376(1) I.P.C. (prior to amendment) discretion is vested with the Court to impose imprisonment for a term of less than seven years for adequate and special reasons to be recorded in the judgment. In this case, the occurrence was of the year 1993 i.e. about 25 years
G ago. Having regard to the passage of time and other facts and circumstances of the case, the sentence of imprisonment of seven years imposed on the respondent-accused is reduced to a period of four years.

17. Accordingly the appeal preferred by the State is allowed and the conviction of the respondent-accused under Section 376 I.P.C. as
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passed by the trial court is restored. However, the period of sentence of seven years, as noted above, is reduced to four years. A

18. In case the respondent has not already undergone the sentence of imprisonment of four years, he is to surrender to custody within a period of fours weeks from today to serve the remaining sentence failing which he shall be taken to custody. B

19. A copy of this order be sent to the concerned trial court for necessary action.

Divya Pandey Appeal allowed.

A R.S. SEHRAWAT

v.

RAJEEV MALHOTRA & ORS.

(Criminal Appeal No. 684 of 2006)

B SEPTEMBER 05, 2018

[DIPAK MISRA, CJI AND A. M. KHANWILKAR, J.]

Contempt of Courts Act, 1971 – s. 19(1)(b) – Contempt of court – Reconstruction of the unauthorised constructions – On facts, C *writ petition by the respondent seeking action against appellant-junior engineer and others involved in the incident of demolition alleging that they first permitted to carry on unauthorised construction on the property and later on unilaterally demolished the structure –* Suo motu *action by the High Court as per the earlier order in PIL restraining unauthorised constructions' in unauthorised* D *colonies – Issuance of notices to appellant – Filing of affidavits by appellant and other officers – Conviction of the appellant for committing contempt of court holding that the appellant-junior engineer by filing false affidavit, attempted to mislead the court and his acts tended to substantially interfere with the due course of* E *justice – On appeal, held: Appellant was not served with any charges muchless specific charge which he was expected to meet – High Court made no attempt to verify or examine the contemporaneous record relied upon by the appellant – High Court ought to have tested the authenticity and veracity of the contemporaneous record – Affidavit so filed cannot be termed as incorrect or misleading – It* F *cannot be held that the demolition work undertaken was not in conformity with the position reflected in the contemporaneous office submissions/record and photographs submitted by appellant to his superior authority – Thus, the order passed by the Division Bench of High Court set aside and show cause notices issued to* G *appellant are dropped.*

Allowing the appeal, the Court

HELD: 1.1 It is evident that the High Court took *suo motu* action as it was *prima facie* convinced that unauthorised construction was carried out in the Farms despite the direction

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contained in the order in a writ petition. The order also records that the show cause notice was accepted by the officers present in Court. The appellant, like other officers, filed his affidavit revealing the relevant facts concerning him. The appellant had explained the factual position as to the action of demolition of unauthorised structures in the Farms during the relevant period as per the task assigned to him by his superior officers and reporting of that fact to his superiors by way of contemporaneous office submission. The correctness of the said contemporaneous office reports could not be and has not been questioned or doubted as such. The reply affidavit makes it amply clear that the Commissioner of the Corporation was personally supervising the demolition work of unauthorised constructions and, therefore, there was no reason to doubt the contemporaneous record in the form of office submissions and photographs reinforcing the fact of demolition. The report of the Committee of advocates, however, was based on the site visit made in January, 2001 after a gap of more than 6 months from 7th June, 2000 and 3 months from 14th September, 2000 when the demolition was actually carried out. The factual position stated in the said report, therefore, may not be the actual position as obtained on the date of demolition. It is not unknown that such unauthorised structures could be and were reconstructed overnight after the demolition work is undertaken by the officials. That was done by unscrupulous persons clandestinely and without notice. The factual position stated in the reply affidavit filed by the appellant also reveals that continuous follow-up action was being taken in respect of unauthorised structures including those which were demolished. Furthermore, the appellant was transferred from the concerned ward w.e.f. 27th September, 2000 and any development or illegal activity unfolding after that date cannot be attributed to the appellant. All these aspects have not been considered by the High Court. [Para 9] [641-G-H; 642-A-F]

Sahdeo Alias Sahdeo Singh v. State of Uttar Pradesh and Others **(2010) 3 SCC 705 : [2010] 2 SCR 1086 ;** *Muthu Karuppan, Commissioner of Police, Chennai v. Parithi Ilamvazhuthi and Anr.* **(2011) 5 SCC 496 : [2011] 5 SCR 329 ;** *Mrityunjoy Das and Anr. v. Syed Hasibur*

A *Rahaman and Ors. Mrityunjoy Das and Anr. v. Syed Hasibur Rahaman and Ors.* **(2001) 3 SCC 739 : [2001] 2 SCR 471 – referred to.**

1.2 Going by the material on record it is not possible to conclude beyond reasonable doubt that the appellant had B **contributed to the reconstruction of the unauthorised structure before or after 27th September, 2000. Furthermore, the appellant was not served with any charges muchless specific charge which he was expected to meet. Yet, the final conclusion in the impugned judgment is that the acts of the appellant tended to substantially interfere with the due course of justice and amounted to** C **committing criminal contempt of court for having filed incorrect affidavit. The High Court made no attempt to verify or examine the contemporaneous record relied upon by the appellant in support of his plea that the factual position stated in the affidavit filed by him was borne out and reinforced from the said record.** D **The affidavit so filed cannot be termed as incorrect or misleading by relying on the report of the advocates' committee, which was prepared after a gap of 6 months from the date of first demolition and 3 months from the second demolition. [Para 12] [645-D-E]**

E **1.3 The finding recorded by the High Court that the property was not razed to the ground based on the report prepared in January, 2001, therefore, is not the correct approach and is manifestly wrong. The High Court ought to have tested the authenticity and veracity of the contemporaneous record in the form of office submissions, Misel Band register, office files,** F **notices, photograph and press reports etc. relied upon by the appellant. It would be a different matter if the contemporaneous record did not support the stand taken by the appellant in the affidavits filed by him. As a matter of fact, the appellant has already faced departmental enquiry in which the matter in issue** G **has been exhaustively dealt with and the plea taken by the appellant has been found to be correct. [Para 13] [645-G-H; 646-A-B]**

1.4 The specific stand taken by the appellant was not considered by the High Court at all. The appellant made this

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grievance in the review petition, but of no avail. It is not possible to hold that the demolition work undertaken on 7th June, 2000 and 14th September 2000 was not in conformity with the position reflected in the contemporaneous office submissions/record and photographs submitted by the appellant to his superior authority. As a matter of fact, the appellant ought to succeed on the singular ground that the High Court unjustly proceeded against him without framing formal charges or furnishing such charges to him; and moreso because filing of affidavit by the appellant was supported by contemporaneous official record, which cannot be termed as an attempt to obstruct the due course of administration of justice. [Paras 16, 17] [648-C-E]

1.5 The impugned judgment and orders passed by the Division Bench of High Court of Delhi are quashed and set aside and the show cause notices issued to the appellant pursuant to the order of the Division Bench of the High Court are hereby dropped. [Para 18] [648-F-G]

Case Law Reference

[2010] 2 SCR 1086	**referred to**	**Para 11**
[2011] 5 SCR 329	**referred to**	**Para 11**
[2001] 2 SCR 471	**referred to**	**Para 11**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 684 of 2006.

From the Judgment and Order dated 01.06.2001 of the High Court of Delhi at New Delhi in C.M. No. 820 of 2001 in CWP No. 6734 of 2000 and order dated 10.05.2006 in R.A. No. 6600 of 2001 in CWP No. 6734 of 2000 respectively.

K. Radhakrishnan, A.C., Ashok Kumar Panda, Sr. Advs., Ashok Mathur, Ms. Asha G. Nair, R. K. Rathore, Mrs. R. Bhardwaj, Raj Bahadur, Mrs. Anil Katiyar, P. Parmeswaran, Praveen Swarup, V. K. Verma, Advs. for the appearing parties.

A The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. The instant appeal under Section 19 (1) (b) of the Contempt of Courts Act, 1971, assails the judgment and orders passed by the Division Bench of the High Court of Delhi at New Delhi in C.M. No.820 of 2001 in C.W.P. No.6734 of 2000 dated 1st June, B 2001 and in R.A. No.6600 of 2001 in C.W.P. No.6734 of 2000 dated 10th May, 2006 whereby the appellant has been found guilty of filing false affidavit and attempting to mislead the Court, thus committing contempt of court by his acts which were of such a nature that they tended to substantially interfere with the due course of justice. The appellant has been sentenced to undergo simple imprisonment for a period C of 30 (Thirty) days and to pay a fine of Rs.25,000/- (Twenty Five Thousand Only). Review petition against the said decision came to be dismissed on 10th May, 2006.

2. Briefly stated, the appellant was working as a Junior Engineer in Municipal Corporation of Delhi (MCD). The writ petitioner D (respondent No.1 herein) had alleged that the appellant and other officials, including police officials had, by their act of commission and omission, first permitted the writ petitioner to carry on unauthorised construction on the property bearing Plot No.37-C measuring 834 square yards at Asoka Avenue, Sainik Farms, New Delhi and later on E unilaterally demolished the said structure. This was the grievance made in Civil Writ Petition No.6734 of 2000 filed by respondent No.1. Respondent No.1 had prayed for taking action against the appellant and other officials including police officials involved in the alleged incident of demolition of the structure. The Division Bench of the High Court adverting to the direction issued in Public Interest Litigation bearing C.W.P. F No.7441 of 1993 dated November 3, 1997 restraining unauthorised constructions in unauthorised colonies, issued notice on 6th December, 2000 in the present writ petition to the officers of the MCD and the police personnel who were posted during the time the construction was raised on the plot belonging to respondent No.1, to show cause as to G why proceedings for contempt of court should not be initiated against them.

3. After receipt of notice, the appellant, as well as other officials, filed their respective affidavits. The appellant filed his detailed affidavit on 3rd January, 2001 *inter alia* pointing out the primary responsibility of

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the officials who were expected to comply with the directions issued on November 3, 1997 by the High Court. As regards his role in the capacity of Junior Engineer, the appellant asserted that he discharged the task assigned to him from time to time by his superior officers and submitted compliance reports to them in that behalf. He further asserted that he had undertaken 14 major demolition actions in Sainik Farms alone between 7th March, 2000 and 27th September, 2000 and razed these constructions to the ground. It was asserted that the writ petitioner illegally constructed the building at the same location inspite of the demolition action taken on the earlier occasions. In support of the contention that he had resorted to the demolition of concerned structure, he placed reliance on the office submission made by him to his superiors as well as the photographs of the structures taken before and after the demolition drive. The stand taken by the appellant was contested by respondent No.1. To verify the factual position, the High Court vide order dated 12th January, 2001 appointed a Committee of advocates to inspect the site and submit a fact finding report. That report was submitted to the High Court by the Committee of advocates on 23rd January, 2001.

4. The High Court vide order dated 24th January, 2001 after recording its *prima facie* opinion issued show cause notice to the concerned officials including the appellant as to why they should not be convicted and punished for contempt of court. After the said order, the appellant filed a further affidavit dated 8th February, 2001 and reiterated the stand taken in the earlier affidavit as also explained the position of possibility of reconstruction on the same location after the demolition was done on 7th June, 2000 and 14th/15th September, 2000. The appellant also relied on contemporaneous evidence such as the report and photographs of the demolition. The High Court, however, was not impressed by the explanation offered by the appellant and proceeded to record finding of guilt against the appellant for filing false affidavit on January 3, 2001. The appellant preferred a review petition which was dismissed on 10th May, 2006. As a result, the appellant has challenged both the orders by way of the present appeal.

5. The principal grievance of the appellant is that no proper charge was framed and conveyed to the appellant. The first show cause notice issued to the appellant in terms of order dated 6th December, 2000 was presumably for non-compliance of the direction given on November 3,

A 1997 in C.W.P. No.7441 of 1993; whereas the second show cause notice issued to the appellant pursuant to order dated 24th January, 2001 was for filing an incorrect and misleading affidavit dated 3rd January, 2001. The appellant had revealed the factual position in his affidavit dated 3rd January, 2001 and further affidavit dated 8th February, 2001. The factual position stated in the said affidavits has not been analysed by the High Court at all, much less in its proper perspective. On the contrary, the High Court, proceeded to record a finding of guilt, being swayed away by the factual position recorded in the report submitted by the Committee of advocates, completely overlooking the plausible explanation offered by the appellant that the unauthorised structure in question was demolished on 7th June, 2000 and again on 14th/15th September, 2000. The contemporaneous record regarding the extent of demolition in the form of office submission, press reports and photographs was also brought to the notice of the High Court. However, that has been overlooked. The grievance of the appellant is that in the affidavit dated 8th February, 2001 a specific disclosure was made about the video recording done by news channels and liberty to play the video clippings was sought but the High Court did not deal with this request of the appellant at all. The time period between the demolition and the inspection by the Committee of advocates being quite substantial, the possibility of reconstruction of the structures in question could not be ruled out. However, the High Court has not dealt with this aspect.

6. The respondent No.1 and the Amicus Curiae espousing the cause of the respondent No.1, would, however, contend that there is no error in the approach or the conclusion recorded by the High Court.

7. We have heard Mr. Ashok Mathur advocate for the appellant, Mr. K. Radhakrishnan, learned senior counsel appearing as amicus curiae and Mr. Ashok Kumar Panda, learned senior counsel for the respondent.

8. As noted earlier, action against the appellant and other officials was initiated by the High Court in terms of order dated 6th December, 2000. The relevant portion of the said order reads thus:

> "....
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> In the instant petition, unauthorized construction was carried out in Sainik Farm which happens to be an unauthorized colony. It is

not disputed that the petitioner started construction on Plot No.37C measuring 834 Sq. Yds. At Ashoka Avenue, Sainki Farm, New Delhi, in July 2000. The building was allowed to come up and when it was nearing completion the same was demolished on 30.10.2000. We fail to understand as to how the building activity could be permitted/allowed from July 2000 till October 2000 when order of this court dated November 3, 1997 was in force. It prima facie appears to us that the building in question could not have come up unless the concerned officers of the MCD and the Police connived with the petitioner. The allegation of the petitioner is that he paid bribes to various offices for raising the construction. He has named those officers.

In the circumstances, we consider it appropriate to issue notices to the following officers of the MCD and the Police, who were posted during the time the construction was raised on the plot in question, to show cause why proceedings for contempt of court be not initiated against them:

1. Mr. R.S. Sherawat (JE) MCD
2. Mr. U.S. Chowhan (JE) MCD
3. Mr. S.R. Bhardwaj, A.E. South zone Building Department MCD.
4. Mr. Puran Singh Rawat, Baildar, MCD
5. Mr. Rakesh Baildar, MCD
6. Mr. Man Mohan, S.I. Chowki Incharge, Sainik Farms
7. Mr. V.K. Malhotra, Ex. Engineer MCD
8. Mr. Vir Singh, SHO.

The aforesaid officers are present and they accept notice. They are granted two weeks time to file affidavits in reply to the show cause notice. Pleadings in the writ petition be completed before the next date."

9. On a bare perusal of this order, it is evident that the High Court took suo motu action as it was *prima facie* convinced that unauthorised construction was carried out in Sainik Farms despite the direction contained in order dated November 3, 1997 in C.W.P. No.7441 of 1993. The order also records that the show cause notice was accepted by the

officers present in Court. The appellant, like other officers, filed his affidavit revealing the relevant facts concerning him vide affidavit dated 3rd January, 2001. The appellant had explained the factual position as to the action of demolition of unauthorised structures in Sainik Farms during the relevant period as per the task assigned to him by his superior officers and reporting of that fact to his superiors by way of contemporaneous office submission. The correctness of the said contemporaneous office reports could not be and has not been questioned or doubted as such. The reply affidavit makes it amply clear that the Commissioner of the Corporation was personally supervising the demolition work of unauthorised constructions and, therefore, there was no reason to doubt the contemporaneous record in the form of office submissions and photographs reinforcing the fact of demolition. The report of the Committee of advocates, however, was based on the site visit made in January, 2001 after a gap of more than 6 months from 7th June, 2000 and 3 months from 14th September, 2000 when the demolition was actually carried out. The factual position stated in the said report, therefore, may not be the actual position as obtained on the date of demolition i.e. 7th June, 2000 and 14th September, 2000. It is not unknown that such unauthorised structures could be and were reconstructed overnight after the demolition work is undertaken by the officials. That was done by unscrupulous persons clandestinely and without notice. The factual position stated in the reply affidavit filed by the appellant also reveals that continuous follow-up action was being taken in respect of unauthorised structures including those which were demolished. Furthermore, the appellant was transferred from the concerned ward w.e.f. 27th September, 2000 and any development or illegal activity unfolding after that date cannot be attributed to the appellant. All these aspects have not been considered by the High Court.

10. During the pendency of this appeal the appellant has also brought on record a fact that he had faced departmental action on the basis of same set of facts regarding his acts of commission and omission for the following three charges:

> "Shri R.S. Sehrawat while functioning as JE (B) in Building Department, South Zone and remained incharge of the area of Sainik Farm w.e.f. 07.03.2000 to 27.09.2000, committed gross misconduct on the following counts:

1. He is connivance with the owner/builders allowed them to carry out and complete the unauthorized construction in P.Nos 37-C, 49, H-541, Sainik Farms unabatedly and did not take effective action to stop/demolish the same at its initial/ongoing stage.

2. He also did not book the said unauthorized construction in Sainik Farm just to avoid demolition action u/s 343/344 of the DMC Act.

3. He also submitted wrong affidavit in the High Court mentioning therein that unauthorized construction in P.No.49 and H-541, Sainik Farms were demolished but the same were found still existing at site. Thus, he mislead the Hon'ble High Court.

He, thereby contravened Rule 3 (I) (i) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as made applicable to the employees of the MCD."

Notably, the appellant has been exonerated in the said enquiry by a detailed report analysing all the official records supporting the stand of the appellant.

11. Be that as it may, the law relating to contempt proceedings has been restated in the case of ***Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others***[1] in paragraph 27 as follows:

"27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the

[1] (2010) 3 SCC 705

A Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded B expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the C statutory rules framed for the purpose."

We may usefully refer to two other decisions dealing with the issue under consideration. In ***Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and Anr.,***[2] this Court observed thus:

D "15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of 'deliberate falsehood' on a matter of substance and the E court should be satisfied that there is a reasonable foundation for the charge."

"17. The contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules F framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As observed above, the contempt G proceeding being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings."

[2] (2011) 5 SCC 496

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In ***Mrityunjoy Das and Anr. Vs. Syed Hasibur Rahaman and Ors.***,[3] this Court observed thus:

> "14. The other aspect of the matter ought also to be noticed at this juncture, viz., the burden of standard of proof. The common English phrase 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt...."

12. In the present case, going by the material on record it is not possible to conclude beyond reasonable doubt that the appellant had contributed to the reconstruction of the unauthorised structure before or after 27th September, 2000. Furthermore, the appellant was not served with any charges muchless specific charge which he was expected to meet. Yet, the final conclusion in the impugned judgment is that the acts of the appellant tended to substantially interfere with the due course of justice and amounted to committing criminal contempt of court for having filed incorrect affidavit. The High Court made no attempt to verify or examine the contemporaneous record relied upon by the appellant in support of his plea that the factual position stated in the affidavit filed by him was borne out and reinforced from the said record. The affidavit so filed cannot be termed as incorrect or misleading by relying on the report of the advocates' committee, which was prepared after a gap of 6 months from the date of first demolition (7th June, 2000) and 3 months from the second demolition (14th September, 2000).

13. The finding recorded by the High Court that the property was not razed to the ground based on the report prepared in January, 2001, therefore, is not the correct approach and is manifestly wrong. The High Court ought to have tested the authenticity and veracity of the contemporaneous record in the form of office submissions, Misel Band register, office files, notices, photograph and press reports etc. relied

[3] (2001) 3 SCC 739

A upon by the appellant. It would be a different matter if the contemporaneous record did not support the stand taken by the appellant in the affidavits filed by him dated 3rd January, 2001 and 8th February, 2001 respectively. As a matter of fact, the appellant has already faced departmental enquiry in which the matter in issue has been exhaustively dealt with and the plea taken by the appellant has been found to be correct.

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14. Be that as it may, the appellant has been found guilty in reference to the notice issued in terms of order dated 24th January, 2001, the relevant portion whereof reads thus:

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> "Learned counsel for the petitioner also pointed out in the affidavit of Mr. R.S. Sehrawat, it is mentioned that property Nos.49 and H-541 were demolished on 7th June, 2000 and 14th September, 2000 respectively. Mr. Awasthy has shown photographs of these properties. From the photographs, it appears that the properties are intact and were not demolished, therefore we are prima facie of the opinion that even Mr. Sehrawat has taken liberties with truth. Issue notices to Mr. U.S. Chauhan and Mr. R.S. Sehrawat, Junior Engineers, MCD, to show cause why they should not be convicted and punished for contempt of Court. Let the affidavits in response be filed by 6th February, 2001."

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15. In response to the second notice given to the appellant, he filed a further affidavit dated 8th February, 2001 to urge as under:

> "3. That the deponent submits that the deponent had not filed any false affidavit, nor did the deponent take liberties with truth while filing the affidavit on 3.1.2001 before this Hon'ble Court. I state that in the order dated 24.1.2001, qua the deponent it has been recorded that properties No.49 and H-541, which were demolished by the deponent on 7.6.2000 and on 14.9.2000/ 15.9.2000 were not demolished as per the report of the committee appointed by this Hon'ble Court and the photographs of these properties.
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> 4. That the deponent submits that property No.49 was demolished on 7.6.2000 and the photo copies of the photographs of the existing building before demolition and after demolition have already been filed by the deponent along with the deponent's

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affidavit filed on 3.1.2001. The deponent is filing photocopies of further photographs of the demolished property. I further state that the press had prior information for the demolition to be carried out at Sainik Farms on 7.6.2000 and the press photographers and reporters were at Sainik Farms. The photograph of the demolished building at 49, Sainik Farm was taken by the photographers of some news papers. The times of India, edition dated 8.6.2000 showed the demolished structure. This is independent evidence which corroborates the stand of the deponent. I further state that the video team of the Doordarshan video taped the demolition of 49 Sainik Farms and the clippings were shown in the programme "Aaj Tak" on 7.6.2000 itself at 10 P.M. I crave indulgence of this Hon'ble Court to summon the video film from the Doordarshan Authorities prepared for the programme Aaj Tak telecasted on 7.6.2000. I state that the owner of the property has reconstructed the same after its earlier demolition. I state that as stated by me in the earlier affidavit filed by the deponent, I was no longer assigned the work of Junior engineer for Sainik Farms after 27.9.2000 and the structure has been re-erected, only thereafter. I state that during my tenure as Junior Engineer incharge of Sainik Farms only one property was bearing No.49 Sainik Farms, which was demolished by me.

5. That as regards property No. H-541, Sainik Farms, I state that the committee report has not referred to the same. However, 29.1.2001, I visited the site of the said property and state that the said property has also been reconstructed after the earlier demolition carried out by me. I state that the reconstructed property is still in the process of finishing and painting work is still going on in the property. I state that the committee members should be requested by this Hon'ble Court to immediately report whether the buildings are in the process of being painted or has been recently completed and painted as the same would show and prove its reconstruction. I have already filed the photographs showing the demolished property by me along with my earlier affidavit.

6. That I state that as already stated by me in my affidavit filed before this Hon'ble Court on 3.1.2001, the Commissioner of the Corporation was weekly reviewing the activities at Sainik Farms

A and the Zonal Engineer and the Executive Engineer of the Zone were also personally supervising the demolition operations carried out by me. The reports of the said Zonal Engineer and Executive Engineers should also be called.

7. That I state that I should be given an opportunity to lead
B evidence of the press photographers, Doordarshan team which video taped the demolitions on 7.6.2000 as also the evidence of the Zonal Engineer and Executive Engineer to prove that I had carried out the demolitions and have not filed any affidavit nor have taken liberties with truth."

C 16. This specific stand taken by the appellant has not been considered by the High Court at all. The appellant made this grievance in the review petition, but of no avail. In our opinion, it is not possible to hold that the demolition work undertaken on 7th June, 2000 and 14th September 2000 was not in conformity with the position reflected in the contemporaneous office submissions/record and photographs
D submitted by the appellant to his superior authority.

17. As a matter of fact, the appellant ought to succeed on the singular ground that the High Court unjustly proceeded against him without framing formal charges or furnishing such charges to him; and moreso because filing of affidavit by the appellant was supported by
E contemporaneous official record, which cannot be termed as an attempt to obstruct the due course of administration of justice. Accordingly, this appeal ought to succeed.

18. In view of the above, the impugned judgment and orders passed by the Division Bench of High Court of Delhi at New Delhi in C.M.
F No.820 of 2001 in C.W.P. No.6734 of 2000 dated 1st June, 2001 and in R.A. No.6600 of 2001 in C.W.P. No.6734 of 2000 dated 10th May, 2006 are quashed and set aside and the show cause notices issued to the appellant pursuant to the order of the Division Bench of the High Court dated 6th December, 2000 and dated 24th January, 2001 are hereby
G dropped. Appeal is allowed in the aforementioned terms.

Nidhi Jain Appeal allowed.

SHIVRAJ

v.

RAJENDRA & ANR.

(Civil Appeal Nos. 8278-8279 of 2018)

SEPTEMBER 05, 2018

[DIPAK MISRA, CJI AND A.M. KHANWILKAR, J.]

Motor Vehicles Act, 1988 – s.166 – Compensation – Appellant was travelling in a tractor when the driver of the tractor driving in a rash and negligent manner dashed the tractor against a big mud stone, consequent to which appellant sustained grievous injuries – Claim petition u/s.166 – Tribunal held that claim of appellant was covered by the insurance policy and awarded compensation of Rs.9,02,324/- payable jointly by the owner of the vehicle and the respondent no.2-insurer – However, High Court held that appellant travelling in tractor was in breach of insurance policy and absolved the insurer from the liability to pay compensation – On appeal, held: High Court rightly found in favour of insurer that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods – Appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver – Resultantly, insurer was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor – However, in view of the consistent view taken by the Supreme Court in various judgments, insurer directed to pay the compensation amount determined by the Tribunal and affirmed by the High Court to the appellant with liberty to recover the same from the tractor owner.

Disposing of the appeals, the Court

HELD: 1. The High Court rightly found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed

A **out that neither the trailer was insured nor any trailer was attached to the tractor. Thus, the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the respondent No.2 (insurer) was not liable for the loss or injuries suffered by the**
B **appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court is unexceptionable in the fact situation of the instant case. However, in the facts of the instant case, the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the**
C **consistent view taken in that regard by this Court. [Paras 9 and 10] [654-A-D]**

National Insurance Co. Ltd. v. Swarna Singh & Ors. **(2004) 3 SCC 297 : [2004] 1 SCR 180 ;** *Mangla Ram v. Oriental Insurance Co. Ltd.* **(2018) 5 SCC**
D **656 ;** *Rani & Ors. v. National Insurance Co. Ltd. & Ors.* **2018 (9) SCALE 310 ;** *Manuara Khatun and Others v. Rajesh Kumar Singh And Others.* **(2017) 4 SCC 796 – referred to.**

2. As regards, the determination of compensation amount
E **by the tribunal and as affirmed by the High Court, the tribunal had taken into account all the relevant aspects and provided for just and proper compensation amount for different heads as are permissible. The High Court, therefore, was justified in not disturbing the said conclusion of the tribunal. The view so taken by the High Court affirmed. [Para 11] [654-F-G]**

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Case Law Reference

[2004] 1 SCR 180	**referred to**	**Para 10**
(2018) 5 SCC 656	**referred to**	**Para 10**
2018 (9) SCALE 310	**referred to**	**Para 10**
(2017) 4 SCC 796	**referred to**	**Para 10**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8278-8279 of 2018.

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From the Judgment and Order dated 13.08.2015 of the High Court of Karnataka at Bengaluru in MFA No. 7662 of 2013 (MV) C/w MFA No. 9995 of 2013 (MV).

Ms. Kanika, Mrs. S. Usha Reddy, Ashwin V. K., Ms. Rekha Chandra Sekhar, H. Chandra Sekhar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. These appeals are directed against the common judgment and order passed by the High Court of Karnataka at Bengaluru dated 13th August, 2015 in M.F.A. No.7662 of 2013 (MV) and M.F.A. No.9995 of 2013 (MV) whereby the High Court allowed the appeal preferred by respondent No.2 (insurer) and dismissed the appeal for enhancement of compensation preferred by the appellant (injured claimant).

2. Briefly stated, on 23rd February, 2010 at about 8:30 a.m., the appellant was travelling in a tractor bearing Registration No.KA-15-T-2011 as a Coolie, on Bangalore Road, Survey No.266, Bangalore. The driver of the tractor was driving at a high speed, in a rash and negligent manner and dashed the tractor against a big mud stone, resulting in the tractor turning turtle and the appellant suffering grievous injuries. The appellant was immediately taken to North Side Hospital and Diagnostic Center, Bangalore, where he underwent medical treatment as an inpatient, from 23rd February, 2010 to 27th February, 2010. Later on, he was shifted to Bowring and Lady Curzon Hospital, Bangalore, as an inpatient from 27th February, 2010 to 7th May, 2010 and underwent 4 (four) different surgeries. According to the appellant, despite receiving best medical treatment, he suffered permanent physical disability to an extent of 59.4% both lower limbs, 18.9% towards Vertebra, Clavicle and Scapula and 80% towards urethral injury, which is about 67% to the whole body. The appellant was only 25 years of age at the time of the accident and was working as a coolie. On account of his permanent disability, the appellant has become incapable of working as a coolie and is thus denied of his income to the extent of Rs.6,000/- per month.

3. Resultantly, a claim petition was filed by the appellant before the III Additional Senior Civil Judge, Member, MACT, Bangalore, bearing M.V.C. No.3533/2010, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- (Rupees Fifteen Lakh Only) for the injuries sustained by him in the accident.

A 4. The appellant examined 4 witnesses in support of his claim and also produced Exhs. P1 to P24. The respondent examined RW1 Sagayaraj, Administrative Officer and produced Exhs. R1 and R2. After analysing the evidence produced by the parties, the tribunal proceeded to answer the three issues framed by it on the basis of the pleadings.

B 5. The tribunal held that the claimant was able to prove the facts that the accident occurred on 23rd February, 2010 at 8:30 a.m. while he was going in the stated tractor, due to rash and negligent driving of the driver of the tractor. The tribunal held that the appellant was travelling as a loader in the tractor and not as a gratuitous passenger. After C adverting to the Insurance Policy, the tribunal noticed that the same covered risk of 1+4. The tribunal held that the respondent No.2 admitted issuance of the Insurance Policy to the offending vehicle and its validity as on the date of the accident. The tribunal then proceeded to quantify the compensation amount on the notional income of the appellant at D Rs.150/- per day as a coolie and, keeping in mind the age of the appellant at the relevant time i.e. 25 years, applied multiplier of 18. The tribunal adjudged the permanent disability of the appellant to the extent of 60% to the whole body and on that basis, computed the loss of future income of the appellant at Rs.5,83,000/-(Rupees Five Lakh Eighty Three Thousand Only). The tribunal arrived at the following calculation to be E awarded as compensation to the appellant payable jointly by the owner of the vehicle and the insurer, along with interest at the rate of 8% per annum from the date of petition till the date of realization. The computation of compensation amount towards different heads arrived at by the tribunal is as follows:

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Compensation Heads	Compensation amount
1. Pain and agony	Rs. 85,000/-
2. Medical expenses	Rs.1,42,324/-
3. Future medical expenses	Rs. 50,000/-
4. Loss of income during laid up period	Rs. 12,000/-
5. Rest, Nourishment and attendant charges	Rs. 5,000/-
6. Loss of future income	Rs.5,83,000/-
7. Conveyance	Rs. 5,000/-
8. Loss of amenities & discomfort in life	Rs. 20,000/-
Total	Rs.9,02,324/-

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6. Feeling aggrieved by the said award, respondent No.2 (insurer) preferred an appeal being M.F.A. No.7662 of 2013 (MV) and the appellant preferred a separate appeal being M.F.A. No.9995 of 2013 (MV) for enhancement of the compensation amount. The High Court disposed of both these appeals by the impugned common judgment and order. The High Court broadly agreed with all other findings given by the tribunal but held that going by the stand taken by the appellant throughout the proceeding and the contemporaneous documents Exhs. P2 to P5, nowhere was it mentioned that the appellant was travelling in a trailer attached to the tractor. The evidence, however, is unambiguous that the appellant travelled in the tractor which was insured only for agriculture purposes and not for carrying goods. No additional insurance was taken in respect of the trailer rather presence of trailer is not shown or demonstrated in any of the documents and there was no evidence to demonstrate that the tractor was attached to a trailer. The tractor could accommodate only one person namely the driver of the tractor and none else.

7. On that finding, the High Court concluded that the appellant travelled in the tractor in breach of policy terms and conditions and therefore, the Insurance Company cannot be made liable to compensate the owner or the claimant. Accordingly, the appeal preferred by the respondent No.2 was allowed by the High Court and the insurer came to be absolved from the liability to pay compensation. While dealing with the appeal for enhancement of the compensation amount filed by the appellant, the High Court noted that the amount arrived at by the tribunal was just and proper and reckoned all the mandatory heads of compensation. As a result, it concluded that the appellant was not entitled for enhanced compensation.

8. The appellant has assailed the said common judgment and order of the High Court by these appeals. We have heard Ms. Kanika for the appellant and Ms. Rekha Chandra Sekhar for the respondent No.2 (insurer). Both the courts have accepted the case of the appellant that the motor accident occurred on 23rd February, 2010 at about 8:30 a.m. in which the appellant suffered grievous injuries due to the rash and negligent driving of the driver of tractor. Further, both courts have determined permanent disability of 60% to the whole body suffered by the appellant in the accident.

A 9. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the B appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is C unexceptionable in the fact situation of the present case.

10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view D taken in that regard by this Court in ***National Insurance Co. Ltd. Vs. Swarna Singh & Ors.***[1]***, Mangla Ram Vs. Oriental Insurance Co. Ltd.***[2]***, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors.***[3] and including ***Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others.***[4] In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, E succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).

11. Reverting to the issue regarding the determination of compensation amount by the tribunal and as affirmed by the High Court, F we find that the tribunal had taken into account all the relevant aspects and provided for just and proper compensation amount for different heads as are permissible. The High Court, therefore, was justified in not disturbing the said conclusion of the tribunal. We affirm the view so taken by the High Court. Accordingly, the appeal preferred by the G appellant for enhancement of compensation amount does not warrant interference.

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[1](2004) 3 SCC 297
[2](2018) 5 SCC 656
[3]2018 (9) SCALE 310
[4](2017) 4 SCC 796

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12. We may place on record that the appellant did make an unsuccessful attempt to persuade us to take a view that the permanent disability should be reckoned as 67% to the whole body. However, after going through the evidence of the doctor who had treated the appellant and the medical records, we find that the assessment made by the tribunal about the extent of permanent disability at 60% to the whole body seems to be a possible view. We are not inclined to disturb the said finding and also because it has been justly affirmed by the High Court, being concurrent finding of fact. Accordingly, the claim of the appellant for enhancement of compensation amount does not merit interference.

13. In view of the above, the appeals are partly allowed to the extent of directing the respondent No.2 (Oriental Insurance Company Ltd.) to pay the compensation amount determined by the tribunal and affirmed by the High Court to the appellant in the first place and with liberty to recover the same from the owner of the offending tractor (respondent No.1) in accordance with law.

14. The appeals are disposed of in the aforementioned terms with no order as to costs.

Ankit Gyan Appeals disposed of.