IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 12th OF SEPTEMBER, 2025

MISC. APPEAL No. 424 of 2024

NATIONAL INSURANCE COMPANY LTD.

Versus

YATEENDRA PRAKASH DUBEY AND OTHERS

Appearance:

Shri Rajeev Shrivastava - Advocate for the appellant.

Shri Tapendra Sharma- Advocate for respondents No.2 and 3.

ORDER

This appeal by the appellant/Insurance Company u/S. 173 (1) of the Motor Vehicles Act, 1988 is arising out of the award dated 04.09.2023 passed by Member, MACT, Bhind (M.P.) (in short "Claims Tribunal") in Claim Case No.108/2022 whereby the Claims Tribunal has awarded compensation in favour of claimants to the tune of Rs.28,09,000/- with interest from the date of filing of claim application till its realization.

2. Brief facts of the case are that on 23.06.2021 at about 09:30 AM, Vivek Dubey was coming to Panaji from Madagaon his TVS motorcycle bearing No.GA06-R-5056. As soon as he reached to near security office of Dilip Buildcon Company Goa, Villa Bypass road, he gave indicator for turning right side. At the same time, Praveen Sharma, who was standing on Security Chowky has also gave

indicator to turn right side towards Dilip Buildcom Company and also showed red flag for stopping traffic, in spite of that, Driver of offending vehicle by driving in rash and negligent manner towards Panaji dashed the motor cycle of the deceased Vivek Dubey. Due to that, Vivek Dubey fell down and got grievous injuries. Praveen Sharma and Roshan Kumar took him to Manipal Hospital Goa for treatment where he succumbed on 18.07.2021 during treatment. Claimants/legal heirs of the deceased filed a claim petition before the Claims Tribunal on account of seeking compensation. Appellant and respondents No.4 and 5 filed their written statements and denied all averments made by the claimants.

3. Learned Claims Tribunal framed the issues and after taking the evidence of both the parties awarded compensation in favour of claimants.

4. Being aggrieved by impugned award, appellant/Insurance Company filed this appeal with submissions that Claims Tribunal has wrongly passed the impugned award and imposed liability on the Insurance Company which is perverse, illegal and without jurisdiction. It is further submitted that alleged accident occurred on 23.06.2021 while claim petition was filed before Claims Tribunal on 26.08.2022, that is beyond the period of limitation. It is further submitted that Tribunal has wrongly assessed the income of the deceased to the tune of Rs.18,000/- per month without going through any documentary evidence. Claimants themselves could not prove the income of the deceased. It is further submitted that claimants were

unable to adduce any eye-witness to prove the negligency of the Driver of the offending vehicle and Driver of the offending vehicle Rohit Dumbre in his evidence stated before the Claims Tribunal that he has not done any accident due to rash and negligence driving and police has falsely implicated him in the case. On these ground, Insurance Company prayed for setting aside the impugned award.

5. On the other hand, learned counsel for the claimants supported the impugned award and prayed for rejection of the appeal.

6. Heard learned counsel for both the parties and perused the entire record.

7. First ground raised by counsel for Insurance Company that accident was occurred on 23.06.2021 and claim petition was filed before Claims Tribunal on 26.08.2022 from which, it is apparently clear that claim petition filed beyond period of limitation as contemplated under Section 166(3) of the Motor Vehicles Act.

8. In the present case, on perusal of the record, it is found true that accident occurred on 23.06.2021 and claim petition was filed before Claims Tribunal on 26.08.2022, but amendment of Motor Vehicles Act has come into effect from 01.04.2022 in Madhya Pradesh and according to Section 6 of the General Clauses Act, the provisions related to limitation in claim cases have been notified from 01.04.2022 and accident occurred before 01.04.2022, therefore, this provision is not applicable in this case.

9. In this regard, **MAC No.51/2022 Sathya Vs. Dilip dated 01.06.2022 shall be relied.**

10. So, considering the amendment and provisions under Section 6 of the General Clauses Act and judgment passed in the case of **Sathya** (supra) in considered opinion of this court, claim petition was filed before the Claims Tribunal within limitation, therefore, the submission made on behalf of Insurance Company has no substance.

11. Further, contention of learned counsel for the Insurance Company is that claimants were unable to examine any eye-witness before the Claims Tribunal with regard to prove that Driver of the offending vehicle was driving in a very rash and negligent manner.

11. It is true that in the present case only father of the deceased Yatendra Kumar was examined before the Claims Tribunal by the claimants and Yatendra Kumar Dubey was not an eye-witness.

12. Now question arises for consideration in the present case is whether doctrine of *Res Ipse Loquitur* is applicable in the present case or not, so as to justify the finding recorded by the Claims Tribunal, the deceased died due to rash and negligent driving of the offending vehicle in question.

13. In the case of **Pushpabai Parshottam Udeshi vs. Ranjit Ginning and Pressing Co. Pvt. Ltd.** reported in **AIR 1977 SC 1735**, the Hon'ble Supreme Court has observed as under:

> "The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the

> accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states : "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus : "An exception to the general rule is that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or here the event charged as negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.

14. In the case of **Kerala State Electricity Board Vs. Kamalakshy Amma** reported in **1987 ACJ 251** the Hon'ble Supreme Court has observed as under:-

> "The maxim res ipsa loquitur is a principle which aids the court in deciding as to the stage at which the onus shifts from one side to the other. Section 114 of the Evidence Act gives a wide discretion to the courts to draw presumptions of fact based on different situations and circumstances. This is in a way, recognition of the principle embodied in the maxim res ipsa loquitur. The leading case on the subject is Scott v. London and St. Katherine Docks Co. (1865) 3 H & C 596. Erle C.J. in the said case has stated that, "where the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the 8 of 18 defendants, that the accident arose from want of care". Evershad M. R. in Moore v. R. Fox & Sons (1956) 1 OB 96 affirmed and followed the

> principle laid down in Scott's case. Winfield in his famous treatise on Tort, after referring to the decisions which founded the above doctrine, has mentioned the two requirements to attract the above principle. They are, (i) that the "thing" causing the damage be under the control of the defendant or his servants and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence. This principle which was often found to be a helping guide in the evaluation of evidence in English decisions has been recognised in India also. The Supreme Court in Syed Akbar v. State of Karnataka, AIR 1979 SC 1848 has discussed the applicability of the maxim res ipsa loquitur in civil as also criminal cases, in the light of the provisions of the Evidence Act."

15. In the case of **National Insurance Co. Ltd. Vs. Gita Bindal reported in 2013 (8) R.C.R. (Civil) 245** the Hon'ble Delhi High Court has summarised the legal position as to applicability of the principle of res ipsa loquitur as under:-

> i. Res ipsa loquitur means that the accident speaks for itself. In such cases, it is sufficient for the plaintiff to prove the accident and nothing more.
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> ii. Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants, that the accident arose from want of care. iii. There are two requirements to attract res ipsa loquitur, (i) that the "thing" causing the damage be under the control of the defendant and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence. iv. Res ipsa loquitur is an exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of
> the driver. This maxim means the mere proof of accident raises the presumption of negligence unless rebutted by the wrongdoer.
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> 9 of 18 v. In some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him, but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident, but cannot prove how it happened to establish negligence. This hardship is to be avoided by applying the principle of res ipsa loquitur is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that

> it is sufficient for the plaintiff to prove the accident and nothing more.
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> vi. The effect of doctrine of 'res ipsa loquitur' is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of 'res ipsa loquitur', therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortuous liability. vii. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts bearing in the matter are at the outset unknown to him and often within the knowledge of the defendant.

16. In the present case, although Driver of the offending vehicle appeared before the Claims Tribunal, and in his evidence, he stated that no accident has been occurred by him and no accident has been done by him by driving vehicle bearing No. GA07 E880, but in his cross-examination, he admitted that the FIR was lodged against him by the police and after investigation and police has filed charge sheet against him and with regard to this, he has never made any complaint to any Higher Police Authority that concerned police has lodged a false and frivolous case against him. This witness further deposed that Insurance Company challenged the same ground, but Insurance Company has failed to produce any documentary evidence to prove this fact.

17. So, considering the evidence of the Driver of the offending vehicle, it is clear that police has registered a case against him and he faced the trial before Magistrate and he has never filed any complaint that police has falsely registered a case against him. So, it appears that he has not substantially rebutted the criminal document produced by claimants against him.

18. It is settled principle of law that if the police registered a case against the Driver of the offending vehicle and after investigation filed charge sheet against the Driver of the offending vehicle, then Tribunal shall presume that Driver of offending vehicle is guilty and this presumption can be rebutted by the Driver of the offending vehicle. But, considering the evidence of Driver of the offending vehicle, it appears that he was not substantially rebutted in his evidence. Therefore, Claims Tribunal has rightly found him guilty.

19. So, in considered opinion of this Court, Claims Tribunal has not committed any error in holding that Driver of the offending vehicle was liable for accident and it is not a case of false implication.

20. The next contention of the counsel for the Insurance Company is that Claims Tribunal has committed an error in holding income of the deceased to the tune of Rs.18,000/- per month on the ground that claimants were unable to adduce any witness to prove that deceased was working in Dilip Buildcom Company and claimants were unable to examine any person to prove pay slip of deceased (Ex.P-23) with regard to his income.

21. On the other hand, learned counsel for the claimants submitted that deceased was working in Dilip Buildcon Company as Supervisor and used to receive salary to the tune of Rs.19,700/- per month.

22. Considering the documents (Ex.P-21,P-22,P-23), it is found that out of these documents, the document Ex.P-23 is also a salary slip of deceased Vivek and the same was not substantially rebutted by Insurance Company.

23. In the case of **Rajwati @ Rajjo and Others Vs. United India Company Ltd. and Others reported in (2023) 1 SC 743** Hon'ble Apex Court held that it is well settled that strict rules of evidence as applicable in a criminal trial, are

not applicable in motor accident compensation cases, i.e., to say, “the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases”

24. But, in the present case, claimants filed the pay slip related documents (Ex.P-21,P-22,P-23), these documents are conclusive proof of the income of the deceased and were also corroborated by the statements of claimants.

25. So, in considered opinion of this Court, Claims Tribunal has not committed any error in holding the income of the deceased to the tune Rs.18,000/- per month by considering the salary slip and awarded the compensation accordingly.

26. No interference is warranted by this Court in the impugned award passed by the Claims Tribunal. Accordingly, the misc. appeal fails and is hereby **dismissed**.

(HIRDESH)
JUDGE

AVI