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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH**

ON THE 11th OF MARCH, 2024

MISC. APPEAL No. 2628 of 2008

BETWEEN:-

**SMT.MALINIW/O SURESH SHARMA, AGED ABOUT 56
YEARS, OCCUPATION: GOVT.SERVICE 611,KALANI
NAGAR,INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI JM.POONEGAR, LEARNED COUNSEL FOR THE APPELLANT)

AND

- 1. AMIT & ORS. S/O BHAGWANDAS MANTRI, AGED
ABOUT 27 YEARS, OCCUPATION: DRIVER 74-
75,SUKHDEV NAGAR EXT.,INDORE (MADHYA
PRADESH)**
- 2. NARAIAN LALAWAT OCCUPATION: OWNER 250,
USHANAGAR EXTENSION, RANJEET HANUMAN
MANDIR, INDORE (MADHYA PRADESH)**
- 3. THE NEW INDIA INS. CO. LTD. 2/A, RATLAM
KOTHI, A.B.ROAD, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI MAYANK UPADHYAY, LEARNED COUNSEL FOR THE
RESPONDENT NO.3)**

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*This appeal coming on for orders this day, the court passed the
following:*

ORDER

This appeal by the claimant under section 173(1) of the Motor Vehicles Act is arising out of the award dated 08.07.2008 passed by 13th Additional MACT, Indore in claim case no.44/2007 seeking enhancement of compensation awarded by the Tribunal.

2. Brief facts of the case are that on 12.01.2004 at 10.15 a.m appellant/claimant with her son was going to Nirmal hospital, Indore on a motor cycle. His sons was riding the motor cycle and she was sitting behind the motor cycle. When they reached near Kalani nagar, Nirmal hospital then a scooter bearing registration no.MP-09-JP-0346 which was being driven by respondent no.1 rashly and negligently hit the motorcycle due to which she fell down and received injuries on her left hand and suffered fracture. She was admitted in Nirmal hospital Indore and discharged from the hospital on 13.01.2004. She filed a claim petition against the driver and owner of the offending vehicle. She received 17% permanent disability.

3. Respondents/driver and owner/insurance company of the offending vehicle filed their written statement. Tribunal on the basis of the pleadings of the parties framed issues and recorded evidence of both parties. Tribunal after hearing counsel for both parties and on appreciation of evidence dismissed the claim petition filed by the claimant/appellant. Being aggrieved by the said order, appellant/claimant has filed this appeal on the ground that Tribunal has committed error in holding that the accident had not occurred.

4. Counsel for the appellant submits that Tribunal has committed error in dismissing the claim by holding that in the FIR the registration number of the offending vehicle was mentioned as MP-09-JN-6381 whereas in the final report the registration number of the offending vehicle is mentioned as MP-09-JP-0346 and that the offending vehicle had not caused any accident. Hence, prayed for setting aside the impugned award.

5. On the other hand, learned counsel for the respondents has supported the impugned award and prayed for dismissal of the appeal.

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

7. It is settled law that if police registered the case against the driver of the offending vehicle and after due investigation filed the charge sheet against the driver of the offending vehicle, then the Tribunal can presume guilt of the driver of the offending vehicle. But this presumption can be rebutted. It is the duty of the party who claimed that accident had not caused by the offending vehicle. It may be rebutted by adducing direct evidence or on the basis of the evidence adduced by the claimants.

8. In the present case claimant lodged FIR Ex.P/3 which was registered on 13.01.2004 in which the registration number of the offending vehicle is mentioned as MP-09-JN-6381. This FIR was written by the police on the basis of the statement of claimant Malini Sharma and Rahul Sharma, son of Malini Sharma. Ex.P/2 is again another FIR in which the registration number of the offending vehicle is also mentioned as MP-09-JN-6381. This FIR was also written by the police on the basis of the statement of claimant Malini Sharma and Rahul Sharma, the son of Malini Sharma, injured. However, in the final report Ex.P/1 the registration number of the offending vehicle is mentioned as MP-09-JP-0346. So it was the duty of the claimant to explain as to how and why the registration number of the offending vehicle was changed in the final report.

9. It is true that claimant's case is decided on its own facts and evidence. In the case of R.P Gautam vs. R.N.M Singh and another - AIR 2008 MP 68, it is held that it is settled principle of law that every civil case is decided on its own facts and evidence without influencing the paper and decision of the criminal case. In such premises, registration of the offence and police investigation is not a condition precedent for awarding the claim.

10. In the present case, claimant filed the FIR before the police station Ex.P/2 & P/3 and mentioned the registration number of the offending vehicle as MP-09-JN-6381 and AW/2 Rahul Sharma, who is the son of claimant Malini Sharma has accepted in cross examination that people present on the spot at the time of accident caught hold the driver of the offending vehicle and also the offending vehicle. AW/1 claimant has also admitted in cross examination in para-10 that she saw the registration number of the offending vehicle at the time of accident and people present on the spot caught hold the driver of the offending vehicle.

11. The FIRs Ex.P/2 & P/3 were filed by the claimant in support of her evidence. So it is the duty of the claimant to clarify as to how and in what manner she gave information of the registration number of the offending vehicle at the time of lodging the FIR Ex.P/2 & P/3 but the claimant is unable to explain the same.

12. In the case of Oriental Insurance Co. Ltd. vs. Premlata Shukla and others- (2007) 13 SCC 476 the apex court has held that a party objecting to the admissibility of a document must raise its objection at the appropriate time and if the objection is not raised and the document is allowed to be marked, one cannot be permitted to turn round and raise a contention that the contents of the document had not been proved and thus should not be relied upon. In the present case claimant firstly lodged the FIR against the offending vehicle bearing registration no.MP-09-JN-6381, then it is the duty of the claimant to prove as to how and in what manner the number of the offending vehicle has been changed but the claimant has unable to explain this anomaly.

13. Learned counsel for the appellant submits that police filed the charge sheet against the driver of the offending vehicle MP-09-JP-0346 so Tribunal can

hold the guilt of the driver of the above mentioned offending vehicle but this contention of the counsel for the appellant is not tenable. It is the duty of the claimant to explain as to why she lodged FIR against the vehicle bearing registration no.MP-09-JN-6381 but she is unable to explain the same. So because of lack of evidence she is unable to prove that the driver of the offending vehicle bearing registration no.MP-09-JP-0346 had caused the accident.

14. It is true that Motor Vehicles Act is a social welfare Act but it does not mean misuse of it. It is true that if police filed charge sheet against the offending vehicle then Tribunal can presume guilt of the offending vehicle but in the present case on perusal of the evidence of the claimant it was found that claimant is unable to explain in what manner she firstly lodged FIR against offending vehicle MP-09-JN-6381 and why police after investigation changed the registration number of the offending vehicle.

15. So in the present case the Tribunal has rightly disbelieved the evidence of the claimant and has rightly found that the claimant is unable to prove her case. In view of the aforesaid discussion, in the considered opinion of this Court, the Tribunal has rightly dismissed the claim petition filed by the claimant. Hence, no case of interference in the impugned award is made out. Accordingly, the appeal is dismissed.

(HIRDESH)
JUDGE