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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 8th OF FEBRUARY, 2024**

MISC. APPEAL No. 4657 of 2023

BETWEEN:-

**NATIONAL INSURANCE COMPANY LIMITED 4RGT
FLOOR APOLLO TOWER MG ROAD, INDORE PRESENT
ADD. 310-323 BENCHMARK BUSINESS PARK BLOCK A-3
PU-4 VIJAY NAGAR DISTRICT INDORE (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI PANKAJ KUMAR JAIN -ADVOCATE)

AND

- 1. TASLEEM BI W/O LATE ANSAR, AGED ABOUT 27
YEARS, VILLAGE DOLATABAGH RANGWASA
TEHSIL DEPALPUR DISTRICT INDORE PRESENT
ADD. 14 GANESH MARG DEPALPUR DISTRICT
INDORE (MADHYA PRADESH)**
- 2. MALKA D/O ANSAR MINOR THROUGH NATURAL
GUARDIAN TASLEEM W/O LATE ANSAR, AGED
ABOUT 27 YEARS, OCCUPATION: BUSINESS
STUDIES DOLATABAGH, RANGWASA TEH.
DEPALPUR, DIST. INDORE (MADHYA PRADESH)**
- 3. FAIZAL S/O ANSAR MINOR THROUGH NATURAL
GUARDIAN TASLEEM W/O LATE ANSAR, AGED
ABOUT 27 YEARS, OCCUPATION: HOUSEWORK
DOLATABAGH, RANGWASA TEH. DEPALPUR,
DIST. INDORE (MADHYA PRADESH)**
- 4. SAMEEM B W/O LATE GHAFAR KHAN
DOLATABAGH, RANGWASA TEH. DEPALPUR,
DIST. INDORE (MADHYA PRADESH)**
- 5. DILIP S/O MADANLAL BANJARA 136, TAKIPUR,
DEPALPUR DIST. INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SAMEER VERMA, LEARNED COUNSEL FOR THE RESPONDENTS NO.1 AND 4 AND SHRI VIBHASH KHEDEKAR, LEARNED COUNSEL FOR RESPONDENT NO.5)

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

ORDER

This is an appeal filed by the Insurance Company u/S 173 (1) of the Motor Vehicles Act, 1988 being aggrieved the award dated 28.04.2023 passed by XX Additional Member, MACT, Indore in claim Case No. MACC 610/2017 on account of exonerating the Insurance Company from the liability.

2. Brief facts of the case is that on 06.01.2017 deceased Ansar was coming from Depalpur by Motorcycle MP-09/QU-0221 and when he reached Depalpur Betma Road, near Gram Barodapant Phate, driver of the offending vehicle MP-10/H-0771 came rashly and negligently and dashed the deceased due to which he received injuries on his body. He was taken for treatment to Indore hospital where he was declared dead. On the same date, district hospital sent information to police of Chandan Nagar, Indore. Thereafter, the claimants filed claim petition claiming compensation of Rs. 30 lacs.

3. Respondent no.5 who is the driver and owner of the offending vehicle filed written statement before the Tribunal and denied all the averments in the plaint and submitted that in conspiracy with the police he has registered case that he has not caused the accident on 06.01.2017.

4. The appellant/Insurance Company also filed written statement and denied all the averments.

5. The Tribunal framed the issues on the basis of pleadings of both the parties, taking evidence of the parties and after hearing the learned counsel for the parties accepted the claim petition of the claimants and awarded

Rs.13,17,800/- in favour of the claimants/respondents no.1 to 4.

6. Being aggrieved by impugned award, the Insurance Company filed this appeal on the ground that FIR was lodged after 18 days of the incident. The incident took place on 06.01.2017. FIR was lodged on 23.01.2017 to secure the compensation from the Insurance Company. The claimants in collusion with the owner-driver falsely implicated the insured vehicle by surrendering the alleged owner-driver with vehicle in the police station where the vehicle was seized and the alleged owner-driver was arrested by the police. He further submitted that owner of the offending vehicle lodged a complaint before the Inspector General of Police that no accident took place by his vehicle and vehicle was parked at his residence on the date of incident. The owner examined himself and stated that no accident took place from his vehicle. The driver was the best witness who was examined before the Tribunal and he deposed that no accident took place from his vehicle. It is further pleaded that claimant witness AW-2 Jitendra Batham was not reliable. He changed his version continuously in his cross examination and the investigating officer has not stated anything on what basis he has registered the case against the offending vehicle. On this above grounds this appeal be allowed and Insurance Company be exonerated from the liability.

7. On the other hand, learned counsel for the claimants contended that the Claims Tribunal has rightly awarded the compensation and argued in support of the findings recorded by the Tribunal.

8. Heard the arguments advanced by the counsel for the parties and perused the record of the Tribunal.

9. Perusal of the record of the Tribunal it is found that the accident took place on 06.01.2017 and on 06.01.2017 deceased was declared dead in motor accident and Merg was registered vide Ex.P-3 by which information was sent

by district hospital to the police station and post mortem has been done on 06.01.2017. FIR Ex.P-2 was lodged on 23.01.2017. According to the Naksha Panchnama Ex.P-4 it is stated that the death of the deceased occurred due to the accident. In Ex.P-2 FIR it was specifically mentioned that driver of the offending vehicle dashed the deceased and after investigation final report has been filed against the driver of the offending vehicle bearing reg. No. MP-10-H/0771 u/S 304-A of the IPC.

10. Learned counsel for the appellant submits that FIR was lodged with delay and the delay is not properly explained. Perusal of the Ex.P-2, Ex.P-3, Ex.P-4 and Ex.P-6 it is found that accident occurred on 06.01.2017 and Merg was registered after receiving information sent by the hospital and after that FIR was lodged. In other words although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. Apex Court in case of **Ravi Vs. Badrinarayan and Others AIR 2011 SC 1226** in para 20, 21 has held -

"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

11. It reveals that as per record that date of accident was 06.01.2017 and information sent to the police by hospital on the same day. Post mortem was done on the same date, Naksha Panchnama Ex.P-4 was prepared on the same date. So, there is no delay in lodging the FIR. In present case, in the accident, member of a family of the claimants has died, we cannot expect that first they should rush to the police station and lodge the report immediately after the accident, human nature and family responsibilities occupied in mind, give more importance to the victim's treatment, rather than to rush to the police. So from the above discussions it is found that explanation of delay in the FIR is sufficient therefore, on the basis of delay in the FIR, claim case cannot be discarded.

12. Learned counsel for the Insurance Company submits that driver/owner of the offending vehicle is the best evidence who stated when, how and in what manner the accident has occurred. In the present case, driver of the offending vehicle came before the Tribunal and stated that no accident has occurred from his vehicle and he filed a written complaint before the Inspector General of

Police, Indore on 24.01.2017 ie. Ex.D-1. He further submitted that claim witness changed his version from time to time in his cross examination and it is duty of claimant to prove the accident without any doubt.

13. Learned counsel for the appellant has placed reliance in the case of **Take Singh Vs. Kalyan Singh and another reported in 2007 (III) MPWN 110** wherein the Division Bench of this Court has held that it is the duty of the claimant to prove manner and cause of the accident. If negligence is not proved by cogent and reliable evidence, then Tribunal cannot help the claimant. He also placed reliance on the decision of High Court of Gujarat in the case of **ICICI Lombard Insurance Company Vs.State of Gujarat decided on 28.04.2017 in Special Criminal Application (Direction) No.4363/2016** and Apex Court judgment in the case of **Anil and others Vs. New India Assurance Co. Ltd. and others decided on 19.01.2018 in Civil Appeal Nos. 3291-3292 of 2011**. He further submitted that driver of the offending vehicle is acquitted from the criminal case and filed judgment in this regard Ex.D-3.

14. In **Rajjoo Yadav (Dr) Vs. Imrat Singh Alias Amrit Singh 2002 (II) M.P.W.N SN 24** coordinate Bench of this High Court has held that the acquittal of the accused in criminal trial does not absolve him from the liability of compensation. In **P. Varalakshmi Reddy Vs. Karnataka State Road Transport Corporation reported in 2003 ACJ 1952** division Bench held that Tribunal is not bound by the finding of acquittal in criminal case.

15. In **AIR 208 MP 68 R.P. Gautam Vs. R.N. Singh**, it is held that it is settled proposition of law that every civil case is decided on its own facts and evidence without influencing the papers 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.

16. In the present case, AW-2 Jitendra Batham was cross examined at length and he remained substantially intact in the cross examination. He was not relative of the family of the deceased so it cannot be accepted from him that he must lodge FIR or must go to police station immediately for giving information of the registration number of the offending vehicle. The investigating officer of the criminal case was also examined by the claimant and he specifically stated that after investigation he found that driver of the offending vehicle caused the accident and after due investigation he filed charge sheet against him.

17. Learned counsel for the appellant submitted that the driver of the offending vehicle lodged complaint Ex.D-1 with regard to false implication of his vehicle, but only a written complaint is not sufficient that driver of the offending vehicle has not caused the accident. If the higher authority of the police found his complaint to be valid and correct, then only he would be exonerated.

18. In the present case, nothing has been done with regard to the complaint Ex.D-1 so only filing Ex.D-1 can't help the driver of the offending vehicle. After perusal of the impugned award, it is found that the Tribunal has elaborately discussed in its paras 13 to 31 that the driver of the offending vehicle is guilty.

19. In view of the aforesaid discussions, in the considered opinion of this Court, Tribunal has not committed any error in holding that the driver of the offending vehicle has caused the accident. Hence, appellant has failed to prove that offending vehicle was falsely implicated in the accident.

Accordingly, there is no substance in appeal filed by the appellant/Insurance Company, therefore, the same is hereby dismissed.

RJ

