IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 10th OF APRIL, 2024

MISC. APPEAL No. 4743 of 2023

BETWEEN:-

ICICI LOMBARD GENERAL INSURANCE CO. LTD. BRANCH MANAGER II FLOOR COMMERCE HOUSE, RACECOURSE ROAD, INDORE (MADHYA PRADESH)

.....APPELLANT

(SHRI MANOJ JAIN, LEARNED COUNSEL FOR THE APPELLANT).

AND

1. **SMT. RAGANI W/O LATE SANDEEP RAO SIRSAT, AGED ABOUT 30 YEARS, OCCUPATION: NOTHING NEAR TEJAJI MANDIR GALI, VILLAGE KODARIYA, TEHSIL MHOW, DIST. INDORE (MADHYA PRADESH)**

2. **HARSH S/O LATE SANDEEP RAO SIRSAD THROUGH GUARDIAN MOTHER SMT RAGINI SIRSAT W/O LATE SANDEEP RAO SIRSAT, AGED ABOUT 30 YEARS, OCCUPATION: NOTHING NEAR TEJAJI MANDIR GALI KODARIYA, TEH. MHOW DIST. INDORE (MADHYA PRADESH)**

3. KU PURVA D/O LATE SANDEEP RAO SIRSAT THROUGH GUARDIAN MOTHER SMT RAGANI SIRSAT W/O LATE SANDEEP RAO SIRSAT, AGED ABOUT 30 YEARS, OCCUPATION: NOTHING NEAR TEJAJI MANDIR GALI KODARIYA, TEH. MHOW DIST. INDORE (MADHYA PRADESH)

4. SUDHAKAR RAO S/O SHANKAR RAO SIRSAT DIED DURING TRIAL, THEREFORE HIS NAME WAS DELETED S/O SHANKAR RAO SIRSAT, AGED ABOUT 55 YEARS, OCCUPATION: NOTHING NEAR TEJAJI MANDIR GALI KODARIYA, TEH. MHOW DIST. INDORE (MADHYA PRADESH)

5. SMT. USHA S/O SUDHAKAR RAO SIRSAT, AGED ABOUT 47 YEARS, OCCUPATION: NOTHING NEAR TEJAJI MANDIR GALI, VILLAGE KODARIYA, TEH. MHOW, DIST. INDORE (MADHYA PRADESH)

6. GANESH S/O PARMANAND PATIDAR, AGED ABOUT 51 YEARS, OCCUPATION: DRIVER VILLAGE GAVLI PALASIYA TEH. MHOW, DIST. INDORE (MADHYA PRADESH)

7. KISHOR S/O BADRIPRASAD PATIDAR, AGED ABOUT 56 YEARS, OCCUPATION: OWNER VILLAGE GAVLI PALASIYA, TEH. MHOW, DIST. INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VIPIN PARMAR, LEARNED COUNSEL FOR THE RESPONDENTS).

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 12.05.202 passed by 5th MACT, Dr.Ambedkar Nagar, district Indore in Claim Case No.46/2020 seeking exoneration from liability.

2. Brief facts of the case are that on 23.05.2020 deceased Sandeep Rao was going on a motorcycle when he reached near Ganesh Dhaba the driver of car bearing registration no.MP-09-CS-9465 plying it rashly and negligently dashed into motorcycle, due to which deceased fell down and sustained grievous injuries and died. Claimant/respondent no.1 to 5 had filed a claim petition against the appellant and rest of the respondents before the Tribunal seeking compensation for the death of deceased in the said vehicle in their favour and against appellant and respondents no.6 & 7 jointly and severally.

3. Learned counsel for the insurance company submits that impugned award is bad in law and not borne out from facts, evidence, material on record and is liable to be set aside. Tribunal has committed error in disbelieving the pleas raised by the appellant/insurance company. The Tribunal has committed error in not considering that it is case of false involvement of vehicle on the ground that police had lodged the FIR against unknown car. Basically it was case of hit and run. The police lodged the FIR with delay of 5 days against unknown vehicle with inordinate delay. Without any base police has seized insured vehicle and implicated it with the accident. He further submits that insurance company has adduced the evidence of company investigator report Ex.D/1 but

Tribunal has committed error in not considering the evidence of investigator. So prayed for setting aside the impugned award. Tribunal has committed error in awarding huge amount of compensation and that it is a case of false implication of the vehicle. He further submits that claimant has unable to produce any eye witness. So it is not proved by the claimant that accident had occurred due to rash and negligent driving of the offending vehicle.

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

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

6. Perusal of the FIR Ex.P/2 show that the FIR was lodged on 28.05.2020 and it was lodged on the basis of the Merg no.27/20. Perusal of the criminal record produced before the Tribunal it is found that the Merg was registered on 23.5.2020. The MLC has been done on the same date. During treatment deceased died and his post-mortem was done on 25.05.2020. So perusal of the record it is clearly established that on the date of accident the information was received by the police regarding the accident.

7. Counsel for the appellant/insurance company submits that FIR was lodged with a delay and the delay has not been properly explained. But perusal of Ex.P/2 it is found that the accident had occurred on 23.5.2020 and the FIR was lodged on 28.5.2020 the Merg was registered on 25.05.2020, in other words although lodging of FIR is vital in deciding of motor accident claim case, delay in lodging the same would not be treated as fatal for such proceeding if

claimant has been able to demonstrate satisfactory and cogent reason for it. The Apex Court in the case of **Ravi vs. Badrinarayan and others – AIR 2011 SC 1226** in para 20 & 21 has held as under:

> [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.
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> [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.

8. Learned counsel for the insurance company has argued that on 28.5.2020 police registered the case against unknown vehicle and there

are eye witnesses who have not dared to go to the police station for giving information of registration number of the offending vehicle. It is the duty of the police after registration of Merg and FIR to investigate the matter and search the vehicle which caused the accident. It is not the duty of the family member of the claimants who are not present on the spot to investigate and give information of registration number of the offending vehicle.

9. So in the considered opinion of this court delay in lodging the FIR was properly explained and after lodging the FIR police investigated the matter and filed the charge sheet against the driver of the offending vehicle and driver and owner of the offending vehicle had not dared to give evidence in rebuttal of the criminal document and evidence of the claimant.

10. Learned counsel for the appellant submits that claimant has unable to produce any eye witness before the tribunal so in lack of eye witness tribunal has committed error in holding that driver of the offending vehicle was rash and negligent. So now the question arises whether in the present case doctrine of res ipsa loquitur is applicable to the fact of the present case so as to justify the finding that the deceased died due to rash and negligent driving of the offending vehicle.

11. In **Pushpabai Parshottam Udeshi vs. Ranjit Ginning and Pressing Co. Pvt. Ltd. AIR 1977 SC 1735**, Hon'ble Supreme Court 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 7 of 18 "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 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 where 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."

12. **In Kerala State Electricity Board Vs. Kamalakshy Amma, 1987 ACJ 251** Hon'ble Supreme Court 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, a 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 596 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."

13. In **National Insurance Co. Ltd. Vs. Gita Bindal 2013 (8) R.C.R. (Civil) 245** Hon'ble Delhi High Court 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.

> 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.

14. In the present case it is established that deceased has died in the accident and police after registering the FIR investigated the matter and filed charge sheet against the driver of the offending vehicle but they had not dared to adduce evidence in rebuttal of the criminal document and evidence of the claimant. It is the duty of 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 but he was unable to adduce evidence in this regard. So a presumption must be drawn against him. So in the considered opinion of this Court, Tribunal has not committed any error in holding that the driver of the offending vehicle was liable for the accident and it is not a case of false involvement of vehicle.

15. Learned counsel for the appellant further submits that Tribunal gave compensation on the higher side but perusal of the award it is found that Tribunal has awarded just and proper amount of

compensation. So no interference is warranted in the impugned award in this regard.

16. In view of the above, the appeal fails and is hereby dismissed.

(HIRDESH)
JUDGE

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