

**IN THE HIGH COURT OF MADHYA
PRADESH**

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 29th OF JANUARY, 2024

MISC. APPEAL No. 5381 of 2023

BETWEEN:-

**ORIENTAL INSURANCE COMPANY LIMITED THROUGH 07 RACE
COURSE ROAD, 4TH FLOOR BUILDING INDORE (MADHYA
PRADESH)**

.....APPELLANT

(SHRI AKSHANSH MEHRA, LEARNED COUNSEL FOR THE APPELLANT).

AND

- 1. SMT KALA BAI AUOLIYAWAT W/O LATE DINESH
AUOLIYAWAT, AGED ABOUT 33 YEARS, OCCUPATION:
NOTHING HOME NO. 245 VILLAGE CHAPLANA TEHSIL
MANASA DISTRICT NEEMUCH PRESENT R/O MANPASAND
COLONY P.S. AERODRUM DISTRICT INDORE (MADHYA
PRADESH)**
- 2. MUSKAN D/O LATE DINESH AUOLIYAWAT THROUGH LRS
KALA BAI AUOLIYAWAT W/O LATE DINESH AUOLIYAWAT,
AGED ABOUT 33 YEARS, OCCUPATION: NOTHING HOME NO.
245, CHAPLANA, TEH. MANASA, DIST. NEEMUCH PRESENT
MANPASAND COLONY, P.S. AERODRUM INDORE (MADHYA**

PRADESH)

3. **PAYAL D/O LATE DINESH AUOLIYAWAT THROUGH LRS SMT. KLA BAI AUOLIYAWAT W/O LATE DINESH AUOLIYAWAT, AGED ABOUT 33 YEARS, OCCUPATION: NOTHING HOME NO. 245, CHAPLANA, TEH. MANASA, DIST. NEEMUCH PRESENT MANPASAND COLONY, P.S. AERODRUM INDORE (MADHYA PRADESH)**
4. **NEETU D/O LATE DINESH AUOLIYAWAT THROUGH LRS KLA BAI W/O LATE DINESH AUOLIYAWAT, AGED ABOUT 33 YEARS, OCCUPATION: NOTHING HOME NO. 245, VILLAGE CHAPLANA, TEH. MANASA, DIST. NEEMUCH PRESENT MANPASAND COLONY, P.S. AERODRUM INDORE (MADHYA PRADESH)**
5. **KUNWARI BAI W/O BHERULAL AUOLIYAWAT, AGED ABOUT 52 YEARS, OCCUPATION: STUDENT HOME NO. 245 VILLAGE CHAPLANA TEHSIL MANASA DISTRICT NEEMUCH PRESENT R/O MANPASAND COLONY P.S. AERODRUM DISTRICT INDORE (MADHYA PRADESH)**
6. **BHERULAL S/O LAKSHMAN AUOLIYAWAT, AGED ABOUT 57 YEARS, OCCUPATION: NOTHING HOME NO. 245, VILLAGE CHAPLANA, TEH. MANASA, DIST. NEEMUCH PRESENT MANPASAND COLONY, P.S. AERODRUM INDORE (MADHYA PRADESH)**
7. **SUMIT URF SANDEEP S/O LATE DINESH AUOLIYAWAT THROUGH LRS KLA BAI AUOLIYAWAT W/O LATE DINESH AUOLIYAWAT, AGED ABOUT 33 YEARS, OCCUPATION: NOTHING HOME NO. 245 VILLAGE CHAPLANA TEHSIL MANASA DISTRICT NEEMUCH PRESENT R/O MANPASAND COLONY P.S. AERODRUM DISTRICT INDORE (MADHYA PRADESH)**

8. **BABU S/O MR. JORJE 32B, AASHIYANA DHARA NAKA MAHU, SHRIRAM NAGAR COLONY, MAHU, INDORE (MADHYA PRADESH)**

9. **ANITA BABU JORJE 32-B AASHIYANA DHARA NAKA MAHU, SHRIRAM NAGAR COLONY, MAHU INDORE (MADHYA PRADESH)**

....RESPONDENTS

***(SHRI GOVIND MEENA & SHRI JM POONEGAR, LEARNED COUNSEL FOR THE RESPONDENTS NO.1, 2, 4, 5, 6 & 7.
SHRI KAUSHAL SISODIYA, LEARNED COUNSEL FOR THE RESPONDENTS NO.8 & 9.***

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

ORDER

This appeal by the Insurance Company under section 173(1) of the Motor Vehicles Act is arising out of the award dated 08.08.2023 passed by Ind MACT, Indore in Claim Case No.1608/2019 seeking exoneration from the liability to pay compensation/reduction in the compensation amount as awarded by the Tribunal.

2. Brief facts of the case are that on 22.04.2019 when deceased Dinesh was going to Lekar Chinar park with his friend Sourabh Jain on a motor cycle bearing registration no.MP-09-VP-0648 and when they reached Eicher bridge Mhow- Neemuch Road, the offending vehicle bearing registration no.MP09-CN-2719 which was driven rashly and negligently came and hit the motorcycle due to which Dinesh sustained grievous injuries and succumbed to death.

3. Before the Tribunal respondents filed their written statement and denied all the averments made in the claim petition. On the basis of the pleadings Tribunal framed issues and after taking evidence of the parties allowed the claim petition and awarded a sum of Rs.41,74,632/- as compensation in favour of the claims and against the appellant/insurance company.

4. Being aggrieved by the impugned award, appellant/Insurance Company has filed this appeal by submitting that Tribunal has grossly erred in not considering that the offending vehicle has been falsely implicated in the accident. The Tribunal has grossly erred in not considering the testimony of driver of the offending vehicle in which he has clearly stated that on 31.01.2019 he has gone along with his vehicle from Indore to Betma church and when he was returning his vehicle got broke down due to which he had to carry his car to show room and he had not caused any accident on the said date. He further stated that he had also made a complaint to the police authorities regarding false implication of his vehicle. The delay in filing the FIR regarding the accident has also not been properly explained by the claimants, hence prayed for setting aside the impugned award exonerating the insurance company from the liability to pay the compensation awarded by the Tribunal.

5. On the other hand, respondents/claimants have submitted that Tribunal has rightly passed the award which does not call for any interference by this court in appeal and prays for dismissal of the appeal.

6. Learned counsel for the appellant/Insurance Company has submitted that the offending vehicle has been falsely implicated in the accident only for the purpose of compensation. The delay in lodging the FIR has also not been properly explained by the claimants. The Tribunal has committed an error in not believing the evidence of the driver of the offending vehicle. Considering the document Ex.P/3, FIR in which it was mentioned that after enquiring the Marg intimation dated 11.02.2019 the FIR was lodged. The accident occurred on 30.01.2019 and FIR was lodged on 06.02.2019. It is true that according to Ex.P/3 FIR was lodged on 06.02.2019 but perusal of the record it was found that police after enquiring the Marg intimation the FIR was lodged.

7. It is settled law that delay in filing the FIR is not fatal either in criminal case or in claim case provided that sufficient and cogent reason for delay in filing the FIR is given. 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.

[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. In the present case perusal of the criminal case it is found that accident occurred on 30.01.2019 and deceased died on the same date and post-mortem was conducted on 31.01.2019. On perusal of Ex.P/3 it is found that an information was sent to the police station that dead body of Dinesh who died in a road accident came for post-mortem, so according to the criminal record information regarding accident and death of Dinesh was given to the police from the hospital and police enquired the matter and thereafter police registered the case. After registration of the case police investigated the matter and after due investigation police found the driver of the offending vehicle caused the accident and after investigation charge sheet has been filed before the competent Magistrate for trial. Therefore, the delay in filing the FIR was sufficiently explained, hence the argument canvassed by the learned counsel for the insurance

company that the delay in registration of the FIR has not been explained has no substance.

9. Learned counsel for the appellant has further submitted that driver of the offending vehicle came before the Tribunal and stated that he had not committed any accident and Tribunal had committed error in not believing his evidence. Considering the evidence of the driver of the offending vehicle it was found that he stated in evidence that he made a complaint before the higher authorities of the police department that his vehicle was falsely implicated in the accident but he has unable to produce any document which show that he filed a complaint before the higher authorities of the police department. He further admitted that he faced a criminal trial under section 304A of the IPC before the competent Magistrate and he also admitted that he was unable to produce any postal receipt by which he had sent the complaint to the higher authorities of the police department. So considering the evidence of the driver of the offending vehicle, in the considered opinion of this Court, Tribunal has rightly disbelieved the evidence of the driver of the offending vehicle.

10. Considering the evidence of AW/4 Pappulal it was found that he was eye witness and he was intact in his cross examination, therefore, there is no reason to disbelieve him and criminal document also supports his evidence and evidence of the driver of the offending vehicle is not reliable.

11. In view of the foregoing discussion, in the considered opinion of this Court, it is not proved that claimants have falsely implicated the offending vehicle only for seeking compensation in the case. Therefore, in the considered opinion of this Court, Tribunal has rightly

allowed the claim petition and fastened the liability to pay compensation on the insurance company.

12. The appeal being devoid of merit is hereby dismissed.

(HIRDESH)
JUDGE

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