

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

BEFORE

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)
MISCELLANEOUS APPEAL NO. 3067 OF 2019**

BETWEEN:-

**1. SHRIRAM GENERAL INSURANCE CO.
LTD., HAVING ITS OFFICE AT 1ST FLOOR,
PLOT NO.48, M.P. NAGAR, BHOPAL (MADHYA
PRADESH) THROUGH ITS LAW OFFICER
HAVING OFFICE AT 201-202, 2ND FLOOR
ANMOL SPACES, 21 VAIKUNTH DHAM,
INDORE (MADHYA PRADESH)**

....APPELLANT

(BY A. N. SHARMA - ADVOCATE)

AND

**1. RAMESHWARI BAI W/O ISHWAR SINGH,
AGED 40 YEARS, THROUGH NEXT FRIEND &
HUSBAND ISHWAR SINGH S/O HALKE SINGH,
AGED 45 YEARS, R/O VILLAGE NONBHET,
TEHSIL BUDHNI, DISTRICT SEHORE, M.P.
PRESENTLY AT SEMRA GATE, BHOPAL
(MADHYA PRADESH)**

**2. BRAJENDRA SINGH S/O NANDA SINGH,
AGED ADULT, R/O VILLAGE BADODIYA
KHURD, TEHSIL BADI, DISTRICT RAISE
(MADHYA PRADESH)**

**3. YASHWANT SINGH S/O HALKE SINGH,
AGED ADULT, R/O HOUSE NO.162,
PURUSHOTTAM NAGAR, SEMRA GATE,
PHASE - 2, BHOPAL, DISTRICT BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI S. K. SHARMA – ADVOCATE FOR THE RESPONDENT
NO.1)

Reserved on : **21/06/2023**

Passed on : **20/09/2023**

*This Miscellaneous Appeal having been heard and reserved for orders, coming on for pronouncement on this day, **Justice Amar Nath (Kesharwani)** pronounced the following:*

ORDER

This Miscellaneous Appeal under Section 173(1) of the Motor Vehicles Act, 1988 is filed by the appellant/Insurance Company being aggrieved with the award dated 29/03/2019 passed by learned Fifth Additional Motor Accident Claims Tribunal, Bhopal in Motor Accident Claim Case No.1001/2017, whereby the learned Tribunal has awarded a sum of Rs.9,17,004/- (nine lakhs seventeen thousand four) with interest @ 6% per annum from the date of filing of petition till date of realization.

2. Brief facts of the case are that on 28/02/2017 at 03:00 p.m. respondent no.1/claimant was returning to her house after attending a marriage function on a motorcycle bearing registration No.MP-05-MQ-5359, which was being driven by respondent No.3 in rash and negligent manner, due to which respondent No.1 fell down from the motorcycle. In the incident respondent No.1 sustained grievous injuries on her head, face and ear. After the accident, respondent No.1 was admitted at Narmada Hospital, Bhopal, where she got stitches in her head. It was alleged that due to the injuries sustained by respondent No.1 in the accident, she

remained in coma for a long period. Since, respondent No.1 remained in coma, hence, on 09/05/2017 respondent No.1 through her husband filed a claim petition (MACC No.1001/2017) before the learned Claims Tribunal, Bhopal stating that at the time of incident the offending vehicle bearing registration No.MP-05-MQ-5359 was being driven by respondent No.3, owned by respondent No.2 and insured with appellant. A sum of Rs.8-10 lakhs has been incurred in the medical expenses. It is stated that prior to the accident, respondent No.1/claimant was healthy and fit and did sewing and embroidery work from her house and earned Rs.300/- per day from that work. Hence, prayed to award a sum of Rs.37,50,000/- (thirty seven lakhs fifty thousand) as compensation with interest @ 12%.

3. Respondent Nos.2 & 3 have not contested the case before the Claims Tribunal despite the service of notice and they were proceeded ex-parte by the Tribunal.

4. Appellant/insurance company in its written statement denied the averments mentioned in the claim petition and pleaded that there was breach of insurance policy as respondent No.2 was driving the offending motorcycle without valid and effective license. Neither respondent No.1 has filed any disability certificate, nor she has produced documents relating to her treatment. The accident occurred due to negligence on the part of brother-in-law of respondent No.2. The accident occurred on 28/02/2017 and the FIR was lodged on 15/04/2017 after a delay of 46 days and no explanation for delay is mentioned in the F.I.R. Hence, appellant/insurance company has no liability to pay any compensation and prays for dismissal of the claim petition against the insurance company.

5. Learned Claims Tribunal framed the issues. In support of claim petition, respondent No.1 examined her husband Ishwar Singh as AW-1,

Kamlesh Thakur (AW-2) as eye witnesses and Dr. R.K. Bairagi (AW-3) to prove disability certificate (Ex.P/21). Appellant-insurance company has not adduced any evidence in support of its pleadings. After considering the evidence placed on the record and considering the argument advanced by the learned counsel for the parties, learned Claims Tribunal has passed the impugned award and has awarded an amount to the tune of Rs.9,17,004/- (nine lakhs seventeen thousand four) as compensation with interest @ 6% per annum from the date of filing of petition till the realization, and being aggrieved by the impugned award, appellant/Insurance Company has preferred the present miscellaneous appeal.

6. Learned counsel for the appellant submits that the learned Tribunal has totally ignored the fact that there was delay of 1 month 16 days in lodging the FIR as the accident took place on 28/02/2017 and FIR was lodged on 15/04/2017 and such delay has not been explained by the respondent No.1/claimant. He further submitted that if on the date of accident, respondent No.1 was traveling on the offending vehicle and the driver of the offending vehicle was her brother-in-law (Dever), then in that case, the F.I.R. would have been lodged on the date of accident along with registration number of the offending vehicle with name of driver of the vehicle, but this has not been done. Thus the claimant has failed to prove the involvement of the alleged offending vehicle in the matter and the fraudulent involvement of the vehicle to get the compensation from the public funds cannot be ruled out. Learned counsel also submitted that the facts regarding driving of the vehicle with rash & negligent manner is not mentioned in the F.I.R. and amount of compensation awarded by the learned Tribunal is exorbitant and contrary to the pleadings of the claimant and is liable to be modified. The learned tribunal has erred in taking the income of the claimant @ Rs.9,000/- (Nine thousand) per month without

any proof of the earning and thus the income of the claimant should not be taken more than Rs.3,000/- per month in absence of any documentary proof of earning. Hence, it is prayed that the appeal be allowed and impugned award be set aside.

7. Learned counsel for the respondent No.1/claimant supports the impugned award and submits that the insurance company has not adduced any evidence in support of their pleadings. Learned Claims tribunal passed the impugned award after due appreciation of evidence, that came on record, which requires no interference, hence appeal filed by the appellant/insurance company be dismissed. In support of his arguments learned counsel for claimant placed reliance on the order passed by Hon'ble Apex Court in the case of **Ravi Vs. Badrinarayan and Others, AIR 2011 SC 1226** and order passed by the co-ordinate Bench of this Court in the case of **Mohammad Azad @ Aju Vs. Mahesh & Others, ILR (2015) M.P. 1810 (Indore Bench)**.

8. I have heard the learned counsel for the parties, gone through the record and the citations placed by the learned counsel for the respondent No.1.

9. As per certified copy of FIR (Ex.P-2) claimant was brought to Narmada Hospital on 28/02/2017 by her nephew Manish, but Manish has not been examined on behalf of the claimant before the Tribunal and his statement was not recorded even by the investigating officer during investigation of the case.

10. The statement of the treating Doctor was not recorded on behalf of the claimant before the Tribunal. It is said that claimant was admitted in Narmada Hospital, Bhopal from 28/02/2017 to 09/04/2017, but bed head ticket was not filed in the case and no prescription of the date of admission

i.e. 28/02/2017 in the hospital is filed in the case. It is mentioned in the Ex.P-10 dated 25/03/2017 and Ex.P-11 dated 20/05/2017 by the Doctor that “patient is not fit to give statement”, but statement of that Doctor was not recorded on behalf of the claimant before the Tribunal regarding unconsciousness of patient (claimant/respondent No.1).

11. It is settled principle of law that delay in filing of FIR is not fatal either in criminal cases or in claim cases provided sufficient and cogent reasons for delay in filing the FIR are given.

12. In the case of **Ravi Vs. Badrinarayan and Others, AIR 2011 SC 1226**, Hon’ble Apex Court has held in Para 20 & Para 21 (which are reproduced as below) that -

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.

(EMPHASIS SUPPLIED)

13. It reveals from the record that from the date of the incident till the discharge of the claimant from the hospital, no information regarding accident was given by any person including relatives of the claimant to any Police Station to lodge the report. It is also revealed from the discharge summary Ex.P-12 that respondent No.1 was admitted at Narmada Trauma Center, Bhopal on 28/02/2017 at 05:08 p.m. and she was discharged on 09/04/2017 at 03:30 p.m. and FIR (Ex.P-2) was registered on 15/04/2017 at 11:49 a.m. which is after delay of 46 days from the date of incident. Explanation regarding delay in lodging the FIR has not been mentioned in Ex.P-2. It reveals from FIR (Ex.P-2) that after receipt of the copy of rojnamcha-sanha No.53 dated 24/3/2017 from Police Station Habibganj Bhopal and P-MLC report, inquiry was made and after that FIR Ex.P-2 was registered.

14. In certified copy of Rojnamcha-sanha No.53 dated 24/03/2017 of Police Station Habibganj, Bhopal, it is mentioned that patient Smt. Rameshwari Thakur W/o Ishwar Thakur aged 26 years has fallen down from two wheeler on 28/02/2017 at 03:00 p.m. at her village, but facts regarding vehicle number and driver of said vehicle were not mentioned. It is mentioned in P-MLC report of Narmada Hospital (Ex.P-8) that same was provided on 24/03/2017 to Constable of Police Station Habibganj,

Bhopal, but receipt of said document seems to be received on 25/03/2017, on the basis of which inquiry was initiated. Hence, it reveals that no information was sent to the concerning Police Station prior to 24/03/2017 that claimant/respondent No.1 has come in injured condition due to road traffic accident.

15. The relation between owner of motorcycle (respondent No.2) and driver of offending vehicle (respondent No.3) is not on record. Also it is not on record that in what circumstances the offending vehicle was in possession of respondent No.3 at the time of incident. Claimant has not filed any document before the tribunal in which the owner of the alleged offending vehicle admitted that alleged vehicle was involved in the incident. Hence, citation **Ravi Vs. Badrinarayan and Others, (supra)** extends no help to the claimant because the facts and circumstances of that case and the case in hand are different. Facts and circumstances of the case of citation **Mohammad Azad @ Aju Vs. Mahesh & Others (supra)** is also different, hence that too extends no help to the claimant.

16. It is mentioned in the IPD Bill issued by Narmada Trauma Center dated 09/04/2017 amounting to Rs.4,05,044/- (Four lakhs five thousand forty four only) is related to C.M. Relief Fund, it means that payment of that bill was made by the C.M. Relief Fund, but learned tribunal has wrongly awarded that amount of bill as compensation.

17. Although the Motor Vehicle Act is a beneficial legislation and the provisions thereof have to be given beneficial meaning and effect, but such liberal construction should be limited to the interpretation of provision of the Act and the Tribunals/Courts should not over reach its powers and must tread carefully while passing the award since the insurance companies deal with public funds and such public funds should not be allowed to be

expended in fraudulent cases. Beneficial legislations like Motor Vehicle Act should be interpreted in a purposive manner which would effectuate the object of the legislation and it should not be used as a means of charity.

18. As discussed above, in the facts and circumstances of the case this Court is of the opinion that possibility of false implication of the alleged vehicle to get compensation from Insurance Company cannot be ruled out, and it is not found proved from the preponderance of possibilities that the claimant (Respondent no.1) has sustained injury due to the accident which was allegedly occurred on 28/02/2017 due to rash and negligent driving of motorcycle bearing registration No.MP-05-MQ-5359 by respondent No.3. Hence, appeal filed by the appellant/Insurance company is allowed and impugned award passed by the learned Tribunal is set aside.

19. No order as to the cost.

20. Let record of Claims Tribunal be sent back along with a copy of this order.

(AMAR NATH (KESHARWANI))

JUDGE

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