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

**BEFORE  
HON'BLE SHRI JUSTICE HIRDESH  
ON THE 20<sup>th</sup> OF DECEMBER, 2023**

**MISC. APPEAL No. 2306 of 2022**

**BETWEEN:-**

**SHRIRAM GENERAL INSURANCE CO. LTD. THROUGH  
DIVISIONAL MANAGER, SHRIRAM HOUSE PLOT NO.48,  
FIRST FLOOR, ZONE-II, MP NAGAR BHOPAL (M.P.) [AS  
PER IMPUGNED AWARD] THROUGH LAW OFFICER  
SHRIRAM GENERAL INSURANCE CO. LTD., 201-202,  
ANMOL SPACE BUILDING, INDORE (MADHYA  
PRADESH)**

**.....APPELLANT**

***(BY SHRI T.S.LAMBA - ADVOCATE)***

**AND**

- 1. SMT. SAVITRI BAI W/O LATE SHRILAL RATHORE,  
AGED ABOUT 58 YEARS, R/O VILLAGE MARHETI,  
TAHSIL SILWANI, PRATAP GARH, DISTRICT  
RAISEN (MADHYA PRADESH)**
- 2. SHRILAL RATHORE S/O PARAMSHUKH, AGED  
ABOUT 59 YEARS, R/O VILLAGE MARHETI,  
TAHSIL SILWANI, PRATAP GARH, DISTRICT  
RAISEN M.P. AT PRESENT VILLAGE TOLA,  
SAMARDHA KALIYA SOT TAHSIL HUZUR  
DISTRICT BHOPAL (MADHYA PRADESH)**
- 3. LAXMAN SINGH GURJAR S/O LALLURAM  
GURJAR, AGED ABOUT 42 YEARS, R/O VILLAGE,  
MANDAKSIYA, POLICE STATION -NOORGANJ,  
TAHSIL GOHARGANJ DISTRICT RAISEN M.P.  
(MADHYA PRADESH)**
- 4. INDER SINGH GURJAR S/O BABULAL GURJAR,  
AGED ABOUT 30 YEARS, R/O VILLAGE  
MANDAKSIYA POLICE STATION NOORGANJ,  
TAHSIL GOHARGANJ DISTRICT RAISEN M.P.  
(MADHYA PRADESH)**

**.....RESPONDENTS**

*Reserved on : 30.11.2023*  
*Pronounced on:20.12.2023*

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*This appeal having been heard and reserved for orders, coming on for pronouncement this day, this Court passed the following:*

**ORDER**

This Misc.Appeal under section 173(1) of the Motor Vehicles Act, 1988 (for brevity "the Act") has been filed by the appellant-Shriram General Insurance Company Limited (hereinafter referred to as the "Insurance Company") against the impugned award dated 15.3.2022 passed by the Sixth Additional Motor Accidents Claims Tribunal, Bhopal [for short "the Tribunal"], by which, it awarded compensation of Rs.13,30,600/- to the respondents/claimants on account of death of their son in motor accident.

2 . Brief facts of the case are that the respondents No.1 & 2/claimants, who are parents of the deceased-Mahesh Rathore, filed claim petition under section 166 of the Act contending that on 20.4.2019 at about 7.35 p.m. when deceased-Mahesh Rathore was going alongwith his friend on his motor-cycle at that juncture a car bearing registration No.MP-04/BC-0956 which was driving rashly and negligently dashed the motorcycle of the deceased causing him grievous injuries to the deceased on his vital parts of body. Ultimately, the deceased succumbed to the injuries and died during treatment on 21.4.2019 at Hamidiya Hospital, Bhopal. Accordingly, offence was registered at Police Station, Satlapur, Mandideep, District Raisen. The respondents/claimants filed claim petition claiming compensation jointly and severally against owner, driver and insurers of the offending vehicle.

3 . The respondents No.3 & 4 (non-applicants No.1 & 2) remained

e x parte before the Tribunal and did not file written statement. The appellant/Insurance Company/non-applicant No.3 filed written statement denying all the adverse allegations and contended that offence has been registered after about one month six days against unknown vehicle and thereafter 2 months and 04 days of accident the vehicle has been involved on 30.6.2019. The respondent/non-applicant no.1 himself reached to the Police Station and got his vehicle seized. This shows that a false case has been registered against the said vehicle just to realize amount of compensation from the Insurance Company. Alternatively, breach of terms and conditions of the insurance policy has been contended.

4 . The Tribunal on the basis of pleadings of parties framed issues and on recording of evidence and hearing learned counsel for the parties passed the impugned award directing to pay amount of compensation of Rs.13,30,600/- to the respondents/claimants alongwith interest at the rate of 6% p.a. from the filing of the claim petition till realisation.

5 . Being aggrieved with the impugned award the appellant/Insurance Company has filed this appeal on the ground that Tribunal apparently erred in law as well as on facts in holding the Insurance Company liable to pay compensation. The findings arrived at by the Tribunal are perverse, illegal and bad in law and deserves to be set aside as against the appellant. The accident is dated 20.4.2019 and FIR has been lodged with delay of about 01 month and 06 days on 26.5.2019 against unknown vehicle and till that time there was no revelation of said offending vehicle even in the statements taken in marg enquiry. To prove that car (MP-04/BC-0956) has falsely been involved in the accident, appellant/Insurance Company also adduced evidence of Investigator (Saurabh Dilodare) as Non-applicant Witness No.1. Hence, prayed that the impugned

award as against Insurance Company be set aside.

6 . On the other hand, learned counsel for the respondent has supported the impugned award and prayed to dismissed the appeal.

7 . Heard the learned counsel for the parties and perused the record of the Tribunal. On perusal of FIR (Exhibit-P/2) it reflects that it was lodged on 26.5.2019 and Marg No.12/2019 under section 174 Cr.P.C. (Exhibit-P/8) shows that information was given by the Hospital in relation to death of deceased on 21.4.2019. Exhibit-P/11 is 'Naksha Panchnama' reflects that death of deceased occurred due to accident. Accordingly, the FIR (Exhibit-P/2) it is specifically mentioned that unknown vehicle dashed the deceased. According to final report (Exhibit-P/1) it is clear that it has been filed against the driver of offending vehicle bearing registration No.MP-04/BC-0956 and offence has been registered against him under sections 279, 337, 304-A and 338 of IPC.

8 . Learned counsel for the appellant submitted that FIR was lodged with delay and it was not properly explained. But, perusal of FIR and Marg intimation it is clear that accident occurred on 20.4.2019, marg intimation was lodged on 21.4.2019 and FIR lodged on 26.5.2019 against the offending vehicle. Although lodging of FIR may be fatal but in the matter for deciding the claim cases the delay in lodging of FIR should not be treated as vital proceeding, if the claimant has been able to give satisfactory and cogent reason for such delay in lodging FIR.

9. The Apex Court in the case of **Ravi Vs. Badrinarayan and others**, AIR 2011 SC 1126 it has been 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."*

10. In the present case, according to the pleadings of the claimants, the deceased was going along with his friend on his motorcycle and at that juncture the offending car (MP-04/BC-0956) being driven rashly and negligently dashed the motorcycle and deceased suffered grievous injuries and eventually he succumbed to the same during treatment on 21.4.2019. From 20.4.2019 to 26.5.2019 no one informed the Police that as to which vehicle had caused accident. Till 26.5.2019 the Police did not know the number of vehicle which caused accident and also did not know the person who was driver of the offending vehicle.

11. Shrilal Rathore (AW.1), who is claimant No.2/respondent No.2 deposed in his evidence before the Tribunal and admitted in his cross-

examination that he was not present at the spot at the time of accident. He also admitted that at the time of accident he was not present at the spot. He further admitted in cross-examination that for about one month no one informed him that which vehicle had caused accident. It is true that in the absence of information regarding number of offending vehicle he did not lodge complaint at the Police Station. He also admitted that he does know that Police seized the offending vehicle after about two months from the date of accident. He also does not know that owner of the vehicle of the offending vehicle himself appeared at the Police Station and got his vehicle seized. He further stated that he does not know that owner and driver of the vehicle reside in the same village.

12. Dharmendra s/o Ravishanker Rathore (AW.2) is the star witness. He has been produced before the Tribunal as an eye witness of the accident. He deposed in his examination-in-chief by way of affidavit that on 20.4.2019 at about 7.35 p.m. he was going for his duty on his motorcycle. When he reached near Police Station, Satlapur he saw a Maruti Omni Car bearing registration No.MP-04/BC-0956 came very rashly and negligently and hit the motorcycle driven by deceased-Mahesh Rathore as a result he and his friend sustained injuries and thereafter he went on his duty. He later on came to know that Mahesh Rathore passed away during treatment. In his cross-examination he admitted that he and deceased were well known to each other. The deceased was also performing job in Dawat Company. According to this witness he saw the accident from some distance and he know the number of the offending vehicle and deceased, who was working in the same company, But, this witness has not dared to disclose the number of offending vehicle to the family members of the deceased or dare to go to the Police Station to disclose the

number of the offending vehicle. So version of this witness (AW.2) is not reliable because he did not disclose registration number of the offending vehicle to the Police or any any family member of the deceased for considerable long time. He also told the registration number of offending vehicle to the family members after two months of the accident. Thus, the deposition of this witness does not inspire confidence of this Court couple with the fact that there is delay in lodging of FIR and initial documents prepared by the Investigating Officer show that accident occurred with the unknown vehicle.

13. It is settled law that if the Police registers the case against driver of the offending vehicle and after investigation challan is filed before the Magistrate Court, then Tribunal can presume the driver of the offending vehicle to be guilty. It is also settled that delay in lodging was not fatal to the claim case, but these are presumptions against the driver of the offending vehicle. But, these presumptions are rebuttable. One who raise doubt about involvement of the offending vehicle then burden of proof lies upon them. It can be proved by way of direct evidence or lacuna in the evidence produced by the claimant. But, in the present case, the accident occurred on 20.4.2019. Marg intimation was lodged on 21.4.2019 against unknown vehicle. FIR was lodged on 26.5.2019 against unknown vehicle. In the Marg intimation or enquiry the Police does not know the registration number of the offending vehicle and nowhere the registration number of the vehicle was stated. The Insurance Company/appellant filed statements of Laxman Singh Gujar, Inder Singh Gujar, Ashok Shivhare, Lakhan Rathore, Sachin Rathore, Balkishan, Ballu, Ramsewak Rathore and Mahesh Rawa taken by the Police in enquiry as Exhibits-D/2, D/3, D/4, D/5, D/6, D/7 & D/8. In all these statements of Marg Investigation no one stated about the registration number of the offending vehicle. Witness Dharmendra

(AW.2) who said that he was eye witness of the accident, as discussed above, found that he never come to the Police Station for stating about registration number of the offending vehicle nor he stated the registration number to the family members of the deceased, till registration of FIR. On 28.6.2019 he disclosed the registration number of the offending vehicle to the family members of the deceased. The reason behind this, which was stated by him in his deposition, was not reliable. The owner and driver of the offending reside in the same village.

14. So, in view of aforesaid evidence available on record it is clear that offending vehicle was planted to show that accident was caused by it or because the vehicle by which accident occurred was not insured. Whatever may be the cause for planting the vehicle with help of owner, driver or police personnel is deprecated. Although the Motor Vehicles Act is a beneficial legislation. The beneficial mean to the effect such liberal construction should be limited to the interpretation of the provisions of the Act and the Tribunal should not over reach its power and must scrutinize the carefully while passing the award against the Insurance Company which deals with public fund and public fund should not be allowed to spent for fraudulent cause. The beneficial legislation like Motor Vehicles Act should be interpreted in the purposeful manner which would be effective object of the legislation and it should not be used as a means of charity.

15. So as a above discussion in the facts and circumstances of this cases this Court is of the opinion that possibility of false implication of the alleged offending vehicle to get the compensation from the Insurance Company can not be ruled out. It is not proved from the preponderance of possibility that



deceased due to accident which occurred on 20.4.2019 due to rash and negligent driving of the offending vehicle by the respondents/driver

16. Hence, appeal filed by the Insurance Company to set aside the impugned award is allowed.

**(HIRDESH)  
JUDGE**

RM

