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C.M.A.No.1960 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.11.2023	Delivered on 15.12.2023
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.1960 of 2017

1.A.Vasanthi
2.A.Suganya
3.A.Sunil Kumar @ Anil Kumar

...Appellants

Vs.

1.S.Jayakumar
2.United India Insurance Co., Limited,
Motor Third Party (HUB),
134, Silingi Building,
Greams Road, Chennai.
3.The Secretary,
Government of Tamil Nadu (Home) Department,
Chennai.
(3rd respondent suo-motu impleaded vide Court
order dt. 04.07.2023 made in CMA/1960/2017
by RSMJ & RKMJ)

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.02.2017 made in MACTOP.No.2597 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai.



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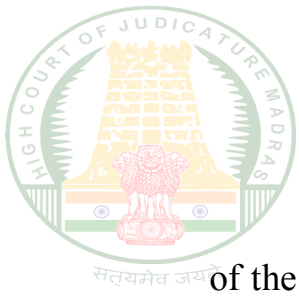


For Appellants : Mr.R.Thirugnanam
For Respondents : Mr.S.Arunkumar for R2
Mr.R.Shanmugasundaram,
Advocate General assisted by
Mr.Edwin Prabhakar
Special Government Pleader for R3
R2-Served-No appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This appeal is at the instance of the claimants, who had sought for compensation for the death of one K.Arulappan in a motor accident that occurred on 26.02.2009 at about 11.30 hours, while the said Arulappan was walking near rear gate of the Madhavaram Milk Dairy was hit by a lorry bearing Registration No.TN-04-C-7396, which came in the opposite direction. Claiming that the lorry was driven in a rash and negligent manner by its driver and the accident was the result of the said negligence of the driver, the claimants sought for a compensation of Rs.27,00,000/-. The quantum was sought to be supported by the plea that the deceased was working in the Madhavaram Dairy and was earning Rs.18,000/- per month. Compensation for loss of love and affection, consortium, funeral expenses etc., was also claimed.



2.The claim petition was resisted by the 2nd respondent / Insurer

of the lorry contending that the vehicle insured with it namely, lorry bearing Registration No.TN-04-C-7396 was not involved in the accident at all. The Insurance Company pointed out that the First Information Report filed on the date of the accident did not disclose the vehicle that was involved in the accident. All that was stated was, a lorry carrying milk came in the opposite direction and dashed against Arulappan. The Insurance Company also relied upon the fact that no final report was filed pursuant to the First Information Report, which was marked as Ex.P1 and the Magistrate had closed the First Information Report as time barred under Section 468 of the Code of Criminal Procedure. The details of employment and the income were also denied. The quantum of compensation claimed was termed as excessive.

3.At trial, before the Tribunal, the 1st claimant / wife of Arulappan was examined as P.W.1 and four other witnesses were examined as P.W.2 to P.W.5. One S.Elango, who was the Sub-Inspector of Police, Transport Investigation Wing, Chintadripet, Chennai was examined as P.W.2. One K.Vimala,P.W.2, was examined as an eye-witness and one G.D.N.Chandran



was examined as P.W.4. Exs.P1 to P15 were marked. The copy of the unfiled charge sheet was marked as Ex.P11. On the side of the 2nd respondent / Insurance Company G.Ramamurthy, the driver of the lorry was examined as R.W.1 and Exs.R1 to R5 were marked.

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4. The Tribunal, on appreciation of the evidence found that the claimants have not established the fundamental fact as to the involvement of the lorry bearing Registration No.TN-04-C-7396 in the accident. The Tribunal refused to go by the First Information Report and the charge sheet, since it suspected planting of the vehicle. The basis of the suspicion of the Tribunal was that the charge sheet, which was not filed into Criminal Court in time made its way to the Tribunal through the claimants. On the finding that the vehicle was not involved in the accident, the Tribunal dismissed the claim in toto. Hence, this appeal.

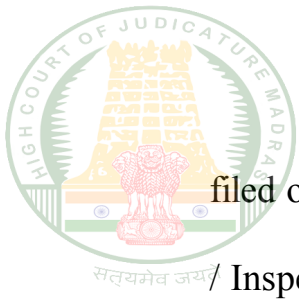
5.After hearing the parties for some time, we entertained a doubt as to how a final report / charge sheet which should have been filed before the Criminal Court under Section 173(2) of the Code of Criminal Procedure was produced before the Tribunal after the criminal case was closed as



barred by limitation under Section 468 of Criminal Procedure Code, 1973.

It is evident that the final report has been prepared within a year from the date of the First Information Report but, the same has not been filed before the Criminal Court. The reasons for such non-filing are not forthcoming, we wanted to know the reasons for non-filing of the final report before the Criminal Court. We therefore, suo motu impleaded the Secretary, Home, Government of Tamil Nadu and required a report on the state of affairs, which in our opinion, was a little alarming.

6. We found it very peculiar that a final report prepared within time is not filed into Court and thereby, a person charged of an offence under the Indian Penal Code goes scot free or he is acquitted by the Police Officer concerned, but, at the same time, a copy of the final report reaches the Motor Accident Claims Tribunal in a claim petition filed by the third party claimants. We suspect a definite collusion between the Police and the claimants in bringing about the above situation. Hence, we had required the State Government namely, the Secretary, Home Department to clarify as to how the final report which did not reach the Criminal Court had reached the Tribunal. Pursuant to the notice issued by us, two status reports have been



filed on behalf of the Home Secretary. One by the Additional Commissioner / Inspector General of Police (Traffic), Greater Chennai and the other by the

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Assistant Commissioner of Police, Traffic Investigation (North), Chintadripet, Chennai -2. We will advert to the contents of those reports in the course of this judgment. We shall now deal with the merits of the appeal.

7.We have heard Mr.R.Thirugnanam, learned counsel appearing for the appellants, Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent / Insurance Company and Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.Edwin Prabhakar, learned Special Government Pleader for the impleaded 3rd respondent. Despite service, the 1st respondent / owner of the lorry is not appearing either in person or through counsel, duly instructed.

8.Mr.R.Thirugnanam, learned counsel for the appellants would vehemently contend that eventhough the First Information Report did not contain the registration number of the lorry and it was stated that it was a unknown lorry, the police, after investigation had found that the accident

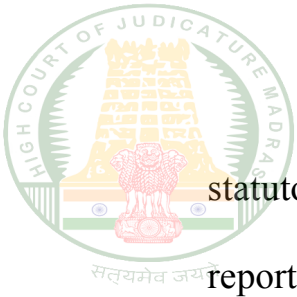


was caused by the lorry bearing Registration No.TN-04-C-7396. According to the learned counsel, the final report filed as Ex.P11 r/w. the evidence of P.W.3 would clinchingly prove the accident. The learned counsel would further submit that once the accident is proved, the liability of the Insurance Company is automatic.

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9.Contending contra, Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would submit that the Tribunal was justified in its conclusion that the lorry insured with it bearing Registration No.TN-04-C-7396 was not involved in the accident. The learned counsel would submit that once a First Information Report is registered for a cognizable offence, an obligation is cast on the Police to conduct investigation. Section 173 of the Criminal Procedure Code,1973 mandates that the investigation should be completed without unnecessary delay. Section 173(2)(i) of the Code requires the Police Officer to forward the final report to the Magistrate empowered to take cognizance of the case.

10.Relying upon the language of Section 173(2)(i) of Cr.P.C., where it uses the word "**shall**", Mr.S.Arunkumar would submit that a

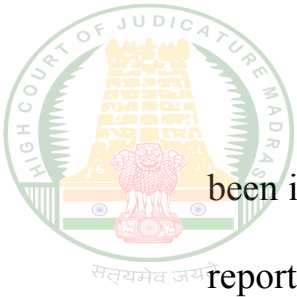


statutory obligation is cast upon the Investigating Officer to forward the final report to the Court concerned. The learned counsel would also point out that

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Section 468 of Cr.P.C., provides for the outer time limit within which, the report shall be forwarded to the Court. According to the learned counsel for the Insurance Company, a final report which is not forwarded to the Magistrate is not a valid document and it cannot be relied upon for any purpose. The learned counsel would also point out that by preparing the final report and not forwarding it to the Magistrate within a limitation prescribed under Section 468 of Cr.P.C., 1973, the Police Officer, in effect, acquits a person, who is charged of an offence under the Indian Penal Code. Terming it as a very serious flaw, the learned counsel for the Insurance Company would submit that the Tribunal was justified in refusing to rely upon the said final report as evidence of the accident.

11.Mr.R.Shanmugasundaram, learned Advocate General would admit that non-forwarding of the final report to the concerned Magistrate is a serious lapse. He would also submit that several steps have been put in place pursuant to the past experience and also pursuant to the orders of this Court to check such mishaps. He would add that required instructions have



been issued to the Police Officers concerned as to the need for filing the final reports in time. According to the learned Advocate General, as of today, the number of cases in which the First Information Report is closed on the ground of limitation has drastically reduced. We have considered the rival submissions.

12. Section 173(2) of Cr.P.C., reads as follows:-

(2) (i) As soon as it is completed, the officer in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

- (a) the names of the parties;*
- (b) the nature of the information;*
- (c) the names of the persons who appear to be acquainted with the circumstances of case;*
- (d) whether any offence appears to have been committed and, if so, by whom;*
- (e) whether the accused has been arrested;*
- (f) whether he has been released on his bond and, if so, whether with or without sureties;*
- (g) whether he has been forwarded in custody under Section 170.*
- (h) whether the report of medical examination of the*

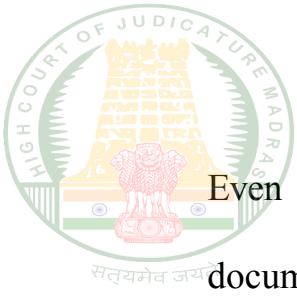


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woman has been attached where investigation relates to an offence under Sections 376, 376A, 376B, 376C, [376D or section 376E of the Indian Penal Code (45 of 1860)].

13.As rightly contended by Mr.S.Arunkumar, provision is couched in a mandatory language and it imposes a statutory obligation on the Police Officer to forward the final report to the Magistrate concerned. The consequence of the failure to forward the final report is an acquittal granted by the Police Officer himself without reference to Court. The criminal justice system does not contemplate such acquittal. A final report which is prepared and not forwarded to a Magistrate, in our considered opinion, has no value and the same cannot be relied upon, as evidence, in any other proceeding.

14.No doubt, Mr.R.Thirugnanam, learned counsel for the appellants would submit that the evidence of P.W.2 and P.W.3 would be sufficient to conclude that the vehicle in question bearing Registration No.TN-04-C-7396 was involved in the accident. He would draw our attention to the evidence of P.W.2, the Sub-Inspector of Police, Traffic Investigation Wing wherein, he had stated that a final report has been filed.



Even in chief-examination, he has stated that he is deposing as per documents. He would admit that the First Information Report was closed by the Magistrate Court for non-filing of final report within the statutory period of one year allowed under Section 468 of Criminal Procedure Code, 1973.

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15. We find that the Investigating Officer himself has been examined as P.W.5. Though he has deposed to the effect that he has collected the trip sheets of the lorries from the Milk Dairy, the same have not been produced before the Tribunal. P.W.5 would admit that he has not collected the trip sheets and filed it before the Tribunal or annexed it with the final report prepared by him. Therefore, what we have as evidence of the accident is only the final report not supported by any material and evidence of P.W.3, who claims that she was an eye-witness.

16. We have been taken through the evidence of P.W.3. We can, at the outset, state that her evidence is not trust worthy. In the proof affidavit, she had stated that while she was walking on the road near the rear gate of Madhavaram Dairy, the lorry which was coming in the opposite direction dashed against the pedestrian, walking ahead of her, she has also given the



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lorry number. In the cross-examination, she had stated that she has not given any statement to the Police about the accident. She had also stated that she informed only the Security Guard. This statement of her's is belied by Ex.R5, which is a letter addressed by her to the Inspector of Police, Traffic Investigation Wing. In the said letter dated 21.04.2009, she has stated that one Baskaran, who was the driver of the lorry bearing Registration No.TN-07-AR-3525 had claimed that no one can find out the vehicle that caused the accident. She has asserted that it was the vehicle bearing Registration No.TN-04-AR-3525 which caused the accident. A similar letter has also been given by the 1st claimant accusing the driver of the lorry bearing Registration No.TN-07-AR-3525 as the cause for the accident. The above contradictions would make the evidence of P.W.3 wholly unreliable.

17. Apart from the above, there is very vital documentary evidence in the form of Ex.R2, which is a Milk distribution list for the lorry bearing Registration No.TN-04-C-7396 which has been obtained from the Madhavaram Dairy and produced before the Court. The said document contains the time at which the lorry left the Dairy and the time at which it



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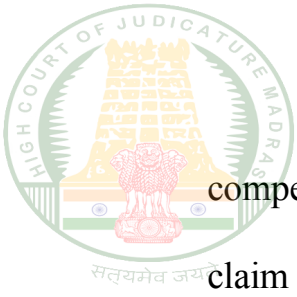


came back to the Dairy. The details are as follows:-

- i) Time at which the lorry left the Dairy - 11.15 a.m.
- ii) Time at which the lorry reached the first vending point - 11.45 a.m.
- iii) Time at which the milk was unloaded at the first vending point - 12.15 p.m.
- iv) Time at which the vehicle reached the last vending point - 12.30 p.m.
- v) Time at which the empty tubs were collected from the last vending point - 1.30 p.m.

The above would show that there was no possibility of the lorry bearing Registration No.TN-04-C-7396 having been involved in the accident at 11.30 a.m. in the morning.

18. We are therefore, unable to fault the Tribunal for having arrived at the conclusion that the claimants have not established the fact that the lorry bearing Registration No.TN-04-C-7396 was, in fact, involved in the accident. Once it is found that the lorry was not involved in the accident, sympathies apart, the Insurance Company cannot be directed to pay

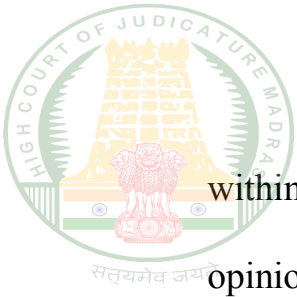


compensation. Therefore, we have to necessarily affirm the dismissal of the claim petition by the Tribunal.

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19. Adverting to the non-filing of the final report, the status reports filed by the Officers of the Traffic Investigation Wing reveal that a very serious lapse has been sought to be brushed aside very lightly. The 1st status report has been filed on 03.08.2023. It reveals that First Information Report was closed on 23.11.2013 on the ground that it is time barred. The final report that has been marked as Ex.P1 is dated 19.02.2010, which has been prepared within one year from the date of the First Information Report dated 26.02.2009. But, the same has not been forwarded to the Magistrate as required under Section 173(1) of the Criminal Procedure Code, 1973. The status report states that the Officer who was in-charge of the Police Station at the relevant point of time is still in service and an enquiry will be held and **if found wanting** action will be taken as per the law in force. We are unable to comprehend the expression '**if found wanting**'.

20. As already pointed out that Section 173 of Cr.P.C., imposed a statutory obligation on the part of the Police Officer to file a final report



within the time prescribed under Section 468 of Cr.P.C. In our considered opinion, mere non-filing of the final report is a dereliction of duty on the part of the Police Officer in-charge of the investigation of the crimes. We are compelled to observe that a result of non-filing of final reports within time and closing a First Information Reports under Section 468 of Cr.P.C., is an acquittal of an offender, who is alleged to have committed a cognizable offences under the Indian Penal Code by a Police Officer has not been realized by the Inspector General of Police, Traffic, Greater Chennai, who has filed the first status report dated 03.08.2023. When an omission on the part of Police Officer results in such a serious consequence, we expect the authorities to be more serious or more vigilant in ensuring that such acquittals by Police Officers do not recur. The additional status report also is not very helpful.

21. In order to appraise ourselves of the manner in which the investigation was conducted, we had, by our order dated 16.11.2023 required the Special Government Pleader to produce the investigation file which led to the final report dated 19.02.2010, marked as Ex.P11. It is claimed that the records are not available and it is suspected that the records



were destroyed in a flood. Therefore, we have no means of finding out what exactly was the material that was available with the Investigating Officer when he prepared the final report. We are, however, spared of the trouble of going into the materials, since the final report itself has not been forwarded to the Court and it does not have evidentiary value as such.

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22. In order to arrest, recurrence of default in filing final reports, which have the effect of acquittals being granted by the Police Officers, we deem it fit to issue the following directions to the Police Department:-

i) To ensure that final reports are filed within time contemplated under Section 468 of Cr.P.C., 1973.

ii) To issue appropriate circular to all the Investigating Officers, impressing them upon the need for filing the final reports in time.

iii) To ensure that appropriate disciplinary action is taken in cases where, there is a failure on the part of the Officer to comply with the provisions of Section 173(2)(i) within the time limit stipulated under Section 468 of Criminal Procedure Code, 1973.

23. We find, in the recent past, there is a considerable spike in the

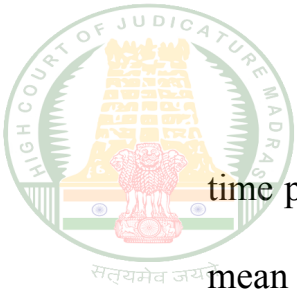


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number cases where, vehicles are planted in accidents by the Police in connivance with the victims of road accidents. This is mainly because the investigation relating to road traffic accidents are not done as seriously as in other crimes and there is considerable slackness or we can even say negligence on the part of the Traffic Investigating Wing of the Police Department. Another factor which leads to this planting of vehicles is inadequacy of the compensation provided by the State in case of hit and run accidents.

24.Compared to the compensation that is awarded under the Motor Vehicles Act to victims of road accidents where, the offending vehicle is identified without any difficulty, the compensation awarded by the State for hit and run accident is terribly low. We earnestly commend the state to have a re-look into the scheme for payment of compensation for victims of hit and run accidents. It would by and large, ensure that the planting of vehicles does not happen.

25.We direct the Director General of Police to ensure that the closure of First Information Report for non-filing of final reports within the



time prescribed under Section 468 of Cr.P.C., is fully avoided, which would mean that the Police would be required to file a final report within the time granted under Section 468 of Cr.P.C., in all cases. This Court has enabled online filing of final reports also only to felicitate the compliance with the provisions of Section 173 and 468 of Cr.P.C. We are sure that the State will endeavour to ensure that these kind of cases do not recur.

26. We place on record our sincere gratitude to the learned Advocate General, who had appeared at our instance and clarified the position regarding non-filing of the final reports within the statutory period.

27. In fine, this Civil Miscellaneous Appeal is dismissed, confirming the award of the Tribunal. In view of the facts and circumstances of the case, there shall be no order as to costs.

(R.S.M., J.) (N.S., J.)
15.12.2023

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No



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To:-

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1. The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.
2. The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore,
Chennai - 600 004.



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R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

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