

MATHEW ALEXANDER

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v.

MOHAMMED SHAFI AND ANR.

(Criminal Appeal No. 1931 of 2023)

JULY 13, 2023

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**[B. V. NAGARATHNA AND  
PRASHANT KUMAR MISHRA, JJ.]**

*Code of Criminal Procedure, 1973 : s. 482 – Quashing of final report – Motor accident matter – Rash and negligent driving – Appellant's son was driving a car which collided with the gas tanker lorry – Death of appellant's son and five others travelling in the car – Claim petition by the respondent no. 1 and the legal representative of the deceased passengers – Claim petition also filed by the appellant against the driver and the insurer of the tanker lorry, and against the owner – FIR against the appellant's son u/s. 279 and 304 A, however, abatement of charges against him on his death – Submission of the final report by police that the incident was an unavoidable accident, not attributable to negligence on the part of the appellant's son – Two years later, petition u/s. 482 by the respondent no. 1 for quashing of the final report – High Court quashed the final report – On appeal, held : Opinions expressed by the High Court which are in the nature of findings while considering the correctness of the final report and thereby quashing the same was, not a correct and proper approach adopted by the High Court – Order passed by the High Court is set aside – Penal Code, 1860 – ss. 279, 304 A.*

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*Motor Vehicles Act, 1988: Motor accident – Claim for compensation – Negligence – Burden of proof – Held : Motor accident matter has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt – On facts, in a claim petition by the appellant alleging negligence on part of the driver of the tanker lorry and the pick up van in causing the accident resulting in the death of his son and five others travelling with him, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved – It was for the appellant to establish negligence*

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- A *on the part of the driver of the tanker lorry – Opinion in the final report that the incident was an unavoidable accident, not attributable to negligence on the part of the appellant's son, would not have a bearing on the petition – In the claim petitions filed by the dependents of the other deceased passengers, they have to similarly establish the negligence in accordance with law.*
- B **Allowing the appeal, the Court**

**HELD:** 1.1 The High Court made observations which are in the nature of findings while considering the correctness or otherwise of the final report impugned before the High Court.

- C Further, the observations of the High Court to the effect that the car driven by the appellant's son, was being driven rashly; that the car had gone astray to the wrong side; that the possibility that the driver of the car had driven the car after consuming alcohol cannot be ruled out; that rashness and negligence on the part of the driver of the car is patent and that this is a clear case in which the principle of *res ipsa loquitur* applies, are in the nature of findings which were wholly unnecessary to be made while considering the correctness or otherwise of the final report submitted on further investigation of the case. It is on the basis of the said observations which are in the nature of findings that
- D the High Court has quashed the report made pursuant to further investigation by opining that the incident is attributable to the rash and negligent driving of the Alto car. The opinions expressed which are in the nature of findings while considering the correctness or otherwise of the final report submitted on a further investigation of the case and thereby quashing the same is, not a correct and proper approach adopted by the High Court. Hence, the impugned order of the High Court is liable to be set aside.  
[Para 8][1088-D-H; 1089-A]

- G 1.2. Insofar as the claim petition filed by the appellant is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the appellant or other claimants to let in their respective evidence and the burden is on them to prove
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negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. If the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition would be disposed of accordingly. [Para 9] [1089-B-D]

1.3. It is for the appellant to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the said reasons. This is because the appellant is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. In the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law. The impugned order of the High Court is set aside. [Paras 10 and 11][1090-A-C]

*N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal AIR 1980 SC 1354 : [1980] 3 SCR 101; Bimla Devi vs. Himachal Road Transport Corporation (2009) 13 SCC 530 : [2009] 6 SCR 362; Dulcina Fernandes vs. Joaquim Xavier Cruz (2013) 10 SCC 646 : [2013] 10 SCR 480 – referred to.*

<u>Case Law Reference</u>		
[1980] 3 SCR 101	referred to	Para 9
[2009] 6 SCR 362	referred to	Para 9
[2013] 10 SCR 480	referred to	Para 9

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. G 1931 of 2023.

From the Judgment and Order dated 31.03.2022 of the High Court of Kerala at Ermakulam in CRLMC No. 4870 of 2021.

G. Prakash, Mrs. Beena Prakash, Ms. Priyanka Prakash, Advs. for the Appellant.

A Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, A. Karthik, Ms. Sreepriya K., Ms. Smriti Suresh, Arsh Khan, Ms. Neeta Sanjay Savale, Advs. for the Respondents.

The Judgment of the Court was delivered by

**NAGARATHNA J.**

B Leave granted.

2. The Appellant herein is aggrieved by the quashing of the opinion formed as per final report in pursuant to the further investigation in Crime No.1/2015 registered at Chathannoor Police Station, by the High Court in its order dated 31.03.2022.

3. Briefly stated the facts are that an FIR bearing No.01/2015 was registered by the complainant against the Appellant's son before the Chathannoor Police Station invoking Sections 279 and 304A of the IPC. The FIR stated that on 01.01.2015, at around 2.15 am, Appellant's

D son, Nixon Abey Matthew, aged 20 years, was driving a Maruti Alto car bearing No. KL 2 AC 1370 through the Kollam-Thiruvananthapuram National Highway from East to West direction on the left side of the road, along with his friends. When the car reached Seemati, Chathannoor, a gas tanker lorry bearing registration No. KL 39 C 4577, driven by Ramar in an utmost rash and negligent manner, hit the Maruti Alto car

E and in the said accident, Appellant's son and five others travelling in the car died. Claim petitions have been filed by Respondent No.1 herein and other legal representatives of the deceased passengers in the car before the Motor Accident Claims Tribunal, Kollam seeking compensation for the death of their kin on whom they were dependent. Respondent No.1 herein also has filed a claim petition in which the deceased son of the

F Appellant was named as Respondent No.4 and the driver of the tanker lorry, Ramar, is named as Respondent No.2. The said claim petition is also pending.

G 4. A final report was filed by the Assistant Commissioner of Police in the case arising out of FIR No.1/2015. It was also mentioned in the chargesheet that the charges against the Appellant's son had abated as he died in the accident. However, on the basis of the complaint made by the Appellant herein regarding irregularities in the conduct of the investigation, the District Police Chief, Kollam, directed the Assistant Commissioner of Police, Chathannoor to undertake a thorough

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investigation in the matter and further investigation commenced in the matter by the order of the JMFC, Paravur, Kollam under Section 173(8) of the CrPC and the final report was to be filed in accordance with law. It is also necessary to mention that the claim petition filed by the Appellant herein is against the owner and driver of the tanker lorry which is said to have collided with the Alto car driven by his son, as also against the insurer of the tanker lorry alleging negligence on the part of the driver of the tanker lorry. This claim petition is also pending.

5. The Assistant Commissioner of Police took over further investigation of the case and submitted a final report before the JMFC, Paravur, Kollam, stating that the incident was an unavoidable accident; that the incident had occurred because the Appellant's son's Alto car was trying to overtake a pick-up van and the driver of the van did not give way, and as a result, the car hit the van and thereafter collided with the tanker lorry. The final report dated 29.11.2019 is stated to be contrary to the earlier report dated 27.01.2016. It was stated in the final report that the incident was an unavoidable accident, not attributable to negligence on the part of the Appellant's son.

6. Being aggrieved by the said final report, Respondent No.1 herein filed a petition under Section 482 of the CrPC before the Kerala High Court praying that the investigation report dated 29.11.2019 be quashed. The said petition itself was filed two years from the date of the final report. The High Court, by the impugned judgment dated 31.03.2022, has allowed the petition filed by Respondent No.1 and quashed the final report dated 29.11.2019 wherein it has been observed that the incident was an unavoidable accident, not attributable to negligence on the part of Appellant's son. Being aggrieved by the quashing of the said report, the present appeal has been preferred.

7. We have heard learned counsel for the Appellant and learned counsel for the impleading applicants and perused the material on record. Respondent No.1 is served and has not appeared.

It is noted that the quashing of the said report would have a bearing in the criminal proceeding but having regard to the fact that the Appellant's son also died in the accident, as against him, the criminal proceeding would abate.

However, learned counsel for the Appellant submitted that Respondent No.1 unnecessarily filed a petition under Section 482 CrPC

- A for quashing the final report dated 29.11.2019 after a period of two years. In this regard, our attention was drawn to the fact that the earlier final report was filed by the Assistant Commissioner of Police, Kollam District Crime Branch dated 27.01.2016 for the offences under Section 279 and 304A of the IPC as against the Appellant's son, although the FIR was filed against Ramar also, the driver of tanker lorry. In the chargesheet, the investigating officer has stated that the chargesheet had abated as against the son of the Appellant herein. The Appellant herein had in fact made a representation for a thorough further investigation in the matter pursuant to which, further investigation was commenced in CC No. 215 of 2016 in Crime No.1 of 2015 of Chathannoor Police Station *vide* order dated 19.12.2018 of the JFCM under Section 173(8) of the CrPC. On further investigation taken up by the Assistant Commissioner of Police, a final report was submitted on 29.11.2019. It was two years thereafter that the first Respondent herein filed Criminal MC No.4870 of 2021 under Section 482 of the CrPC seeking quashing of the further investigation's final report before the High Court without making the Appellant or other affected party, a Respondent.

- 8. We find that the High Court, in the impugned order in paragraphs 8 to 13 and 18, has made observations which are in the nature of findings while considering the correctness or otherwise of the final report impugned before the High Court. Further, the observations of the High Court to the effect that the car driven by the Appellant's son, Nixon Abey Mathew, was being driven rashly; that the car had gone astray to the wrong side; that the possibility that the driver of the car had driven the car after consuming alcohol cannot be ruled out; that rashness and negligence on the part of the driver of the car is patent and that this is a clear case in which the principle of *res ipsa loquitur* applies, are in the nature of findings which were wholly unnecessary to be made while considering the correctness or otherwise of the final report submitted on further investigation of the case.

- G It is on the basis of the aforesaid observations which are in the nature of findings that the High Court has quashed the report made pursuant to further investigation by opining, "*The incident is attributable to the rash and negligent driving of the Alto car*". The opinions expressed which are in the nature of findings while considering the correctness or otherwise of the final report submitted on a further investigation of the case and thereby quashing the same is, in our view,
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not a correct and proper approach adopted by the High Court. Hence, A the impugned order of the High Court is liable to be set aside on this short ground alone.

9. Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.

In this context, we could refer to judgments of this Court in the case of *N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal* reported in *AIR 1980 SC 1354*, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in *(2009) 13 SCC 530*, in the case of *Bimla Devi vs. Himachal Road Transport Corporation (“Bimla Devi”)*, it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646* which has referred to the aforesaid judgment in *Bimla Devi*.

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- A        10. In that view of the matter, it is for the Appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the Appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law.
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11. In view of the above discussion, the impugned order of the High Court dated 31.03.2022 is set aside and the appeal is allowed.

Parties to bear their respective costs.

Nidhi Jain  
(Assisted by : Tamana, LCRA)

Appeal allowed.