

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.3235 of 2014

1.R.Mallika
2.Minor Mithra Shree
rep. by M & NF Mrs.R.Mallika
3.N.Niraimathi

... Appellants

Versus

1.A.Babu
2.M/s.Bajaj Allianz General Insurance Co.Ltd.
C/o.Motor Third Party Claims Offices,
No.25/26 College Road
Kodunghaiyur, Chennai-600 006.
3.The Secretary,
Home Department,
Government of Tamil Nadu,
St.George Fort,
Chennai.
4.The Director General of Police,
Mylapore,
Chennai
5.The Union of India represented by its
Secretary Surface Transport Ministry,
New Delhi.

... Respondents

RR 3 & 4 Suo motor impleaded vide
order of Court dated 11.12.2014 made
in CMA.No.3235 of 2014
R5 Suo motor impleaded vide order
of Court dt. 23.3.2015 made in
CMA.No.3235/2014.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgement and decree made in MCOP.No.2824 of 2011 on the file of Motor Accident Claims Tribunal, Special Sub Judge, Small Causes Court at Chennai dated 23rd day of July 2014.

For Appellants : Mr.T.G.Balachandran

For Respondents : Mr.M.Venugopal Spl.G.P.(CS)
Assisted by Mrs.Jayasree-RR3 & 4
Mr.Srinivasa Ramajeyam for R2
Mr.G.Rajagopalan, Addl.Solicitor General
for R5

For Intervenor : Mr.V.Anand, Advocate
Party-in-Person

JUDGMENT

“jh;kk; jiyfhf;Fk;@ goes the saying in Tamil. Whether "*Dharma*" would save a life or not, wearing of helmet would definitely do so, by acting as a protective headgear. It is really disheartening to note that a number of precious lives are lost due to non-wearing of protective headgear, namely, helmet, as mandated under Section 129 of the Motor Vehicles, Act, 1988. The pathetic position is that in spite of the enabling statute and a number of judgments rendered by the Honourable Supreme Court as well as various High Courts including ours, neither the authorities' act as per the statue nor follow the directions issued in this

regard.

2. It is a common sight, on the roads of every City, that people ride two-wheelers without helmets. It is shocking to note that 6419 persons lost their lives in 2014 alone in Tamilnadu due to non-wearing of helmet while riding two wheelers. It means that every day atleast 17 persons are dieing in Tamil Nadu alone.

3. When the Parliament enacted a statute viz Motor Vehicles Act 1988, which mandates the riders of two-wheelers to wear helmets to protect their heads, in case of any accident, the subjects are bound to follow the same and the officials are dutybound to implement it. The case on hand is the consequence, which would follow, on failure to abide by the statute, wherein the victim, due to non-wearing of helmet, sustained head injuries and later, succumbed to the injuries.

4. The victim in this case, namely, one Mr. N.Kumar, aged about 30 years, a building demolition work contractor, on 02.05.2011, while riding his two-wheeler from North to South direction, in Virugambakkam,

opposite to RTO Office, was hit by a van, coming from the opposite direction, belonging to the 1st respondent and insured with the 2nd respondent Insurance Company, driven in a rash and negligent manner, causing head injuries and multiple injuries to him, which proved fatal later on. Hence, the claim petition was filed by the legal heirs of the deceased Kumar seeking compensation to the tune of Rs. 17,50,000/-. The Tribunal, after enquiry, awarded a sum of Rs. 12,23,100/- as compensation to the claimants. Not satisfied with the said award, the claimants are before this Court.

5. Heard Mr.T.G. Balachandran, learned counsel for the appellants, Mr.Srinivasan Ramalingam, learned counsel for the 2nd respondent Insurance Company, Mr.M. Venugopal, learned Special Government Pleader (CS), assisted by Mrs. Jayashree, learned Government Advocate, for R3 & R4 and Mr.G. Rajagopalan, learned Additional Solicitor General for the 5th respondent and perused the records carefully.

6. In the claim petition filed by the appellants, the 2nd respondent Insurance Company took many defences including non-wearing of helmet

by the deceased at the time of accident. It is the specific case of the 2nd respondent that the deceased was not wearing helmet and that if he had worn the helmet, he would not have lost his life. However, no such plea was taken in the counter statement. Therefore, the contention is not sustainable.

7. Ex.P1 FIR was registered against the driver and charge sheet Ex.P3 was laid against the van driver. The contentin of the 2nd respondent that the injured fell down from the two wheeler and died was rejected by the Tribunal. Considering the filing of FIR on the same day, the plea of the 2nd respondent that the Van (offending vehicle) was not involved in the accident was rightly negatived by the Tribunal. P.W.2 eyewitness spoke about the accident and there is no contra evidence on the side of the second respondent. All the three witnesses examined by the second respondent are all their officials and an official from RTO Office in this regard. Therefore, the Tribunal, based on evidence adduced rightly came to the conclusion that the accident had occurred only because of the rash and negligent driving by the driver of the van. In any event the finding regarding negligence attained finality, as there is no appeal neither by the

insurance company or by the owner of the vehicle.

8. The Tribunal considered the contention of the 2nd respondent Insurance Company that the offending vehicle, namely, the van, did not have a valid goods carriage permit, on the date of the accident. That is, according to the 2nd respondent Insurance Company, the goods carriage permit of the vehicle in question expired on 28.07.2010 and it was renewed only on 04.05.2011 whereas the accident occurred on 02.05.2011. Therefore, there is no liability on the part of the Insurance Company. In this regard, the Insurance Company examined an official from the RTO Office as R.W.1 and also the investigating Officer as R.W.2 to prove that the van did not have a valid goods carriage permit on the date of accident. The Hon'ble Supreme Court in *National Insurance Co.Ltd. vs. Challa Bharathamma and others* reported in *2004 ACJ 2094* held that in case of vehicles without permits, though in law, the Insurance Company has no liability and it would be proper for the insurer to satisfy the award. The said fact was further fortified by examining R.W.3, an official of the 2nd respondent Insurance Company. *Therefore, the Tribunal, finding that the offending vehicle did not have a valid goods carriage permit, rightly, fastened the*

liability on the owner of the van and directed the Insurance Company to pay the compensation with liberty to recover the same from the owner of the vehicle.

9. Now, the only question to be decided in this case is with regard to the quantum of compensation awarded by the Tribunal.

10. PW1 deposed that the deceased was a building demolition contractor and earning Rs.10,000/- per month and marked Ex.P9- Employment Proof (SS Engineering) and Ex.P6 Provisional Certificate (Commercial practice of Typewriting Higher). Since the employer was not examined and income proof was not produced the Tribunal, took Rs.7000/- as notional income of the deceased including "Future Prospects" and after deducting one-third towards "Personal Expenses", determined the monthly contribution of the deceased to his family as Rs.4667/-. Depending on the age of the deceased, multiplier 18 was adopted and a sum of Rs.10,08,072/- was arrived at as "Loss of Income" (Rs.4667 x 12 x 18).

11. However, according to the learned counsel for the

claimants, the notional income fixed by the Tribunal is on the lower side and in support of his contention, he relied upon the judgment rendered by the Honourable Supreme Court in *Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited* reported in *2014 ACJ 627* wherein for a vegetable vendor, the monthly income was fixed at Rs.6500/- and after adding 50% towards “ Future Prospects”, Rs.9000/- was fixed as total monthly income.

12. On the other hand, relying upon the judgment of the Honourable Apex Court in *Savitha V. Binder Singh and Others* reported in *2014 (2) TN MAC 750*, where for the death of a 26 year old salaried person, alleged to be earning about Rs.7000/- per month, in the absence of any evidence, the notional income was fixed at Rs.3900/- per month, reducing Rs.7000/- fixed by the Tribunal. Relying upon the said judgment, the learned counsel for the 2nd respondent would submit that the amount fixed by the Tribunal is on the higher side and therefore, the compensation awarded has to be reduced.

13. However, the Honourable Apex Court, in its latest judgment reported in *Nita and Others V. Divisional Manager, MSRTC, Kolapur*

reported in *2015 1 TN MAC 161*, determined the monthly income of a Carpenter, aged about 31 years, at Rs.12,000/-, in the absence of any documentary evidence in support of the same. The accident in the aforesaid reported was on 22.03.2011 and the accident in the case on hand almost in the same period had occurred on 02.05.2011. Besides, the claimants filed documents to show that the deceased possessed diploma in Commercial Practice and Typewriting higher Grade by marking Ex-P6 and marked Ex-P9 to prove his employment as a building demolition contractor. However, no proof is available with regard to his income. Since the accident had occurred, more or less, during the year 2011, this Court is inclined to follow the judgment of the Apex Court rendered in *Nita's* case and accordingly, the monthly income of the deceased is re-determined as Rs.12,000/-. Adopting multiplier 18, "Loss of Income" is calculated as follows:

Loss of Income :: (Rs.12,000/- (-) 30% (12,000/-))x 12 x 18
 :: Rs.8000 x 12 x 18
 :: **Rs.17,28,000/-**

14. The Tribunal rightly awarded Rs.1 lakh towards "Loss

of Consortium”, which is in consonance with the judgment of the Honourable Apex Court rendered in *Rajesh and others V. Rajbir Singh and Others reported in 2013 2 TN MAC 55*.

15. The 2nd appellant was hardly aged about 3 years at the time of accident and therefore, for having been deprived of her father's love and affection, sufficient amount has to be given. The Tribunal took care of the said aspect and justifiably awarded Rs.1 lakh under the caption “Loss of love and affection” to the 2nd appellant, daughter, as well as to the 3rd appellant, the mother of the deceased. The sum of Rs.15,028/- awarded by the Tribunal towards “Funeral Expenses” is too low and the same is enhanced to Rs.25,000/-. No amount was awarded towards “Transportation Expenses” and therefore, a sum of Rs.10,000/- is awarded under the said head.

16. Though the accident occurred on 02.05.2011, the victim was hospitalised and he died on 04.05.2011. Therefore, the entire family of the deceased would have undergone “Pain and Suffering” and mental agony on seeing the plight of the deceased. Therefore, a sum of Rs.25,000/- is awarded towards “Pain and Suffering” and further, sum of Rs.20,000/-

is awarded towards "Loss of Estate". Totally, a sum of **Rs.20,08,000/-** rounded off to Rs.20,00,000/- (Twenty lakhs only) is awarded as compensation. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

17. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st appellant is entitled to withdraw Rs.8.5 lakhs with proportionate interest; the 3rd appellant would be entitled to withdraw Rs.3 lakhs with proportionate interest and the remaining sum of Rs.8.5 lakhs, to which the minor 2nd appellant is entitled to, shall be re-invested in interest bearing Fixed Deposit, in anyone of the Nationalised Banks, till she attains majority. The appellants shall pay additional court-fee for the enhanced amount.

18. As observed earlier, the 2nd respondent Insurance Company is at liberty to recover the award amount deposited by them

from the owner of the vehicle.

19. In the result, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal, to the tune of Rs.12,23,100/- is enhanced to Rs.20,00,000/- (Rupees twenty lakhs only) together with interest @ 7.5% per annum. No costs.

20. This case demonstrates the importance of wearing of helmet by the riders of the two wheelers and the evil consequences of non wearing of helmets. The contention of the second respondent-insurance company is that the deceased in this case did not wear helmet at the time of accident and that he could have saved his life by wearing helmet and therefore, he was negligent. However, the said contention was rightly not accepted by this Court, as no such plea was taken in the counter statement and no eye witness was examined on the side of the insurance company.

21. As this case reminds about the necessity to wear helmet by the two wheeler riders, this Court, by order dated 11.12.2014, suo motu

impleaded respondents 3 and 4 and directed them to answer the following queries:

“ After the enactment of the Motor Vehicles Act, 1988 and enforcement of Section 129 of the said Act, by issuance of Government Orders in various States, including Tamil Nadu, by issuance of G.O.Ms. No.292 Home (Tr.V) Department dated 22.02.2007, why wearing of helmets has not been strictly enforced by the authorities?

- Why no action has been taken against those two-wheeler riders, who do not wear helmets while riding?
- How many cases have been registered with regard to non-wearing of helmets for the past 10 years?
- How many lives have been lost because of non-wearing of helmets, at the time of accident, for the past of 10 years and year-wise details to be furnished, in regard thereto.
- How many cases wherein head injuries were suffered by the riders of two-wheelers due to non-wearing of helmets?”

22. Subsequently, the Central Government was also made as fifth respondent in this case. Mr.V.Anand, a practicing advocate, intervened

and submitted that helmets all over India are designed with a visor or a regular front vision. The 90 degree side vision is blocked by the side wall of the helmet on both sides. He also filed a memo making his contention.

Paragraph-3 of the memo. reads as follows:

“3. It is submitted that the helmets all over India are designed with a visor or a regular front vision. The 90 degree side vision is blocked by the side wall of the helmet on both sides. This prevents the ocular vision and thereby the motor cycle riders from taking into consideration, the vehicles plying alongside on both sides while directly looking at the road ahead. This is the cause for helmet wearers meeting with accidents as they are not able to take into the account of t he vehicles plying along side, their distance and speed.”

Therefore, he would submit that more number of accidents can be averted, if helmet wearing would be a natural option and if helmets are designed in such a way so as to provide visibility on the sides as well as at the front of the wearer of helmet which would, in future, avert many accidents. He sought for appointment of an expert to go into details of the design of the helmet and for directions to suitable authorities to design

helmets by providing them with 90 degree vision on both sides of the wearer.

23. Mr.G.Rajagopalan, learned Additional Solicitor General would submit that specification of protective helmet for two wheeler riders was examined and tested by the Bureau of Indian Standards as per IS 4151 : 1993. He also produced a scheme of testing and inspection for clarification of protective helmets for two wheeler riders and the sketches showing the internal components of the helmets, namely, peripheral vision-vertical field, peripheral vision-horizontal field and identification of intract point. By giving the above details, he would submit that only as per the technical report, on inspection by Bureau of Indian Standards, the helmets are manufactured. He would refer the judgements of the Hon'ble Supreme Court in *S.Rajaseekaran vs. Union of India and others* reported in (2014) 6 SCC 36, *R.Muthukirshnan and others vs. Secretary to Home Department Government of Tamil Nadu and others* reported in (2007) 5 MLJ 1351 and an unreported judgement of a Division Bench of this Court in *W.P.No.19387 of 1999 in Accident Victims Association vs. State of Tamilnadu and four others*.

24. As per Rule 138 (4) (f) of Central Motor Vehicles Rules, 1989, the manufacturers of two wheelers shall supply protective head gears at the time of purchase of the two wheelers. As per the statistics, two wheelers constitute more than 70% of the vehicles. As the victim was a two wheeler rider, he was mandatorily liable to wear helmet as per Section 129 of the Act. Since the issue of wearing of helmet by two wheeler riders has to be gone into incidentally, it is useful to extract Section 129 of the Motor Vehicles Act 1988:

“129. Wearing of protective headgear.—Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear 1[protective headgear conforming to the standards of Bureau of Indian Standards]:

Provided that the provision of this sections shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit. “

A reading of the above Section makes its very clear that Section 129 of the Motor Vehicles Act 1988 is mandatory in nature and therefore, two wheeler riders are statutorily bound to wear helmet. Section 177 speaks about the punishment of offences under the Act and the said Section reads

as follows:

“ 177. General provision for punishment of offences.

Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.”

25. The Honourable Apex Court in its judgement in *Ajay Ganu v. Union of India and others* reported in *AIR 1988 SC 2027*, upheld Rule 498-A of A.P. Motor Vehicles Rules, 1964 which mandated wearing of helmet by two wheelers and paragraph No.11 reads as follows:

“11. It is urged on behalf of the petitioner that Rule 498-A does not and cannot come within the rule making power of the State under clause (i) of sub-section (2) of Section 91 of the Act, for it does not refer to the driver of a motorcycle or scooter. It is true that clause (i) does not refer to the driver of a motorcycle or a scooter, but it is much wider inasmuch as it provides, inter alia, for the prevention of danger, injury or annoyance to the public or any person. It is not disputed that Rule 498-A has been framed for the purpose of protecting the head from being injured in case of an accident. **It is common knowledge that head of the driver of a two-wheeler vehicle is the main target of an accident and often it is fatal to the driver. By insisting on the wearing of a helmet by the driver driving a two-wheeler vehicle, Rule 498-A intends to protect the head** from being fatally injured in case of an accident. Clause (i) is wide enough to include the driver of a motorcycle or a scooter. The expression “any person” in clause (i) also includes within it a driver of a two wheeler vehicle. We are unable to accept the contention of

the learned counsel for the petitioner that the words “any person” do not include the driver of a two-wheeler vehicle and the rule is intended to prevent the danger, injury or annoyance to the public or any person other than the driver of a two-wheeler vehicle. In our view, clause (i) is also intended for the prevention of danger, injury or annoyance to the public or any person including the driver of a two-wheeler vehicle. Rule 498-A is, therefore, quite legal and valid, in spite of the absence of any provision like Section 85-A.”

(Emphasis supplied)

As observed earlier, most of the two wheeler riders do not wear helmets and there is also a failure on the part of the law enforcing agencies to implement Section 129, in letter and spirit. In view of Section 129 of the Motor Vehicles Act and also the judgement of the Division Bench of this Court reported in (2007) 5 MLJ 1351 (cited supra), the authorities are duty bound to see that the riders of two wheelers, wear helmets.

26. In *S.Rajaseekaran vs. Union of India* reported in (2014) 6 SCC 36, the Hon'ble Supreme Court In paragraph-34 held that all existing laws and norms including the provisions of the Motor Vehicles, Act as in force, are required to be implemented in the right earnest and with all vigour by authorities of the Union and State Governments, who are responsible for such implementation. Paragraph-34 of the judgement reads as follows:

“34. The sum total of the discussions above is that all existing laws and norms including the provisions of the Motor Vehicles Act, as in force, are required to be implemented in the right earnest and with all vigour by the authorities of the

Union and the State Governments who are responsible for such implementation. Insofar as suitable amendments to the laws are concerned, this Court can only hope and trust that all such changes or amendments which are presently under legislative consideration would be expedited and measures as may be considered necessary by the legislature in its collective wisdom will be brought in the statute book in due course. At the same time, what has been admitted to be necessary and, therefore, has been initiated by the Central Government insofar as engineering and road education is concerned shall be implemented and directions to so act may be construed to have been issued by this Court by the present order. Similarly, insofar as emergency care is concerned, what has been initiated by the Central Government, as stated in its affidavit, shall be suitably implemented and extended subject to the limits of its financial ability. The States also shall act accordingly and initiate similar measures if required, in a phased manner."

27. The State Government, as per Section 129 of the Act issued in G.O.No.292 Home (Tr.V) Department dated 22.2.2007. The said G.O. was challenged before this Court in *R.Muthukrishnan and others vs. Secretary to Home Department, Government of Tamilnadu and others* reported in (2007) 5 MLJ 1351 held that Section 129 of the Act is mandatory. Paragraphs-10 and 11 are usefully extracted as follows:

"10. Article 19 of the Constitution of India guarantees freedom to move freely throughout the territory of India, apart from freedom of speech, expression, etc., it is in addition to the right to personal liberty guaranteed under Article 21. While orders violating such right cannot stand the test of Articles 19 and 21, it is always open to the State to impose permissible restriction without

interfering with the basic rights to move freely or personal liberty guaranteed under Articles 19 and 21 of the Constitution of India. By the impugned G.O. ms. No.292 dated 22nd Feb., 2007, the Government has not restricted physical movement or personal liberty of any person. It is open to a person to move at any place with complete liberty without any restriction. But, for the purpose of movement in a vehicle no person could claim any fundamental right to move in a vehicle in any manner the person so desires, which could be regulated by reasonable restrictions, if imposed under the law. There are reasonable restrictions imposed under the MV Act for driving a vehicle. For example, a person cannot drive a motor vehicle without a licence. Similarly, u/s 124, a person is prohibited to enter or remain in any stage carrier for the purpose of travelling therein without a proper pass or ticket.

Safety measures for drivers and pillion riders may not be a fundamental duty of the State, **but public health being concern of the State, it is always open to a welfare State to enact the provisions for safety measures for the drivers and pillion riders.** For example Section 128 of the MV Act, prohibits the driver of a two wheeler to carry more than one person in addition to himself on a motor cycle, and no person can sit at any place except on a proper seat, which has been framed as safety measure not for others but for the drivers and pillion riders.

11. The argument of the petitioner, Mr.Muthukrishnan that as the matter relates to how he will be leading his life is his concern and no suggestion or direction is required from the State, cannot be accepted. A motor vehicle, including two wheeler, cannot be taken on road without valid insurance. In case of death, even though not

caused by any other person, but the driver himself, it is not the driver of the pillion rider, who may die, their family is directly affected because of such death. In such case, because of the fault on the part of the driver or pillion rider, and even for no fault, the insurance company becomes liable for payment of compensation to the family of the deceased. Therefore, it cannot be stated that State has no role to play for safety of the driver or the pillion rider of a two wheeler."

In paragraph-13 of the said judgment, the Division Bench of this Court allowed the State Government to implement the G.O. in its letter and spirit.

28. The Division Bench of this Court in *Accident Victims Association vs. the State of Tamil Nadu and four others* held that Section 129 of the Motor Vehicles Act is mandatory for wearing helmet and it is the duty of the law enforcing agency to faithfully and honestly implement the provision. Paragraphs 13 to 16 are usefully extracted as follows:

"13. It is of course that there are certain actions which can be considered as "self-regarding actions" and certain actions which are to be termed as "other regarding actions". Self-regarding action affects only the person and may not affect any other person and therefore, the other person should not impede the liberty of the person to do any "self-regarding action". Even though the above philosophy

appears to be acceptable to certain extent, yet the Society cannot lose sight of the necessity to impose certain rules or regulations even relating to other matters which can be described as "self-regarding action". **It is the opinion of many Scientists including Neurologists that wearing of helmet reduces the possibility of accident becoming fatal. Therefore, the necessity of a provision making it compulsory for wearing the helmet is to protect the unwary victims of unforeseen accidents. It is no doubt true that ultimately it is the individual who is affected. However, since the State or the Society has the duty to protect the individual, one can say that the State is discharging its duties by enacting such a provision.** It is not for the Courts to examine the wisdom of such a provision on the basis of half-baked statistics furnished to the contrary. Ultimately it is the law which has been enacted has to be enforced by the court of law as well as the Executive.

14. Section 129 of the Motor Vehicles Act has made it mandatory for wearing of helmet. The proviso to such section contains an enabling provision under which the State can make rules providing for any exemption. Such law has been enacted by the Parliament in its wisdom. The assertion that such provisions have been made with a view to help the helmet manufacturers, is just be stated to be rejected. Moreover, any imputation relating to collective mala fides against the Parliament, cannot be countenanced. Validity of Section 129 is not an issue in the present writ

petition. Validity of the G.O. regarding compliance with Section 129 has already been upheld by the Division Bench in the decision reported in (2007) 5 MLJ 1351 (cited supra).

15. In such view of the matter, it is futile and too late in the day to contend that wearing of helmet need not be made mandatory and should be left to the option of the individual concerned. In this connection, it is necessary to clarify certain misconception. An impression seems to have been gathered in some quarters that Section 129 is being implemented for the first time through the Government Order or through the Rules framed by the Government on the basis of any decision of the Court. Respondent Nos.4 and 5 have not been able to refer to any provision of the Motor Vehicles Act remotely indicating that Section 129 is inapplicable in the absence of any Government Order or any Rule to be made. **The clear language of Section 129 leaves no room for doubt that as soon as the statute containing such provision comes into force, wearing of helmet is compulsory and only exemption is contained in two provisos.** Under the provisos, the State Government is only empowered to frame rules making any exemption. Since such provision is applicable on its own steam, there cannot be any debate on the question of making wearing of helmet compulsory or otherwise. (In fact similar provision also contained in the Motor Vehicles Act, 1939 in the shape of Section 85A). In such view of the matter, there is hardly any scope to countenance any of the contentions raised by Respondent Nos.4 & 5, save and except observing that it is not for the Court to decide about the wisdom of such provision.

16. The most important question which remains to be answered is relating to the prayer of the petitioner which

was described as additional prayer in the previous order of the Division Bench. It is quite clear that for violation of such provision, action can be taken under Section 177 of the Motor Vehicles Act by imposition of fine. The State Government, in its counter affidavit has indicated that steps are being taken to implement such provision in letter and spirit. In view of such stand taken, we do not think any specific direction be issued in the matter, save and except by observing that **the provisions are meant to be implemented and it is the duty of the law enforcing agency to faithfully and honestly implement the provisions.** “

(Emphasis supplied)

29. It is reported that the Motor Vehicle Accident deaths are result of head injuries. **Global status report on Road Safety 2013** states that

a) Wearing of Motor Vehicle helmet can result in 40% reduction to risk of death and 70% reduction to severe injuries.

b) 155 countries have comprehensive helmet laws which cover travellers and passengers and 98 countries apply national and international motorcycle helmet standard. WHO states that non-helmeted users of motorized two wheelers are three times likely to sustain head injuries in a crash.

It is reported that Indian Road Accidents killed 1.2 million people in

the last decade and on an average of one in every four minutes. **India has the dubious distinction of having the highest number of road accidents in the world and 1,37,423 lives were lost in 2013. 24.9% of deaths were in the accidents involving two wheelers which is the highest followed by Truck/lorry 17.5%.**

30. International Road Federation (IRC) is a Unique global platform that brings public and private entities committed to road development. **As per the report of the International Road Federation, India accounts for more than 10 percent on total road fatalities world wide despite having only one percent of the world's vehicle population and 1.38 lakhs people died in the road accidents in India during 2013. India suffers a staggering hit of Rs.1 lakh crore every year due to road accidents. Besides the loss of human lives and trauma, estimates of the Planning Commission and the World Bank have put social cost of accidents between 2 to 3 percent of the GDP every year. It also advised to increase safety of two wheeler riders following countries like Vietnam, Campodia and Uganda which have adopted Global Helmet Vaccine initiatives.**

31. Original Research Paper namely “**Profile of Road Traffic Fatalities in Adults A 40 year Study in Chandigarh Zone of North West India**, published in “ **J Indian Acad Forensic Med. January-March 2014, Vol.36, No.1**” states that the occupants of two wheelers were most commonly involved in Road Accidents namely 55% and the relevant portion reads as follows:

“ Head & neck injuries were the most common cause of death (82.3%) and comparable results were seen in a study conducted in Haryana (50.4%). (13) Less use of protective gears (like helmet) could be attributed for such high incidence of head injuries. (21)

Moreover, helmet wearing laws are not strictly enforced in India. (2) Also the dominant populations of Punjab belonging to a particular religion are exempted from wearing helmets. (22) The occupants of two wheelers were most commonly involved in road accidents (55%) followed by pedestrian population (22%)”

32. As per **Motor Transport Statistics of India, Transport Research Wing**, Ministry of Road Transport and High Ways, India, two wheelers population from 2001 to 2012 are given as follows:

Number of Two wheelers in India	
Year	Two Wheelers
2001	38556026

Year	Two Wheelers
2002	41581058
2003	47519489
2004	51921973
2005	58799702
2006	64743126
2007	69128762
2008	75336017
2009	82402105
2010	91597791
2011	101864582
2012	115419175

33. In Tamilnadu as on 31.3.2014 a total of 188.09 lakh vehicles ply on the road. The two wheeler vehicle population is 155.95 lakhs out of total vehicle population. The number of registered two wheelers from 2006 to 2014 as stated in Policy Note 2014-2015 are as follows:

Number of Two Wheelers in Tamilnadu	
Year	Number of two wheeler
2006-2007	75,03,426
2007-2008	82,60,019
2008-2009	90,36,783
2009-2010	99,69,598
2010-2011	1,12,07,338

Year	Number of two wheeler
2011-2012	1,26,59,928
2012-2013	1,41,50,373
2013-2014	1,55,95,140

The above details show that the number of two wheelers in India as well as are increasing year by year.

34. Pursuant to the directions given by this Court on 11.12.2014 calling upon the State Government to give the details regarding number of persons died in the past 10 years due to non-wearing of helmet and the details of cases filed due to non-wearing of helmet for the past 10 years, the 4th respondent, D.G.P. stated as follows:

“1) 42,53,038 cases have been registered through out the State of Tamil Nadu for the past 10 years for non-wearing of helmet while riding two wheelers.

2) 41,330 people died because of non-wearing of helmet at the time of accident in the past 10 years and the other details given are as follows:

Sl.No.	<i>Hon'ble High Court called required particulars</i>	<i>Reply furnished</i>																						
a)	After the enactment of the Motor Vehicles Act 1988 and enforcement of Section 129 of the said act, by issuance of Government order in various States, including Tamil Nadu by issuance of G.O.Ms.No.292, Home (Tr.V) Department, dated 22.02.2007, why wearing of helmets has not been strictly enforced by the authorities?	Sec. 129 of the Motor Vehicles Act 1988 is strictly enforced throughout the State of Tamil Nadu and the subordinate officers are appropriately instructed to take stringent steps against the riders who are not wearing helmets.																						
b)	Why no action has been taken against those two wheeler riders, who do not wear helmets while riding?	Action is being taken against the two wheeler riders who are not wearing helmets while riding two wheelers.																						
c)	How many cases have been registered with regard to non-wearing of helmets for the past 10 years?	42,53,038 (Forty two lakhs, fifty three thousand and thirty eight) cases have been registered throughout the State of Tamil Nadu in the past 10 years for non-wearing of helmets while riding two wheelers.																						
d)	How many lives have been lost because of non-wearing of helmets, at the time of accident, for the past 10 years and year-wise details to be furnished in regard thereto?	<p>41330 number of lives have been lost because of the reason of non-wearing of helmets alone in the past 10 years. The year wise details are furnished below:</p> <table border="1" data-bbox="980 1352 1385 1799"> <thead> <tr> <th data-bbox="980 1352 1166 1394"><u>Year</u></th> <th data-bbox="1170 1352 1385 1394"><u>No.of Life lost</u></th> </tr> </thead> <tbody> <tr><td data-bbox="980 1400 1166 1442">2005</td><td data-bbox="1170 1400 1385 1442">1670</td></tr> <tr><td data-bbox="980 1442 1166 1484">2006</td><td data-bbox="1170 1442 1385 1484">2506</td></tr> <tr><td data-bbox="980 1484 1166 1526">2007</td><td data-bbox="1170 1484 1385 1526">3170</td></tr> <tr><td data-bbox="980 1526 1166 1568">2008</td><td data-bbox="1170 1526 1385 1568">3545</td></tr> <tr><td data-bbox="980 1568 1166 1610">2009</td><td data-bbox="1170 1568 1385 1610">3964</td></tr> <tr><td data-bbox="980 1610 1166 1652">2010</td><td data-bbox="1170 1610 1385 1652">4588</td></tr> <tr><td data-bbox="980 1652 1166 1694">2011</td><td data-bbox="1170 1652 1385 1694">4698</td></tr> <tr><td data-bbox="980 1694 1166 1736">2012</td><td data-bbox="1170 1694 1385 1736">5287</td></tr> <tr><td data-bbox="980 1736 1166 1778">2013</td><td data-bbox="1170 1736 1385 1778">5483</td></tr> <tr><td data-bbox="980 1778 1166 1799">2014</td><td data-bbox="1170 1778 1385 1799">6419</td></tr> </tbody> </table>	<u>Year</u>	<u>No.of Life lost</u>	2005	1670	2006	2506	2007	3170	2008	3545	2009	3964	2010	4588	2011	4698	2012	5287	2013	5483	2014	6419
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Sl.No.	<i>Hon'ble High Court called required particulars</i>	<i>Reply furnished</i>	
		Total	41330
e)	How many cases wherein head injuries were suffered by the riders of two-wheelers due to non-wearing of helmets were filed?	There are 62,413 cases regarding head injuries filed in the last 10 years.	

From the above, it is evident that a number of people losing their lives due to non wearing of helmets is increasing year after year and, in fact, astonishingly, has multiplied four times within 10 years. That is, 1670 people died in 2005, whereas 6419 people died in 2014. Every day, 17 people were killed in 2014 because of non-wearing of helmet in Tamilnadu alone, though, it was preventable. When two wheeler riders take their vehicles out, they should remind themselves that their family members are depending upon them for survival and therefore, they are legally and morally bound to wear helmets to avoid injuries, in case of any accident.

35. As stated above, enforcement of Section 129 of the Motor Vehicles Act is mandatory. State Government issued G.O.292 Home (Tr.E) Department 22.2.2007 which was upheld by this Court in *R.Muthukirshnan and others vs. the Secretary to Home Department,*

Government of Tamilnadu reported in (2007) 5 MLJ 1351. A Division Bench of this Court in *Accident Victims Association vs. the State of Tamil Nadu and four others*, as early as on 20.12.2007 in *W.P.No.19387 of 1999* directed the law enforcing authorities to implement Section 129 of the Motor Vehicles Act.

36. In in *Tamil Nadu State Transport Corporation (Kumbakonam) Ltd. vs. R.Kalavathi and five others* reported in 2015 (1) *TNMAC 451* in para-1 this Court observed as follows:

“No one can invite death voluntarily, which is an offence under Section 309 of IPC, if the negligence is the cause. A precious life could have been saved, if the rider of the two wheeler wore helmet when he met with the accident on 27.09.2009. An avoidable negligence took away the life of the person and also caused injuries to the child who was traveling along with him. **A number of publications are being made insisting upon the importance of the wearing helmets by the two wheeler rider. It is known that nobody takes care even to safeguard their lives. The authorities who are supposed to enforce law are also keeping blind eye to this violation day and out.** A Division Bench of this Court already directed the authority to enforce the regulation with regard to the wearing of helmets. **The order of this Court has been thrown to the wind and authorities have not followed neither the law nor implemented the order passed by this Court. It is unfortunate and**

sorry state of affairs in this country which needs to be rectified. “

37. Though the issue before this Court is with regard to quantum of compensation awarded to the appellants, the issue about the non-wearing of helmet incidentally arises for consideration as contended by the Insurance Company. This Court cannot close its eyes and mechanically decide the issue alone. This Court is duty bound to look into the root cause for the accident. This Court is bound to go into the basic reason for the case and has a duty to issue remedial direction as per the words of Saint Thiruvalluvar who wrote about 2000 years ago.

“ neha; eho neha; Kjy; eho mJzpf;fFk;
tha; eho tha;g;gr; bray; @

Therefore, this Court has every responsibility to give appropriate directions, to safeguard the rights including the right to live as enshrined in Article 21 of the Constitution of India as this Court is the guardian of fundamental rights of the citizens. When our fellow citizens are being killed in the road accidents, this Court has to travel beyond its jurisdiction to pass novel and unconventional orders in the interest of the society. In spite of grim situation, if this Court shirks its responsibilities, it would be injustice done to the society by this Court, apart from being incapable of

implementing Apex Court as well as this Court's orders.

38. When statute speaks about the mandatory wearing of helmet and the Hon'ble Apex Court and almost all High Courts including ours directed the law enforcing authorities to enforce the statute, there is no escape for the authorities except to see that two wheeler travellers are wearing helmet. However, this court can take judicial note of the fact that more than 50 % of two wheeler riders are not wearing helmets. To save life from accident, this Court incidentally directs the third and fourth respondents to see that all the two wheeler riders wear helmet compulsorily.

39. Section 129 of Motor Vehicles Act, 1988, is not incorporated in the Act for ornamental purpose by the policy makers and it has been included as a preventive measure to prevent loss of life. There is no use in terming the section mandatory without implementation. Section 129 is made redundant, inspite of inclusion in the statue and Court's direction to the authorities to enforce it. The State is duty bound to safeguard the rights of the citizens by compelling them to wear helmets. Mere imposition

of fine for the violation has proved to be of no use. Therefore, the vehicle documents needs to be impounded; licence of the rider is required to be suspended and cancelled after enquiry and then only effective implementation is possible. That apart, people need to be sensitized through out India. Media needs to sensitize people through free advertisements. When non-wearing of helmet is alleged to be the cause for the death of the victim in this case, interest of justice requires this Court incidentally to exercise power under Article 226 of the Constitution of India to direct the authorities to ask the two wheeler riders to wear helmets compulsorily.

40. The Hon'ble Supreme Court in *Baby vs. Travancore Devasvom Board and others* reported in *1998 (8) SCC 310* held that the power of the High Court under constitution of India is always in addition to the power of the revision under Kerala Land Reforms Act. Similarly the power under Article 226/227 is in addition to Section 173 of the M.V.Act. That apart in *Jasbin Singh vs State of Punjab* reported in *2006 (8) SCC 294* held that the power of this Court administrative and judicial nature could be exercised suomotu also. In *Union of India and another vs Kriiloskar*

Preumatic Co.Ltd reported in 1996 (4) SCC 453 held that the power conferred under Article 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. In view of the above authorities to enforce Section 129 of the M.V.Act, this Court suomotu invokes Article 227 and issue direction.

41. Irrespective of law and enforcement of laws, the citizens themselves should take preventive measures to save their lives. This Court expects the family members of the riders of two wheelers to insist upon the riders to wear helmets while driving vehicle and inform the concerned rider that they are depending upon him for their livelihood and his safety and security is important not only for the family but also to the concerned person himself.

42. The Motor Vehicles Act was enacted in the year 1988 (Act 59 of 1988) and thereafter the said Act has not been revisited for the past 27 years except insertion of 163-A in 1994 and other minor amendments. The population of vehicles in India has phenomenally multiplied many times

and the number of accidental deaths has also shockingly increased. In the year 1980, the number of vehicles in India was 45,21,000. Whereas the population of vehicles in India in 2012 is 15,94,91,000. Similarly, the number of accidents occurred in 1980 was 1,53,200 and number of people killed in the accidents was 20,000. Whereas, the number of accidents occurred in 2012 was 4,90,383 and the number of people killed was 1,38,258. The details are as follows:

Total number of vehicles involved		Total number of Accidents		Number of persons killed		Number of persons injured	
Year	Total Vehicles	Year	Total Accidents	Year	Number of persons killed	Year	Number of persons injured
1970	14,01,000	1970	1,14,100	1970	14,500	1970	70,100
1980	45,21,000	1980	1,53,200	1980	24,000	1980	1,09,100
1990	1,91,52,000	1990	2,82,600	1990	54,100	1990	2,44,100
2000	4,88,57,000	2000	3,91,449	2000	78,911	2000	3,99,265
2005	8,15,02,000	2005	4,39,255	2005	94,968	2005	4,65,282
2010	12,77,45,972	2010	4,99,628	2010	1,34,513	2010	5,27,512
2012	15,94,91,000	2012	4,90,383	2012	1,38,258	2012	5,09,667

The above data would only reveal that in spite of stringent provisions in the Act, the accidents occur due to human error, mechanical error and

other avoidable reasons like drunken driving, cell phone speaking while driving, driving rash and negligently, driving speedily, negligence and riding two wheeler without wearing helmet. The above facts would also demonstrate that the punishment and penalty imposed for the offences committed under the Motor Vehicles Act are incapable of containing the violations.

43. When the vehicles got multiplied due to population growth, correspondingly, accidents have also increased. Taking note of rise in number of accidents and resultant loss of human lives and disablement of human beings, the Parliament should have amended the Act or enacted a new Act. Even compensation amount as stated in Second Schedule annexed to the Section 163A of the Motor Vehicles Act was fixed, based on money value, inflation, earning power, purchase power of the year 1994 and it has got no relevance as on date. When the main cause for loss of lives in India is due to accidents, the Motor Vehicles Act should have been amended once in every three years. The Hon'ble Apex Court, in *TNSTC vs. Bindul* reported in 2007 (7) SCC 642, *Oriental Insurance Company Ltd. Vs. Deo Patodi and others* reported in 2009 (1) TNMAC 629 etc. insisted re-

visitation of Motor Vehicles Act. However, the suggestion of the Apex Court has not been taken note of by the Parliament. In *Kishan Gopal vs. Lala and others* reported in **2013 (2) TNMAC 358**, the Apex Court, took Rs.30,000/- as the notional income of a non-earning member whereas as per II Schedule annexed to Section 163 of the Motor Vehicles Act 1988, it is only Rs.15,000/-. When the facts warrant, the Apex Court travelled beyond the provisions of the Act to render justice.

44. Even penalties and punishments imposed as per M.V.Act, 1988 are not effective to prevent or reduce the number of accidents. It is common knowledge that the law enforcing authorities are not effectively enforcing traffic laws. The very fact that number of accidents are increasing and correspondingly and the number of lives lost are also increasing, would only go to show that the police is not taking action promptly to enforce the Act. Therefore, the enforcing police authorities are deemed to be responsible for the violation of Section 129 of the Act and accidents and resultant deaths and injuries. As the Hon'ble Supreme Court as well as High Courts, including this Court directed the respondents to implement the provisions of the Act, non wearing of helmet and resultant

deaths would be deemed to be contempt committed by the law enforcing agencies, apart from being guilty of abetment under Section 107 of IPC. Similarly, the citizens themselves are to be blamed as they deliberately fail and neglect to follow the Road Rules and take precautions to avoid accidents. Section 129 of the Motor Vehicles Act mandates the wearing of helmets by the two wheeler riders. The fine amounts of Rs.100/- as punishment for first offence and Rs.300/- for subsequent offences as per Section 177 of the M.V.Act are palpably very low.

45. The deaths due to non wearing of helmets in Tamilnadu has shockingly increased from 1670 in 2005 to 6419 in 2014. The enormous increase in loss of precious lives denotes an extraordinary situation which is required to be addressed by unconventional orders traveling beyond provisions of the Act as stated by the Hon'ble Supreme Court in *Prithipal Singh vs. State of Punjab* reported in (2012) 1 SCC 10 that while dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. Paragraph-50 of the judgement is usefully extracted as follows:

“50. Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. In *B.P. Achala Anand v. S. Appi Reddy*⁴² this Court observed: (SCC p. 318, para 1)

“1. Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice.”

Thus, it is evident that while deciding the case, the court has to bear in mind the peculiar facts, if so exist, in a given case.”

Following the above judgement, in order to meet the unprecedented situation, namely, rise in the number of accidents and loss of lives due to non-wearing of helmets, this Court incidentally issues the required directions to the authorities.

46. If the rider of a two wheeler drives the vehicle without helmet, it endangers the life of the rider. Till he purchases the helmet, this Court directs the police authorities to invoke powers under Section 206 of the M.V. Act to impound the documents of the vehicles including the driving licence of the rider only with sole aim to make the riders to wear helmets. The above section is extracted as follows:

Section 206 in The Motor Vehicles Act, 1988

“206. Power of police officer to impound document. —

(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, 1860 (45 of 1860) seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it into the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under sub-section (3).

(3) A police officer or other person seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgment whichever is earlier: Provided that if any Magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgment for any reason for which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgment."

It is well settled that the Rules or procedures are the handmaids of justice.

Therefore, the above directions are required to be given irrespective of statutory power.

47. This Court expects the police authorities not to misuse this order to cause unnecessary hardships to the riders and give room for an allegation of corrupt practice. If any complaint of unnecessary harassment and corrupt practice is made, the higher police officials shall look into the said complaint very seriously and take appropriate action against those officials.

48. Therefore, this Court directs:

(a) Respondents 3 and 4 shall inform the public through media on or before 18.6.2015 that wearing of helmet by two wheeler riders is compulsory from 1.07.2015, failing which, all the documents of the two wheeler including driving licence of the rider shall be impounded under Section 206 of the Act as per the procedure stated therein and impounded documents would be released only on production of new ISI certified helmet with purchase receipt.

(b) If the order of this Court, namely, direction given to the respondents 3 & 4 to inform the people through media on or before 18.06.2015 about wearing of helmet compulsorily from 1.07.2015 onwards, is not complied with, the 3rd and 4th respondents namely, Home Secretary,

Tamil Nadu and the Director General of Police, Chennai, shall appear before this Court on 19.6.2015.

(c) Respondents shall suspend the driving licence of the riders and to cancel after enquiry for violation of Section 129 of the Motor Vehicles Act, after registering a case for violating the said provision.

(d) Respondents 3 and 4 are directed to install CCTV cameras in important junctions and Roads including Natinal Highways to monitor the wearing of helmet by two wheeler riders and those fail to wear helmets have to be issued notice about the non-wearing of helmet and to cancel the licence after enquiry.

(e) The fifth respondent (Central Government) shall go into the details of the design of the helmets to provide visibility on the sides as well as at the front of the wearer of helmet, as suggested by the intervenor.

(f) Respondents 3 and 4 shall file details of number of cases filed and other connected data every two months once before this Court.

(g) The fifth respondent shall direct all the States to monitor the wearing of helmet compulsory and take actions.

(h) The respondents are directed to conduct programmes sensitizing two wheeler riders about the necessity to wear helmets by distribution of pamphlets, short films, advertisements etc.

48. Appeal is allowed partly with the above directions. Call the matter on 19-06-2-15 for compliance.

8.6.2015

Internet :Yes
Index :Yes
vk

Note: Issue order copy on 08.06.2015

To

2.M/s.Bajaj Allianz General Insurance Co.Ltd.

C/o.Motor Third Party Claims Offices,

No.25/26 College Road

Kodunghaiyur, Chennai-600 006.

3.The Secretary,

Home Department,

Government of Tamil Nadu,

St.George Fort,

Chennai.

4.The Director General of Police,

Mylapore,

Chennai

5.The Union of India represented by its

Secretary Surface Transport Ministry,

New Delhi.

N.KIRUBAKARAN,J.

vk

C.M.A.No.3235 of 2014

8.6.2015