

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29-4-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Rev.Appln.No.219 of 2015
in
CMA.No.3235 of 2014

R.Muthukrishnan,
Advocate,
Enrolment No.246(A) 1990
28/1, Lawyer's New Chamber,
High Court Campus,
Chennai-600 104.

... Petitioner/Applicant

Versus

- 1.R.Mallika
- 2.Minor Mithra Shree
Rep. by M & MF Mrs.R.Mallika
- 3.N.Niraimathi
- 4.A.Babu
- 5.M/s.Bajaj Allianz General Insurance Co.Ltd.,
C/o.Motor Third Party Claims Offices
No.25/26 College Road
Prince Towers,
Nungambakkam
Chennai-600 006.
- 6.The Secretary
Home Department
Government of Tamil Nadu
St. George Fort
Chennai-600 009.
- 7.The Director General of Police
Mylapore,
Chennai-600 004.
- 8.The Union of India
Represented by its Secretary

... Respondents/Appellants

Surface Transport Ministry
 Transport Bhawan
 1,Parliament Street
 New Delhli-110 001.

... Respondents/Respondents

This Review Application is filed under Section 114 Order XLVII of the Code of Civil Procedure, 1908 to review at once its Judgement dated 8th June 2015 in CMA.No.3235 of 2014 passed by Hon'ble justice N.Kirubakaran.

For Applicant :Mr.R.Muthukrishnan
 Party in person

ORDER

"**CAT's-PAW**" is the nomenclature given to this Court for having passed the judgement making helmet wearing compulsory by two wheeler riders in C.M.A.No.3235 of 2014 dated 08.06.2015 reported in **2015 SCC On line MAD -3097= Manu/TN/1243/2015= 2015 4 CTC 646 = 2015 1 WLR 688 = 2015 5 MLJ 336 = 2015 3 LW 435 = 2015 2 TN MAC 171.**

2. Ignorance of law is no excuse, especially for a person like the petitioner, who is a practising Advocate and he is expected to know the law. No person can go against the law and all the persons are bound by law and there may not be any justification for violation of Law or Statutes passed by the Parliament as well as State Legislature.

3. The case of the petitioner, in crux, is to violate Section 129 of the Motor Vehicles Act, 1988, which mandates, wearing of protective head gear by

two wheeler riders. The petitioner filed the above application to review the order passed by this Court in CMA.No.3235 of 2014 dated 8.6.2015 by which, this Court directed the State to make compulsory, wearing of helmet by two wheeler riders wearing helmet from 1.7.2015 with some other directions.

4. The petitioner would contend that the said judgement suffers from error on the face of record, serious illegal infirmities and it is founded on an illegal construction, which is wrong in framing of questions relating to Helmet Rule, error of law, creation of emergency like situation in the minds of 1.5 crores of two wheeler riders and ordering compulsory wearing of helmet or else cancellation of driving licence are in total derogation of two wheeler riders' fundamental rights; The judgement is tainted with unwarranted judicial activism; The judgement has encroached upon the powers and authority of the Legislature of the State; The judgement is biased towards the deceased and is prejudicial towards two wheeler riders.

5. The petitioner would submit that there is a failure to appreciate the unfettered provision of liberty guaranteed to the Indian citizens under the Constitution of India and there is no room for any action or compulsion on the citizens to do or not to do any act. Instead of ordering to eliminate the identified causes of accident namely, road conditions, Traffic congestions; mechanical problems; negligent driving or drunken driving etc., the Court punished the two

wheeler riders by ordering to wear helmet or else to face cancellation of their licence.

6. The petitioner would further contend that the judgement is draconian, undemocratic and against the Rule of Law. Helmet does not prevent accidents, leave alone much talked about fatal accidents. The helmet ruling hinders the safe riding by way of and including in the form of obstructing rear view, creating discomfort in breathing in the form of suffocation, sweating and causing irritation and horn sounds made by vehicles behind are not properly heard; the judgement promotes marketing and sale of commercial product of helmet.

7. This Court has only become a cat'spaw of the crocodile tears shedding of helmet lobbyists group consisting of Helmet manufacturers and marketeers as well as publicity oriented/ personally interested "helmet activists".

8. The petitioner argued in person contending that this Court has got no power and jurisdiction to pass such an order violating the fundamental rights of the two wheeler riders. Therefore, he seeks to review the order passed by this Court in the above appeal. Further he would submit that wearing of helmet causes inconvenience, health hazards, discomfort, suffocation, sweating etc. Though the petitioner exhibited unwarranted vehement arguments and made

uncharitable remarks against the Court, this Court is not perturbed, since he is a practising advocate and a senior citizen. Not swayed by his verbal abuse, this Court paid consideration to the petitioner's arguments.

9. The aversion to wearing of helmet is exhibited by the petitioner, whenever there is an attempt to make two wheeler riders to wear helmet compulsorily. When there was an attempt made by the State Government in 2007, the petitioner filed a writ petition against the Government of Tamil Nadu, which was dismissed by a Division Bench of this Court holding that Section 129 of the Motor Vehicles Act is mandatory and the said judgment is reported in **(2007) 5 MLJ 1351 (R.Muthukrishnan and others Vs. Secretary to Home Department, Government of Tamill Nadu and others)**. Subsequently, when this Court, by way of judgement dated 8.6.2015, gave directions, making compulsory wearing of helmet, the petitioner has come out with the present Review Petition.

10. The petitioner, in paragraph-3 of the affidavit filed in support of the Review Petition, stated that the framing of the question relating to the helmet Rule is an error of law, when it is not an issue for determination in CMA.No.3235 of 2014. The contention raised by the petitioner, was consciously taken note of by this Court, even while deciding the appeal, in paragraphs Nos. 37 to 40, 44 to 46 of the judgement, which are extracted as follows:

“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.

“ நோய் நாடி நோய் முதல் நாடி
அதுதணிக்ககும்
வாய் நாடி வாய்ப்பச் செயல் ”

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 Kriloskar 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.

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."

Hence the question of error of law does not arise.

11. The petitioner would contend that emergency like situation has been created in the minds of 1.5 crores of two wheeler users in the State Tamil Nadu by ordering compulsory wearing of helmet or else face cancellation of driving licence, which is violative of the fundamental rights of the two wheeler riders guaranteed under Articles 19 and 21 of the Constitution of India. The aforesaid contentions raised by the petitioner were already answered as early as in 2007 by the Division Bench of this Court in its judgment rendered in ***R.Muthukrishnan and others vs. Secretary to Home Department, Government of Tamil Nadu and others*** reported in ***(2007) 5 MLJ 1351*** and paragraphs 10 and 11 of the judgement are 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."

Further, making two wheeler riders to go by law, by wearing helmet compulsorily,

as mandated under Section 129 of the Motor Vehicles Act 1988, cannot be attacked contending that it created emergency like situation. If emergency situation is created for safety and security of two wheeler riders, it is only in the interest and well-being of two wheeler riders and not otherwise.

12. It is the duty of the every citizen to abide by law, especially when the law has been enacted in the interest of two wheeler riders. Under Section 9 of the Motor Vehicles Act only, the two wheeler riders are getting licence to ride vehicles. Motor Vehicles Act makes it compulsory to have effective and valid driving licence issued by the Transport Authorities to drive motor vehicle under Section 3 of the Act. When such is the provision of law, no rider can contend that there is no necessity for having driving licence under Section 3 of the Act. Similarly, no one could contend that there is no necessity to wear helmet compulsorily especially when Section 129 of the Motor Vehicles Act 1988, renders it mandatory. 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. “

13. When possession of driving licence is a must under Section 3 of the Motor Vehicles Act to drive any motor vehicle, it is equally mandatory for two wheeler riders to wear head gear under Section 129 of the Motor Vehicles Act, and there may not be any justification or excuse to escape from wearing of helmet as per Act. Moreover, the various judgements passed by the Hon'ble Supreme Court namely, ***Ajay Banu vs. Union of India and others reported in AIR 1988 SC 2027***, the recent judgment in ***S.Rajaseekaran and others Vs. Union of India and others reported in 2014 SCC 36*** and all other High Courts including this Court mandate the wearing of helmet. The judgement of this Court is only as per the Act, in consonance with the judgements rendered by the Hon'ble Apex Court and taking into consideration of the loss of precious lives due to non wearing of helmets. The details furnished to the State Government have been extracted in paragraph-34 of the judgement of this court in C.M.A.No.3235 of 2014. Paragraph-34 is extracted as follows:

“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

Sl.No .	Hon'ble High Court called required particulars	Reply furnished																								
		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?	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: <table><thead><tr><th><u>Year</u></th><th><u>No.of Life lost</u></th></tr></thead><tbody><tr><td>2005</td><td>1670</td></tr><tr><td>2006</td><td>2506</td></tr><tr><td>2007</td><td>3170</td></tr><tr><td>2008</td><td>3545</td></tr><tr><td>2009</td><td>3964</td></tr><tr><td>2010</td><td>4588</td></tr><tr><td>2011</td><td>4698</td></tr><tr><td>2012</td><td>5287</td></tr><tr><td>2013</td><td>5483</td></tr><tr><td>2014</td><td>6419</td></tr><tr><td>Total</td><td>41330</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	Total	41330
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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".

14. The contentions of the petitioner that non wearing of helmet does not prevent road accidents and non wearing of helmet is not the cause of any road accident are all made for the sake of argument. No one could say that helmet would prevent accidents and non wearing of helmet is the cause of any accident. What has been insisted by this Court is that wearing of helmet is only

in the interest of two wheeler riders as per law. Wearing of helmet would prevent the riders from getting head injuries in case of accident. The point raised by the petitioner has already been dealt with, by this Court, in the judgement in CMA.No.3235 of 2014 itself in paragraph No.29, which reads as follows:

“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%."

15. This Court, while rendering judgement in the appeal, only highlighted the relevant laws with regard to the issue, especially when the Insurance Company specifically took a stand that the deceased did not wear helmet at the time of accident. This Court is not only a Court of Appeal under the Motor Vehicles Act, but also a Constitutional Court clothed with powers to issue directions safeguarding the civil rights as well as fundamental rights of the citizens especially the right guaranteed under Article 21 of the Constitution of India, the right to live.

16. The petitioner contends that the judgement promotes marketing and sale of commercial product of helmet. If the contentions of the petitioner are to be accepted, then the very statute viz. the Motor Vehicles Act would be for promotion of sale of various types of motor vehicles, helmets and spare parts. To abide by Section 129 of the Motor Vehicles Act, definitely, a person riding two wheeler, has to wear the head gear. In fact this Court, subsequently, by order dated 22.9.2015, directed the Central Government to give a directive to the manufacturers of the two-wheelers to supply protective headgear freely conforming to the specifications prescribed by the Bureau of Indian Standards

1986 while selling two wheelers. Paragraphs 4, 5 and 6 of the order are extracted as follows:

“4. Further, as per Rule 138(f) of the Motor Vehicles Act, supply of headgears i.e., helmets for the two-wheelers by the manufacturers is mandatory. Rule 138-(f) is extracted as follows:-

“138 (Signals and additional safety measures for motor vehicle) – (f) At the time of purchase of the two wheeler, the manufacturer of the two wheeler shall supply a protective headgear conforming to specifications prescribed by the Bureau of Indian Standards under the Bureau of Indian Standards Act, 1986 (63 of 1986):

Provided that these conditions shall not apply to category of persons exempted in terms of sections 129 and the rules made thereunder by the concerned State Government.”

5. Therefore, the Central Government is directed to direct the manufacturers of the two wheelers to supply protective headgear conforming to specifications prescribed by the Bureau of Indian Standards under the Bureau of Indian Standards Act, 1986. As the head gear is mandatory for the pillion rider also, it is appropriate to direct the supply of two helmets by manufacturer. Moreover, if the helmets are supplied by manufacturers, it will prevent use of sub-standard helmets. Because, there is a

practical problem in wearing helmet and also keeping the helmet in safe, most of the two wheeler riders are not using the helmets. They are unable to keep the helmets fearing that they may lose it. Therefore, lock is necessary.”

Therefore, this Court has taken into consideration, every provision of the Act and Rules and issued suitable directions not only to supply head gears to the two wheeler riders and also to provide for safety locks to keep the head gears in the two wheelers at the time of manufacturing of two wheelers itself.

17. The petitioner would charge that this Court has only become a cat's paw of the crocodile tears shedding by helmet lobbyists' group consisting of helmet manufacturers and marketeers as well as publicity oriented/personally interested “helmet activists”. The above contention of the petitioner is highly derogative and contemptuous in nature. The petitioner, an advocate, cannot stoop down to the level of making such allegation against this Court. There is no question of this Court becoming a puppet in the hands of somebody, as this Court is earnestly concerned only with the safety and security of two wheeler riders and the interest of their family members by implementing Section 129 of the Motor Vehicles Act, in letter and spirit.

18. The petitioner contended that helmet hinders the safe riding of two wheelers by way of and including in the form of obstructing rear view, creating

discomfort in breathing in the form of suffocation, causing irritation and non-hearing of horn sounds made by the vehicles coming from behind. The question of obstruction of rear view by wearing of helmet is unsustainable, since the rear view is possible from the mirrors-fixed in the handle bar and it is mandatory to have it fixed on both sides. Discomfort caused by wearing of helmet, if any, cannot be an excuse to avoid wearing of helmet.

19. The petitioner submitted that this Court failed to appreciate unfettered provision of liberty guaranteed to the citizens under the Constitution and there may not be any room for any action or compulsion to do or not to do any act. When the petitioner is a citizen of this Country, he is duty bound to abide by all the laws enacted by the Parliament as well as the State Legislature and he cannot be allowed to say that he would not follow the laws.

20. Further, he deliberately referred to only a portion of paragraph 13 of the order passed by the Division Bench of this Court by order dated 20.12.2007 in W.P.No.19387 of 1999 in ***Accident Victims Association Vs. The State of Tamil Nadu and four others*** leaving important portion of the para. In the relevant portion of paragraph-13 of the said judgement, this Court insists to impose certain Rules and Regulations even relating to other matters, which can be described as “self-regarding actions”. This Court in paragraph-28 of the judgement in CMA.No.3235 of 2014 dated 8.6.2015 itself, extracted paragraphs

13 to 16 of the Division Bench unreported Judgement in W.P.No.19387 of 1999 in ***Accident Victims Association Vs. The State of Tamil Nadu and four others***. At the cost of repetition, paras 13 to 16 are 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)

Therefore, the petitioner is guilty of deliberately employing only a portion of the order, which suits him to mislead this Court. Being an advocate, he is supposed to reproduce the entire paragraph, wherein the Division Bench negated the petitioner's contention.

21. Recently, a three member Committee headed by **Justice K.S.Radhakrishnan** was appointed by the Hon'ble Supreme Court by order dated 22.04.2014, to scrutinise and monitor the enforcement of Statutory provisions including the Motor Vehicles Act for making the road safer. The said Committee filed a report dated 19.8.2015, wherein it has been stated that unless strong and urgent measures are taken to deal with speeding, drunken driving, red-light jumping, violation of helmet laws, seat belt laws, use of mobile phones while driving and overloading, number of accidents and fatalities will continue to remain high and asked the Chief Secretary of all the States and Union Territories to take stringent action against the violators of law. It also directed that helmet laws be made applicable all over the country both for main and pillion wheel riders and suggested the two wheeler owners to carry an extra helmet with them. When the Committee constituted by the Hon'ble Apex Court itself has come out with many strong and stringent measures to deal with traffic offences, the directions given by this Court, are in consonance with the provision of law, in the interest of safety of two wheeler riders and in the interest of their family members.

22. Pursuant to the directions given by this Court in CMA.No.3235 of 2014 on 8.6.2015, the State of Tamil Nadu passed order making wearing of helmet compulsory from 1.7.2015. The said order was challenged before this Court in W.P.No.19034 of 2015 filed by one J.N.Nimmu Vasanth and the First Bench of this Court by order dated 30.6.2015 dismissed the same. Paragraphs 2

and 3 of the order are extracted as follows:

“ 2. Petitioner states that wearing Helmet is per se not desirable and causing harassment. The above submission is contrary to the provisions of the Motor Vehicles Act, 1988 and the Rules therein. **This is the second petition today, which is nothing but publicity interest litigation, dealing with an important issue of road safety where the learned Single Judge of this Court has directed enforcement of norms of wearing Helmet.** We have dismissed the other writ petition being W.P.No.19020 of 2015 dealing with the same issue.

3. There is no public interest or all involved and the writ petition is dismissed. “

The order passed by the First Bench of this Court, impliedly confirmed the directions given by this Court in CMA.No.3235 of 2014 dated 8.6.2015, which is the subject matter of review. Therefore, it is too late for the petitioner to come up with the review petition.

23. When life of the victim in the appeal is alleged to have been lost due to non wearing of helmet, as contended by the Insurance Company opposing the claim petition, this Court is duty bound not only to look into the said issue, but also to consider, comprehensively, the reality in the society namely, loss of atleast 17 lives in Road Accidents in 2014 in Tamil Nadu alone, due to

non wearing of helmet and issued unconditional directions in the interest of two wheeler riders and their families. This Court cannot wait for any person to come and knock the doors of this Court seeking direction to the authorities for making wearing of helmet compulsory. Whenever an appropriate and relevant case, in which one of the problems of the society is the subject matter, comes up before the Court, it is the best occasion for this Court to give suitable remedial directions to address the menace/problem. It cannot be termed as “**unwanted judicial activism**”, even if the direction amounts to judicial legislation, it is only to save the lives of the two wheeler riders and human rights of family members.

24. In our country more number of two wheelers are being added daily on the roads. Two-wheelers constitute about 70% of the total vehicular population in our country and the victims of the accidents are mostly two wheeler riders. Therefore, when a specific case, in which, wearing of helmet is an issue, making use of that case, this Court only demonstrated to the General Public as to how non-wearing of helmet by two wheeler riders causes loss of life so that the others should learn.

25. As levying of penalty is proved to be ineffective and daily 17 lives are lost for non-wearing of helmet, this Court has to innovate and issue remedial directions viz. Impounding of driving licence of the rider. For passing such orders this Court has power and jurisdiction under Article 226 and 227 apart from

inherent and plenary powers as Constitutional Court. The said directions in furtherance of object of Motor Vehicles Act. The object of Motor Vehicles Act apart from other objects, safety and security of two wheeler riders. Considering the object only, Section 129 has been incorporated in the Statute.

26. The Court cannot encourage any proceedings which criticises implementation of law. The contention of the petitioner is against public safety and public policy.

27. Being a lawyer, he should be a role model for other persons. Lawyer is supposed to know the law. By seeking to review the order he indirectly seeks a direction to violate Section 129 of the Motor Vehicles Act. If the order of the Court is reviewed, it would amount to a direction to violate the Statute. Moreover, unnecessary contemptuous and uncharitable remarks and unwanted criticisms against the Court have been made in the review petition as well as during the arguments in the open court. Taking into consideration that the petitioner is a senior citizen and having sufficient standing in the Bar, this Court is not inclined to award any costs, even though very cost is required to be slapped on him. There is no merit in the review petition and the same is dismissed. No costs.

28. When about 155 countries have mandated the Helmet Rule and the World Health Organisation itself is in favour of wearing of helmet by two wheeler riders, and when the Law of the land is also in favour of wearing of helmet, only in this country, this kind of petition challenging the mandatory wearing of helmet is possible.

29.4.2016

Internet:Yes/No
Index :Yes/No
vk

To

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2.The Secretary
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3.The Director General of Police
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4.The Union of India
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N.KIRUBAKARAN.J,

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Rev.Appln.No.219 of 2015
in
CMA.No.3235 of 2014

29.4.2016