

THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1860 of 1998 (O&M)
Date of decision : 04.02.2015

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Smt. C. Rajalakshmy and others

...Respondents

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ravinder Arora, Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant

Mr. Sandeep Vermani, Advocate
for respondents No. 1 to 3

None for respondents No. 4 and 5

ANITA CHAUDHRY, J.

This appeal is by the Insurance Company against the award dated 30.04.1998 passed by the Motor Accident Claims Tribunal, Faridabad.

The submission on behalf of the appellant was that the accident had taken place on 15.10.1995 and a claim petition was filed by M. Ramachandran Nair on 30.4.1996 and he died during the pendency of the petition and the legal heirs were impleaded as a party. It was urged that the claimants had failed to lead any evidence to show that the death was on account of the injuries. It was urged

that the injured remained in the hospital only for three days in October 1995 and his death came 11 months later on 16.9.1996 and there is no postmortem report, no treatment record to show that he had not recovered from the injuries. It was urged that they had led evidence to show that he had joined office and Ex. R-3 contains the details of the leave he had taken after joining office in March 1996.

The submission on the other hand was that the injured not only took treatment in Escorts Hospital, Faridabad but he had taken treatment in Kerala and, therefore, he was on long leave and the death was on account of injuries suffered in the accident and the statement of claimant witnesses had gone un rebutted. It was urged that the claimants had produced bills to show the amount that had been spent from time to time.

The bills Ex. P-3 to P-11 on record pertain to the period October 1995 which were only for a sum of ₹ 15,000/- which has been referred to by the Tribunal in para 12 of the petition.

The accident had taken place in October 1995 while M. Ramachandran Nair died on 16.9.1996. The claim petition had been filed by him on 03.04.1996 but before he could appear to make a statement he had died. The onus was upon the claimants to prove that the death was on account of the injuries suffered by him. The only evidence on record was the oral statements made by his family and the death certificate issued by the Municipal Committee, Faridabad. No postmortem report was produced. No evidence was led to show that the deceased had taken treatment during the intervening period. The Insurance Company had summoned the

leave record of M. Ramachandran Nair which shows that he was on leave till 25.05.1996. Thereafter, he had been attending office. He had availed leave for 2 or 3 days every month. He had attended office even on 13.09.1996. The claimants were required to lead evidence to show the cause of death. The intervening period between the accident and death is so much to raise a presumption in favour of the claimant. The Tribunal gave no reason for accepting the false statement. The reasoning given by him is recorded in para 9 of the award reads as under:-

9. There is absolutely no evidence on the record to rebut the statements of PW1 and PW2. From the above referred statements of PW1 and PW2, copy of FIR Ex. P13, death certificate of Ram Chandran Ex.P14, it is clear that accident took place on 15.10.1995, in which Ram Chandran received serious injuries and thereafter died on 16.9.1996 due to the injuries. PW1 also stated that the accident took place due to rash and negligent driving of scooter No. HR-29/D-7262 by respondent No. 1 Harjeet, the driver of the vehicle in question. Even the respondent No. 1 did not appear in the witness box either to deny the occurrence of the accident or to state that the accident did not occur due to his rash and negligent driving."

M. Ramachandran Nair was just 48 years old. He had remained on leave for almost 5 ½ months after the accident. He had recovered from the injuries and, therefore, he had started attending office from end of March 1996 to October 1996. No record from the Indian Institute of Panchakarma, District Trichur, Kerala was

produced. The MLR does not show that the injuries were so grave that it would lead to death. The findings recorded by the Tribunal have to be set aside. The claimants were only entitled to ₹ 15,000/-, the amount spent on medicines and treatment. No compensation could have been awarded for death as the claimants had failed to prove that the death was on account of the injuries and a proximate cause of death. If the amount had been paid, the same shall be refunded to the Insurance Company. The appeal is partly allowed.

04.02.2015

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(ANITA CHAUDHRY)
JUDGE

