

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 3840 of 2014 (O&M)

Date of decision: 15.03.2016

National Insurance Co. Ltd.

... Appellant.

versus

Kailash Mehra and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Paul S. Saini, Advocate, for the Appellant.

Mr. Ashwani Arora, advocate for respondent Nos. 1 to 5.

Mr. Yogesh Gupta, Advocate for respondent Nos. 6 & 7.

K.Kannan, J. (ORAL)

The appeal is by the insurer challenging the finding attributed to death of Ram Kumar as resultant to the use of motor vehicle. The incident alleged was on 21.05.2010. The deceased was travelling in a rickshaw, with his brother following him by bicycle. The insured's vehicle which was a car was reported to have dashed against the rickshaw from behind when the deceased fell down from the vehicle. He had bruised himself and he was reported to have been taken home. He did not get admitted till the next day at 9.30 pm at the hospital where he died and the cause of death as entered in the hospital records was "Broncho-pneumonia, coronary artery disease in case of pre-existing liver cirrhosis". A copy of the record prepared by Rajiv Aggarwal was Ex.P.14. The Doctor who was at the Department of Forensic Medicine & Toxicology, GMCH, Sector 32, Chandigarh was examined as DW4 who spoke from the hospital records to say that it

was a known case of chronic heart disease and alcoholic liver disease. The death report P3 entered in Column 16 the cause of death as alcoholic liver disease with hepatic encephalopathy with shock. The Doctor had explained that shock is the ultimate event that precipitated death. The Doctor further explained at the trial that the patient died a natural death and as per the records, the death had no relation with the alleged accidental injuries. Indeed, there were no visible injuries noted in the death certificate. With all this evidence, which must have been treated as admission against the claimants, the Tribunal still found that the accident was on account of the injury suffered in an accident that had taken place on 21.05.2010.

It is admittedly a situation where the deceased was not taken to the hospital immediately after the accident. The counsel for the claimant would explain that he had fixed his daughter's marriage and he did not want to be seen getting admitted in a hospital. He was anxious to avoid getting admitted in the hospital not because the injuries were slight but because he did not want to sully the preparations for conduct of marriage. I will take this to be an explanation possible but this explanation cannot still take us to make an inference to be made that an accident was in any way responsible for the death. The counsel for the respondent would refer to the decisions of this Court in National Insurance Company Limited Vs. Pooja Verma, 2010 Legal Eagle (P&H) 2990, that applies the principle that if the person died soon after injuries in an accident, with no other intervening event, it must only be

taken that the accident alone is the proximate cause for death. The theory in tort called as the *talem qualem* rule had been applied. Yet another judgment in Kiran Bala and others and others Vs. Rajeev Sharma 2013 Legal Eagle (P&H) 355, where the accident victim suffered dislocation of the hip which was sought to be corrected through a surgery, when he died. He was already a diabetic patient and the Court held that the death was resultant to the accident.

I cannot apply these two decisions to the favor of the claimant only because in Pooja verma's case (supra) there was no intervening incident between the accident and death and the person was not previously suffering from any other ailment. In Kiran Bala's case (supra) it was the accident injury that required surgery which failed. In both the cases, the application of *talem qualem* was perfectly justified. In every case of accident, we still look to the proximate cause of death. If there was any evidence that the deceased who had a cirrhosis of the liver could not have died in the usual course but he died only because he had an accident and the immediate proximate cause was the accident, then there was surely a scope for addressing the claim as resultant to the accident injury. On the other hand, it was a case where the deceased did not even feel compelled to get admitted in the hospital. Some abrasions not even an abrasion was recorded was recorded as injury in the post mortem certificate. Even the doctor did not opine that a fall from a rickshaw in his state of physical health that already existed could cause death. We have already extracted portions

of the statement of the Doctor and the entries found in the medical records. After the damning evidence of PW4, the claimants have attempted to effect a damage control through yet another Doctor Neeraj Singla examined as PW5. He has stated that the patient remained under treatment at GMCH 16 Chandigarh under one Dr. Ram Singh with whom he was working. His statement was that on 04.03.2008, that is about two years and 2 months before the accident, he was under treatment and he was discharged in satisfactory condition and that he was under follow up treatment. He has also made reference to the fact that he had known that he had received some injuries in the accident on 21.05.2010 and did not go as far as to the state that caused death could have been some injuries. On the other hand, he stated that “the patient injuries (sic) had not been noted by me. As per record patient came to medical emergency on 21.06.2010 at 9 pm in a gasping condition and altered sensorium condition, blood pressure was not recordable”. He has stated that resuscitative measures were started and endotracheal intubation was done. This evidence also does not in any way help the situation for the claimants. He has also reiterated that as per the record the case of death was alcoholic liver disease with hepatic encephalopathy. There is nothing to mention about the accident as per the record of the Medical Department.

Courts are no experts for determining cause of death. If we make inference about the cause of death as due to an accident, we invariably look to the fact of accident and the proximate cause for the

death and wherever postmortem is done, the report of the Doctor regarding the cause of death. It will be wholly wrong for a Tribunal to discard Doctor's evidence and enter a pure realm of conjecture to determine cause for death. Any death is painful. Every person who is seriously ill still believes that he will come through. If he is the sole bread earner, the whole family at all times will have to face the pangs of death and separation. The Courts do not compensate for the vicissitudes of natural calamities in the family. The Court's interventions are to compensate in situations where somebody has been responsible by the civil or criminal wrong that takes away the life prematurely. In this case, the decision that I take to set aside the award is not to slight the poignancy of the situation and to take away the serious sense of grief that the family would feel for the death of the bread earner. However, it will be placing the sympathy wrongly to compensate for what was surely a non-sequeter to a jostle from the rickshaw through the alleged accident. It is a matter of record that a police constable who was said to have been injured in an accident did not think of having the complaint registered. A person who was in the immediate vicinity namely his brother did not also record the complaint. It was not only after his death that the family thought of bringing up the incident of an accident that took place as the case for death. It was clearly an afterthought and not a natural happening to register a complaint.

The award passed by the Tribunal is indefensible. It is a

result of expression of misplaced sympathy. The award is set aside and the appeal by the insurer is allowed.

15.03.2016

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(K.KANNAN)
JUDGE