

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 855 OF 2010

1. Smt. Birjha Bai, Wd/o Shiv Kumar Nirmalkar, aged 46 years
 2. Bhupendra Kumar, S/o Shiv Kumar Nirmalkar, aged 19 years
 3. Teman Lal, S/o Late Shiv Kumar Nirmalkar, aged 30 years
- All R/o Village Bharar, P.S. Ranitarai, Tehsil Patan, Distt. Durg (C.G.)

... Appellants

versus

1. Chhannu Lal Sahu, S/o Goharam Sahu, aged 32 years, resident of Village Nayakbandha, P.S. Abhanpur, District Raipur (C.G.)
2. Lekhu Tarak, S/o Kishun Tarak, aged 30 years, R/o in front of Gurudwara, Dhamtari Road, Abhanpur, District Raipur (C.G.)
3. Manager, National Insurance Company Limited, Naveen Market, Phool Chowk, Raipur, Tehsil and District Dhamtari (C.G.)

... Respondents

For Appellants	:	Mr. A.L. Singroul, Advocate, as Amicus Curiae.
For Respondent No.3	:	Mr. Goutam Khetrpal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 12.5.2010 passed by the Chief Motor Accident Claims Tribunal, Dhamtari, in Claim Case No. 125/2009.
2. Since there was no representation on behalf of the appellants, this Court thought it fit of getting the appeal decided taking the assistance of Shri A.L. Singroul, Advocate, present in the Court.
3. Brief facts of the case are that the deceased in the instant case, i.e., Shiv Kumar Nirmalkar, aged about 51 years, met with an accident on 21.4.2009 when he was hit by a Maruti Van, bearing Registration No. CG04-HP-1887, while he was travelling on a motorcycle, bearing Registration No. CG07-LG-9479, driven by his son Teman Lal, the appellant no.3. As a result of the said accident, the deceased-Shiv Kumar Nirmalkar received injuries on his body. He was immediately admitted to a hospital at Dhamtari from where he was discharged after some time and later on he developed certain complications and died on 26.5.2009.

4. A claim application under Section 166 of the Motor Vehicle Act was filed by the claimants who are the widow and two sons of the deceased. The learned Tribunal after considering the fact that there was no direct evidence to reach to a conclusion that the death had occurred because of the resultant injuries caused from the accident on 21.4.2009, the claimants were not granted any compensation for the death of the deceased-Shiv Kumar Nirmalkar. However, for the medical expenses incurred in respect the treatment of the injuries sustained by the deceased, an amount of Rs. 22,900/- has been granted by the Tribunal, with interest at the rate of 6% per annum from the date of filing of the claim application.

5. Shri A.L. Singroul, learned counsel appearing for the appellants, submits that it is a case where the death of the deceased took place within about 30-35 days from the date of accident i.e. 21.4.2009. He further submits that the perusal of the record of the Tribunal would show that the deceased was in continuous treatment from the hospital at Dhamtari and relevant bills in this regard have also been marked and exhibited before the Tribunal. He next submits that the claimants before the Tribunal had fully established and proved the causal connection between the accident that took place on 21.4.2009 and the death of the deceased on 26.5.2009. He also submits that there was also no specific denial either by pleading or by evidence by the insurance company to disprove or contradict the said averment/contention of the claimants as regards the death of the deceased not relating to the accident.

6. Shir Singroul, further referring to the post-mortem report of the deceased shows that there were indications of the lungs of the deceased to have got punctured and in all probability the lungs must have got injured as a result of the accident and therefore the Tribunal has committed an error of facts and on law in not treating the death to be resulting from the

said accident and also in not accepting that there was a causal connection between the accident and the death of the deceased. He thus prayed for the amount of compensation awarded to be suitably enhanced.

7. Per contra, Shri Goutam Khetrapal, learned counsel appearing for respondent no.3-insurance company, vehemently opposes the appeal and submits that there is no medical evidence to prove the causal connection between the death and injuries. He further submits that the medical prescription that is available on record would also show that there was no injury as such sustained by the deceased which had been sustained as a result of the accident which could have caused the death of the deceased. According to him, the major injuries which are reflected were the fracture of the tibia fibula bone and abrasion on the lower right limb of the deceased and the death does not seem to have been caused because of the injuries suffered from the accident. He next submits that the post-mortem report which also does not show the cause of the death to be the injuries sustained from the accident. He thus prayed for the rejection of the appeal holding that there is no illegality or infirmity on the part of the Tribunal while passing the impugned award.

8. Having considered the rival contentions put forth on either side and on perusal of the record, what is necessary at this juncture is to refer to the documents which have been exhibited during the course of the evidence. Record shows that the accident occurred on 21.4.2009. An FIR to that effect was also lodged on 24.4.2009 at Police Station Kurud, District Dhamtari. An offence under Section 279, 337, 338 and also under Section 304-A of IPC was registered against the driver of the Maruti van which had dashed the motorcycle on which the deceased was travelling. The fact that the driver of the Maruti van has been prosecuted for the offence under Section 304-A of IPC itself is sufficient to prove a causal connection

between the accident and the death of the deceased. Further, what is also relevant is the fact that the documents which have been produced before the Tribunal, from Exhibit D-4 onwards, would show that there has been a continuous treatment of the deceased at the Dhamtari Christian Hospital from the date of accident till the date of his death on 26.5.2009, which is all the more a stronger ground for drawing an inference that there was a causal connection between the accident and the death of the deceased. Lastly, the post-mortem conducted upon the deceased, i.e., Exhibit P-9, would also reflect that there is an observation made by the Doctor conducting the post-mortem finding that the lungs of the deceased were found to be torn at one place. This could have been resulted because of the injuries sustained from the accident. All these facts force this Court to reach to the conclusion that the finding of the Tribunal of there being no causal connection between the accident and the death, to be erroneous and the same deserves to be and is accordingly set aside and it is held that the death of the deceased was as a result of the accident that took place on 21.4.2009 from the vehicle belonging to respondent no.2 and which was duly insured with the respondent no.3.

9. So far as the compensation part is concerned, this Court does not intend to remit the matter back on that ground alone and considering the period of litigation spent by the claimants, this Court thinks it proper to dispose of the appeal by quantifying the amount of compensation.

10. Considering the date of death is of the year 2009 and accepting the fact that the deceased was working as a labourer, this Court assesses the monthly income of the deceased at Rs.4500/- accepting the daily income of the deceased, a labourer, at Rs.150/- per day. Since the deceased was aged around 50 years at the time of accident, he would not be entitled for any income under future prospects.

11. Accordingly, accepting Rs.4500/- as the monthly income of the deceased, the yearly income would be Rs.54,000/- of which if 1/3rd is deducted towards the personal expenses, the amount left would be Rs.36,000/- which if multiplied by applying the multiplier of 11, the amount of compensation payable would come to Rs.3,96,000/-. Further, so far as the compensation under the conventional heads is concerned, considering the fact that the accident is of the year 2009 and applying the principles laid down by the Hon'ble Supreme Court in the case of **Rajesh and Others v. Rajbir Singh and Others, 2013 (9) SCC 54**, ends of justice would meet if the claimants are granted a lump sum compensation of Rs.1,25,000/- under this head and it is so ordered. Thus, the total compensation payable to the claimants would come to Rs. 5,21,000/- instead of Rs.22,900/- that has been awarded by the learned Tribunal. The enhanced amount shall also carry the interest at the same rate as has been awarded by the Tribunal. It is accordingly ordered so.

12. Resultantly, the appeal is allowed and the impugned judgment stands modified in terms mentioned herein above. Rest of the award and the conditions enumerated in the impugned award shall remain intact.

13. Registry of this Court is directed to forward a copy of this order to the Secretary, District Legal Services Authority of District Durg, with a direction for ensuring that the copy of the order is served upon the appellants at the earliest.

14. This Court renders a word of appreciation to Shri A.L. Singroul, Advocate, in rendering his valuable assistance to this Court.

Sd/-
(P. Sam Koshy)
Judge