

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 47 OF 2008

The Oriental Insurance Co. Ltd., through Divisional Manager, Bilaspur,
near to High Court, Bilaspur, Tahsil & District Bilaspur (C.G.)

... Appellant

versus

1. Smt. Ganga Bai, Widow of Late Bhaklu Yadav @ Rameshwar, aged about 35 years
2. Ku. Purnima Bai, aged about 13 years, D/o Bhaklu Yadav @ Rameshwar Yadav
3. Ku. Sunita Bai, aged about 11 years, D/o Bhaklu Yadav @ Rameshwar Yadav
4. Rajendra Kumar, aged about 9 years, D/o Bhaklu Yadav @ Rameshwar Yadav
5. Kallu Ram, aged about 4 years, S/o Bhaklu Yadav @ Rameshwar Yadav
6. Bhuru Ram, aged about 3 years, S/o Bhaklu Yadav @ Rameshwar Yadav

For minor Respondents No. 2 to 6 through guardian mother Smt. Ganga Bai, Widow of Late Bhaklu Yadav @ Rameshwar

Residents of Respondents No. 1 to 6, Village – Devari, P.O. Kathakoni, Tah. Takhatpur, District Bilaspur (C.G.)

7. Virendra Kumar Kaushik, aged about 25 years, S/o Horilal Kaushik, Resident of Village Chanadongari, P.O. Kathakoni, Tah. & Thana- Takhatpur, District Bilaspur (C.G.) (Driver of Vehicle No. CG10-ZJ-3011 Bajaj Boxer Motorcycle)

8. M/s Shri Tractors through Partner Smt. Mamta Agrawal, aged about 40 years, W/o Vinod Agrawal, Resident of 27 Kholi, Thana- Civil Lines, Bilaspur, Tah. & Distt. Bilaspur (C.G.), Address of Shop Warehouse Road, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

... Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate.
For Respondents 1 to 6	:	Mr. M.K. Bhaduri, Advocate.
For Respondent 7	:	Mr. Prateek Singh, Advocate, under instructions of Mr. Rajeev Shrivastava, Advocate.
For Respondent 8	:	Mr. A.L. Singroul, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the insurance company assailing the award dated 4.8.2007 passed by the First Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No. 120/2007.

2. Vide the impugned award, the learned Tribunal, in a death case, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.6,82,600/- in favour of respondents no. 1 to 6/claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application till realization and fastened the liability for payment of compensation upon the appellant-insurance company indemnifying the driver and owner of the offending vehicle, i.e., respondent no. 7 & 8.

3. The impugned award has been challenged by the appellant-insurance company primarily on two grounds. Firstly, that the death of deceased-Bhaklu @ Rameshwar Yadav was not directly related to the injuries that he had sustained from the accident in the instant case. Secondly, that the driver of the offending vehicle at the relevant point of time was only having a learner's license and as per the requirement of the Motor Vehicles Act he could not have driven the motorcycle without being accompanied by a person who has a valid license. Thus, on both these grounds, the appeal of the insurance company deserves to be allowed and the liability of payment of compensation should be shifted upon the owner and driver of the offending vehicle.

4. Learned counsel for the appellant-insurance company referring to the records submits that it is a case where admittedly an accident took place on 16.12.2005 when deceased-Bhaklu Yadav who was going on a bicycle was hit by a motorcycle driven by respondent no.7 and owned by respondent no.8, as a result of which the deceased suffered grievous injuries on his right leg and for which he was hospitalized for a considerable period of time and thereafter discharged. He further submits that it is a case where the accident took place on 16.12.2005, the FIR was lodged after 45 days on 1.2.2006 and the deceased-Bhaklu Yadav died on

12.7.2006. According to him, there was no post-mortem conducted on the deceased to show that the accident had a nexus with the injuries that he had suffered from the accident on 16.12.2005.

5. Further contention raised by the insurance company is that the evidence which have come on record would reveal that the driver who was criminally prosecuted was also charged for the offence under Sections 279, 337, 338 of IPC and the charge under Section 304-A of IPC was not levelled against him. According the the insurance company, it is also a case where the witnesses examined during the course of evidence on behalf of the claimants as also the doctor, have specifically stated that the deceased after being treated for a couple of months was discharged from the hospital and that his injuries were healed up by that time. This proves that the death of the deceased was not connected to the injuries in any manner. Therefore the claim application should not have been treated as if it was a death case from accidental injury.

6. Learned counsel for the insurance company also submits that the evidence which have come on record and the record do not establish the cause of death or it being directly related to the accident and the injuries suffered by the injured from the said accident. He refers to a judgment of the Madhya Pradesh High Court reported in 1987 (1) MPWN 291 (218) titled as 'Kamlabai v. Kanhaiyalal' and also to a decision of this High Court in the case of 'The Oriental Insurance Company Limited v. Satish Kumar & Ors., decided on 21.9.2012 in MAC No. 368/2011.

7. So far as the breach of policy condition is concerned, the contention of learned counsel for the appellant-insurance company was that the driver/respondent no.7 at the time of accident only had a learner's license and therefore there is a clear violation of the provisions of the Motor Vehicles Act, inasmuch as the respondent no.7 being not accompanied by

a person who was having a valid license at the time of accident while he was driving the motorcycle and thus prayed for the award to be suitably modified.

8. Learned counsel for respondents no. 1 to 6/claimants however opposing the appeal submits that it is a case where the nature of injuries, the subsequent treatment for a considerable long period of time and the death of the deceased thereafter is not in dispute. He further submits that a perusal of the evidence of the widow of the deceased and the doctor who has been examined would show that the deceased was after the accident hospitalized for a considerable period of time and only thereafter he was discharged. It has further come in the evidence of the doctor as well as the widow that even though he was discharged from the hospital but he could not move around or was able to walk properly because of the injuries that he had sustained and thus all these would show that there was a direct nexus between the death and the injuries sustained by him and accordingly prayed for the rejection of the appeal.

9. Having heard the contentions put forth on either side and on perusal of the record, true it is that the date of accident, the motorcycle involved in the accident, the motorcycle being driven by respondent no.7 and owned by respondent no.8 is not in dispute. Likewise, it is also not in dispute that respondent no.7 only had a learner's license.

10. As far as the breach of policy condition that of the driver having only a learner's license is concerned, the Hon'ble Supreme Court in its decision in the case of **National Insurance Co. Ltd. v. Swaran Singh & Ors., 2004 (3) SCC 297**, in paragraph 110(viii), has in a very categorical terms held that, *if a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree*. Thus, the said ground of the appellant-insurance company cannot

be sustained neither would the judgment of the Madhya Pradesh High Court in **Kamlabai** (supra) referred to by the appellant-insurance company be a some aid to the insurance company as the mandate of the Hon'ble Supreme Court would prevail upon it and which is a subsequent judgment.

11. In the light of the decision of the Hon'ble Supreme Court in the case of **Swaran Singh** (supra), the judgment of this Court in the case of **Satish Kumar** (supra) referred to by the appellant-insurance company is also distinguishable. The said judgment is also distinguishable for the reason that this Court while deciding the case of **Satish Kumar** has not referred to the Larger Bench decision of the Hon'ble Supreme Court in the case of **Swaran Singh**.

12. So far as the issue whether there was sufficient evidence in respect of the death of the deceased from the accident is concerned, if we look into the evidence of the widow of the deceased, i.e. AW-1 Ganga Bai, she has categorically deposed before the Tribunal that immediately on the date of accident the deceased was admitted in the hospital and he remained under treatment till February, 2006. Similar statement is also reflected from the deposition of AW-4 Dr. A.R. Ben. Both these witnesses, AW-1 and AW-4, emphatically stated that the deceased though was discharged from the hospital but was not in a position to move around or walk because of the injuries sustained and later he succumbed on 12.7.2006. The fact that there is no other evidence produced by the insurance company by which it could be said that the deceased died for any other reason but for the accidental injuries that he had sustained, the inference drawn by the Tribunal cannot be found fault with nor can it be said to be either erroneous or perverse.

13. From the statement of the witnesses examined on behalf of the claimants particularly the statement which stands corroborated from the doctor's evidence, this Court is of the opinion that the finding of the Tribunal of there being a direct nexus between the death and the injuries sustained by the deceased is proper, legal and justified and the appeal of the insurance company thus deserves to be and is accordingly dismissed.

14. The interim order if any passed in the instant case stands vacated. Considering the fact that it is a very old case, the appellant-insurance company shall honour the award at the earliest by depositing the balance amount if it has not been yet deposited.

15. The appeal stands accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge