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HIGH COURT OF CHHATTISGARH, BILASPUR

MA No.163 of 2006.

The New India Insurance Co. Ltd. Branch Office City Branch 210601 Neptune House, First Floor, Srimali Society, Navrangpura, Ahmedabad Gujarat, Through: Divisional Manager, Divisional Office, Kachhari Chowk, Jail Road, Raipur (CG)

---- Appellant

Versus

1. Smt. Shyama Basu, Aged about 43 years, Wd/o. Kishore Kanti Basu.
2. Arindam Basu, S/o. Kishore Kanti Basu, Aged about 19 years.
3. Aniket Basu, S/o. Kishore Kanti Basu, aged about 14 years, Minor through: natural guardian Mother Smt. Shyama Basu, Wd/o. Kishore Kanti Basu. Respondents No.1 to 3 are R/o. MIG-45, Sector-2, Shankar Nagar, Raipur, District Raipur (CG).
4. Bacchan Mangilal Banjare, Aged about 27 years, S/o. Mangilal Banjare, R/o. Peran, International Limited, 48 In front of Jaishankar Estate, Sarkhenj Railway Station, Ahmedabad, Gujarat.
5. Beran International Limited, Through: Managing Director, Beran International Limited, 48, In front of Jaishankar Estate, Sarkhenj Railway Station, Ahmedabad, Gujarat.

----Respondents

For Appellant	:	Shri Anand Kumar Gupta, Advocate
For Respondent	:	Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/08/2017

1. Present is an appeal under section 173 of the Motor Vehicle Act preferred by the Insurance Company assailing the award dated 28/02/2005 in claim case No.56/2004 passed by 11th Additional MACT(FTC), Raipur.

2. Vide the said impugned award, the Tribunal has awarded compensation in a claim case under section 166 of MV Act has awarded an amount of Rs.16,38,800/-. It is a case where deceased Kishore Kanti Basu, aged around 43 years met with an accident on 04/01/1996 and received grievous injuries in his body and had to be hospitalized for suitable period of time for his treatment. Subsequently the Kishor Kanti Basu filed claim case before the MACT, Raipur.

3. The pending proceeding before the Tribunal after evidence of the injured was recorded. The said injured Kishor Kanti Basu expired on 06/01/2002 at Bodhram Hospital, Indore. It was the contention of the claimant that the

death of the deceased was on account of the injuries that he had sustained in the accident which was occurred on 04/01/1996 and for which the claim application was pending.

4. The Tribunal considering it to be a death occurred on account of injuries sustained from the accident, awarded compensation of Rs.16,38,800/- to the claimant. Since the offending vehicle involved in an accident was registered with the present appellant, the Tribunal has fastened liability of payment of compensation upon the Insurance Company.

5. It is this award which is under challenge. Counsel appearing for the Insurance Company assails the impugned award on the ground that driver of the offending vehicle at the relevant point of time did not had a vaild license. Other grounds which was raised by the Insurance Company is that, the accident is of 04/01/1996 and the injured person has died only on 06/01/2002 i.e. after about 6 years time and therefore there was no connection or nexus between the injury sustained by the injured and the death that has occurred after about 6 years.

6. According to the counsel for the appellant, the driver of the offending vehicle did not produce any license to show that he was having a vaild license to drive the offending vehicle at the relevant point of time.

7. According to the Insurance Company, it was the duty casted upon the owner and driver to have proved that there was no breach of policy condition while the vehicle was being used. It was also contended that since there was a huge gap between date of accident and the date of death, the Tribunal should not have considered the death to have arisen out of the accident and thus prayed for suitable modification of the impugned award. According to the counsel for Insurance Company, there was no direct nexus between the accident and the death of the deceased.

8. Having heard contentions put forth by the appellant what is reflected is that the Insurance Company has not led any evidence to establish that driver of the offending vehicle at the relevant point of time did not have license.

9. In the absence of any evidence led by the Insurance Company which had raised the contention of breach of policy condition, objection raised by the Insurance Company deserves to be negated.

10. Further so far as the contentions of the date of death and the date of accident being of more than 6 years and there is no connection between the injury and the death caused, this court is of the opinion that this has been elaborately dealt with by the Tribunal, on the basis of the evidence which

has come on record, where it is established that right from the date of the accident, appellant had been hospitalized at different places and was under continuous treatment and even the death was in hospital at Indore in continuation to the treatment.

11. This fact that continuous treatment and hospitalization also stands corroborated from the medical evidence which was adduce i.e. of Dr.Yadu and also medical document which were produce during the course of the evidence of the claimant to establish his continuous hospitalization and treatment.

12. In view of the aforesaid evidence and the finding which has come on record before the Tribunal, this court does not find any strong case made out by the Insurance Company, to interfere with the award. Rather it is a case where the claimant have been able to prove and establish the continuous treatment to justify the date of accident till the date of death by adducing sufficient documentary as well as oral evidence to show that there was sufficient nexus between the accident and the cause of death.

13. This court also is not inclined to interfere with the award for the reason that appeal is of the year 2006 and there was no interim relief granted and by now amount must have been deposited and released also to the claimants.

14. Appeal thus is left with only of academic interest. The same therefore deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit