

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1122 of 2012**
Reserved on 07/09/2018**Delivered on.16.11.2018**

1. The Oriental Insurance Company Ltd. Insurer of Vehicle No. CG 07/LB/5535 Paission Plus Motorcycle Hero Honda (Myad Date 17.10.2006 to 16.10.2007) Valid Policy No. 7141/2007 Office Code-157500.

---- Appellants**Versus**

1. Smt. Shobha Wd/o Late Kundali, aged about 39 Years, R/o Shanti Nagar, Bhilai-3, Tahsil- Patan, Distt.- Durg (C.G.)
2. Madhukar S/o Late Kundali, aged about 07 years, R/o Shanti Nagar, Bhilai-03,

Minor natural guardian Mother Smt. Shobha Kundali, Tahsil Patan, distt.- Durg (C.G.),
3. K. Shridhar S/o Madanpiya, aged about 26 years, R/o W.M.R., Sector-04, Bhilai, Qr. No. 3/H, P.S. Bhilaibhatti, Distt.-Durg (C.G.)
4. Madanpiya S/o Malaiya, aged about 47 years, R/o Sector-04, Street W.M.R. Qr. No. 3/H, P.S. Bhilaibhatti, Distt.-durg (C.G.).

---- Respondents

For Appellants	:	Shri Raj Awasthi, Advocate
For Respondent No. 1 & 2	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Gautam Chourdiya
CAV Judgment

1. This appeal is filed by the appellant/non-applicant No. 3/Insurance Company under Section 173 of the Motor Vehicle Act aggrieved by award passed by Motor Accident Claims Tribunal, Durg in Claim Case No.

51/2009 vide award dated 17th September, 2012.

2. The brief facts of the case are that on 14.6.2007 at about 8.45 p.m. when Kundli, who was husband of claimant No. 1 and father of Claimant No. 2, aged about 42 years and earning Rs. 4,500/- per months, was crossing the road, a motorcycle bearing registration No. CG07LV/5535, which was driven by respondent No. 1 rashly and negligently, dashed Kundli, as a result of which he sustained multiple injuries and was shifted for treatment to district hospital, Durg. During treatment his conditions was not well and, as such, for better treatment he was further shifted to Higher Centre, at Raipur on 02.06.2007, near about 25 to 30 days his treatment continued but due to poverty he could not be treated properly and was got discharged from the hospital. Ultimately on 14.08.2007, he died due to injuries sustained by him in the motor accident. The claimants, who are unfortunate widow and son of deceased, filed an application under Section 166 of the Motor Vehicle Act before the Tribunal and after considering the evidence of both the parties the learned Tribunal awarded a total sum of Rs. 2,78,500/- alongwith interest @ 6% per annum to the claimants from the filing of the application till its actual payment. Liability of payment of compensation to the claimants fastened upon the respondent/Insurance Company, as it could not establish violation of policy conditions.

3. Aggrieved by this award the Insurance Company filed this appeal solely on the ground that that learned Tribunal has committed an illegality in recording a finding that death of the deceased occurred due to the road accident as there is no any probable, cogent and clinching evidence on

record to show that Kundli (since deceased) died to due injuries sustained by him in the road accident after being discharged from hospital.

4. Learned counsel for the appellant submits that as per Postmortem report and statement of Dr. Anil Agrawal, it is clearly proved that cause of death of deceased was not related to the accident and, as such, learned tribunal has committed gross error in allowing the claim of the claimants on the basis of death claim instead of injury claim. Learned counsel for the appellant/Insurance Company also argued that death of deceased Kundli was not occurred on account of injuries sustained by him in the road accident and, therefore, the award passed by the learned tribunal is perverse and against the material available on record therefore, it may be set aside.

5. Learned counsel for the respondent/claimants supported the award passed by learned Tribunal. As per the statement of witness of the appellant the documents produced before the Tribunal the case summery sheet as per Ex. P/14 of Medical College Dr. B. R. Ambedker Hospital Raipur, the continuous treatment was being received by the deceased after the accident. AW-1/wife of the deceased Smt. Shobha specifically stated in her statement that just after the accident her husband was shifted to district hospital, Durg and after 9-10 days of his treatment doctors of district hospital referred him to Medical College Hospital Raipur, during treatment blood transfusion was done and after that doctor advised her to take her husband to her home despite her request that due to poverty she is not in a position to treat her husband, the doctors discharged her husband and after 10 to 15 days her husband died. Thereafter, she

informed the police and the police conducted further proceedings and postmortem was done.

6. We have heard the parties and perused the record and the impugned award.

7. Applicant/witness No. 3 Dr. Anil Agrawal conducted postmortem of the deceased and found the injuries mentioned in the award also. As per PM Report vide Ex. P/13 he stated that he is unable to mention cause of death because treatment of deceased was in medical college Raipur, he also remained admitted from 14.06,2007 to 14.08.2007 and during this period if he had suffered any disease, he has no knowledge. As per AW-3 he has not given any opinion but the deceased was taking treatment right from the date of accident till discharge from Medical College, Raipur and thereafter the deceased was at his home and within 10 to 20 days he died.

8. Learned Tribunal considering all the relevant aspects of the case and legal position from paras 11 to 26 in award observed that from the day of accident till discharge from Medical College Raipur, regular treatment was being provided to the deceased but his condition was not good and it was also proved by case summary sheet Ex. P/14. However, instead of his medical condition being not well, he was discharged from the hospital and thereafter he died at his home. After the death of deceased on the request of the family members Postmortem was conducted. In her evidence AW-1- Shobha wife of the deceased has specifically stated that after the accident her husband was being treated in the Medical College Hospital Raipur, during treatment blood transfusion was done and despite the fact

that the condition of her husband was not well the doctor advised her to take her husband to home. She has stated that though she requested the doctors that due to their poor financial condition they can not get treatment to her husband at home, the doctors discharged her husband from the hospital and after 10 to 15 days her husband died at home. There is no reason to disbelieve of statement of AW1- Shobha.

9. Thus, from the pleadings of the respective parties, the evidence adduced by them including the medical evidence, it stands prove beyond all reasonable doubt that the deceased suffered grievous injuries in accident occurred on 14.06.2007 due to use of motor vehicle and he was under the medical treatment for a considerable period and ultimately succumbed to the injuries suffered by him in the said accident. Being so the Tribunal was fully justified in holding that the death of the deceased had nexus with the accident occurred on 14.06.2007 and this court finds no illegality or infirmity in the finding recorded by the Tribunal. Therefore, no reason to interfere with the award by the Tribunal. Appeal has no substance. Accordingly, the appeal is dismissed.

Sd/-

(Gautam Chourdiya)
Judge