

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 692 of 2012

The New India Assurance Company Limited, Through Branch Divisional Manager, Divisional Office, Power House, Bhilai, District Durg (C.G.).

---Appellant

Versus

1. Dubeyram S/o Late Siyaram, aged about 28 years.
 2. Ku.Saroj Bai D/o Late Siyaram, aged about 22 years.
 3. Pukesh Kumar S/o Late Siyaram, aged about 20 years.
- All are R/o village Bhedia Nawagaon, Tahsil Balod, District Durg (C.G) (Claimants).
4. Amar Singh Mandavi S/o Chhabilram Mandavi, aged about 29 years, R/o Amapara, Balod, Tahsil Balod, District Durg (C.G).
 5. Smt.Saroj Vaishnav W/o Prahlad Vaishnav, R/o village Balod, Tahsil Balod, District Durg (C.G.).

---Respondents

For appellant/Insurance Company	:	Shri Sourabh Sharma, Advocate.
For respondents No. 1, 2 & 3	:	Shri Shikhar Bakhtiyar on behalf of Shri B.P.Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 02/04/2012 passed by the learned Additional Motor Accident Claims Tribunal, Balod, District Durg (C.G.) in Motor Accident Claim Case No. 238/2011.
2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.3,37,000/- with interest @ 6% per annum from the date of application.

3. The facts of the case in brief is that, the deceased - Siyaram in the instant case met with an accident on 07/05/2005 while he was travelling in a Bolero Jeep bearing registration No. CG-07-0740 and the same turned turtle as a result of which the deceased received certain injuries. An F.I.R. in respect of the said accident was lodged for the first time after more than 1 ½ month i.e. on 20/06/2005. An MLC in respect of the injuries sustained was also conducted on the same day. Subsequently, the deceased died on 29/07/2005. The legal representatives of the deceased filed the claim application under Section 166 of the Motor Vehicles Act. The said case got initially decided on 27/02/2008 by the learned Additional Motor Accident Claims Tribunal, Balod in the original claim case No. 04/2007. The Tribunal at that point of time had rejected the claim application. The said rejection was challenged by the claimants before the High Court, Bilaspur where the case was registered as MAC No.1323/2009. The said case was decided by the Division Bench of this Court on 17/01/2011 and the High Court has set aside the award on 27/02/2008 and remitted the matter back to the Tribunal for a fresh adjudication granting opportunity to the parties to amend the pleadings, file documents and get the documents verified and also adducing further evidence to substantiate their contentions. As a result of the remand made by the High Court, the matter was again re-registered as claim case No.238/2011 which stood decided vide the impugned award dated 02/04/2012 whereby a compensation of Rs.3,37,000/- was awarded in favour of the claimants and the liability of payment of compensation was fastened upon the Insurance Company.

4. The contention of the counsel for the Insurance Company is that, there was absolutely no fresh material produced before the Tribunal to establish that, there was a direct nexus between the date of accident that took place on 07/05/2005 and the date of death which took place on 29/07/2005. He further submits that, the only piece of evidence which has brought on record is the two documents – Ex-P/4 & P/5 which would establish that, there was no grievous injuries sustained by the deceased with which he could have died. Ex.-P/4 is a document which is an MLC report shows that, the deceased had suffered some injuries on his left wrist and there was some minor injuries on his face whereas Ex.-P/5 is only an ex-ray report with confirmation of the fracture on the left wrist of the deceased. He further contended that, once when the matter was remitted back to the Tribunal, the claimants should have produced cogent evidence before the Tribunal both on the medical aspect so also on the treatment part and also in respect of the death of the deceased to have occurred because of the accidental injuries in the absence of which, the finding of the Tribunal is not sustainable and thus prayed for setting aside of the same.

5. The counsel for the respondents/claimants however opposing the appeal submits that, it is a case where the claimants had examined themselves and had also produced Ex.-P/4 & P/5 which establishes that, the accident did occur and the deceased had received injuries. He further submits that, the period between the date of accident and the date of death was too short i.e. of only about two months time. The only inference which

could be drawn is that, the death of the deceased was as a result of the accidental injuries and thus prayed for rejection of the appeal.

6. Having heard the contention put forth on either side and on perusal of record what appears is the fact that, the accident took place on 07/05/2005. The F.I.R. of the said accident was lodged after 1 ½ month. The deceased for the first time was examined by doctor vide Ex.-P/4 on the date of lodging of the F.I.R. i.e. on 20/06/2005. Even after 1 ½ month from the date of accident, the doctor who had examined the deceased could not find anything serious with the deceased and the MLC report shows that, the injuries sustained were minor and that the only fracture which could be detected was also on the wrist of the deceased. What further revealed is that, no doctor has been examined before the Tribunal to prove the death and the accidental injuries. Neither is there any medical certificate available with which it could be established that, the deceased in the instant case was under continuous medical treatment from the date of accident i.e. 07/05/2005 to the date of death i.e. 29/07/2005.

7. Under the given circumstances this Court is of the opinion that, the finding of the Tribunal to the extent that the deceased died because of the accidental injuries which occurred on 07/05/2005 is not sustainable and the said finding deserves to be and is accordingly set aside.

8. Further in the given facts and circumstances of the case what cannot be brushed aside is the admitted factual position of the accident that took place on 07/05/2005. Further what also is evident from Ex.-P/4 & P/5 is the

resultant injuries caused to the deceased from the said accident on 07/05/2005. The claimants even if they are not been able to prove that the deceased had died because of the accidental injuries, but the fact that the deceased had suffered injuries is not in dispute. He was therefore entitled for compensation for the injuries caused and the treatment provided for the said injuries.

9. The record of this appeal shows that, this Court had ordered for depositing 50% of the awarded amount before the Tribunal and which was also deposited by the Insurance Company and the said amount was also ordered to be disbursed to the claimants vide order dated 10/12/2013.

10. Under the circumstances, whatever amount that has been deposited by the Insurance Company before the Tribunal be treated as the compensation for the expenses incurred for the treatment of the deceased and also for the loss of Estate.

11. The award stand accordingly modified to the extent that, the claimants would be entitled for only an amount of Rs.1,93,500/- instead of Rs.3,37,000/- as awarded by the Tribunal.

12. It is made clear that, the Insurance Company would not be required to pay any further amount of compensation whatsoever under the said impugned award.

13. The appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE