

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 530 of 2018**

- The Oriental Insurance Co. Ltd, Through the Divisional Manager, Gitanjali Bhawan Purana Bus Stand Road, Main Road Korba Tahsil and District Korba (C.G.) (Insurer of K. A. 04 HV5050)

---- Appellant**Versus**

1. Rajesh Agrawal S/o Late Ram Sanjivan Agrawal, about 44 years.
2. Smt. Anita Agrawal w/o Rajesh Agrawal aged about 42 years.

Both Respondent No. 1 and 2 are R/o H.I.G. C-1, C-2-41, Maharana Pratap Nagar, Korba, Tahsil and District Korba (Chattisgarh).

3. Devraj Singh @ Devbrat Singh Thakur S/o Shri Uday Singh Thakur, R/o Quarter No. E/178 Sector-5 Devendra Nagar Raipur, Tahsil and District- Raipur (C.G.).

---- Respondents

For Appellant	: Shri N. K. Malviya, Advocate.
For Respondent No. 3	: Shri Sachchidanand Yadav, Advocate on behalf of Kashif Shakeel, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

22.10.2018

1. This is appellant/insurer's appeal against the award dated 15.11.2017, passed by the Second Additional Motor Accident Claims Tribunal, Korba (for short 'the Tribunal') in claim case No. 20/2016.
2. Brief facts of the case are that on the fateful day i.e. 01.08.2015, Pradeep Agrawal was going on his motorcycle bearing No. K.A-04/ HV-5050 to attend the function of "Rajyotsav". The said motorcycle was

driven by non-applicant No. 1/respondent No. 3 and Pradeep Agrawal (since deceased) was the pillion driver and when they reached near Rajyotsav place, one unknown tractor trolley was crossing the road, due to which, driver of the motorcycle lost his balance and dashed against one pole erected nearby the road, as a result of which Pradeep Agrawal sustained multiple injuries and he was admitted for treatment at M.M.I. Hospital, Raipur, during treatment he died on 09.08.2015.

3. As against the compensation of Rs. 75,39,425/- claimed by unfortunate parents/ respondents No. 1 and 2 of the deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for his death in the motor accident on 09.08.2015, the Tribunal awarded a total sum of Rs. 19,04,243/- as compensation along with interest @ 7 percent per annum from the date of application till its actual payment.

4. The Tribunal, on a close scrutiny of the evidence led, held : Pradeep Agrawal was going on his motorcycle bearing No. A-04 HV5050 to attend the function of "Rajyotsav". The motorcycle was driven by non-applicant No. 1/respondent No. 3 and Pradeep Agrawal (since deceased) was the pillion driver. As they reached near Rajyotsav place one tractor trolley was crossing road, due to which driver lost his balance and dashed against one pole erected nearby road; Pradeep Agrawal sustained grievous injuries and was admitted for treatment at M.M.I., Hospital Raipur during treatment on 09.08.2015 he died. Appellant /insurance company liable for payment of compensation to the claimant as it could not establish violation of policy conditions; assessed and awarded aforesaid sum to the claimant.

5. Learned counsel for the appellant/Insurance Company filed appeal solely on the ground that learned Claims Tribunal has erred in awarding Rs.5,57,000/- to the claimants towards the charge of air ambulance vide Ex. (P/18). He submits that the appellant/Insurance Company could not be held liable to pay the aforesaid amount because it was the claimants' decision, which was taken without advice of the treating doctor for calling the Air ambulance. He further submits that only on apprehension, for providing the better treatment to deceased- Pradeep Agrawal, without any advice of doctor, they called the air ambulance to take the victim to Vedanta Hospital Gurgaon and it is not a liability part of the insurance company therefore, part of award, by which the amount of Rs.5,57,000/- has been awarded for air ambulance, be set aside.

6. Learned counsel for the respondent submits that the Claims Tribunal has rightly fastened the liability to pay compensation upon the appellant/Insurance Company, which does not call for any interference in the instant miscellaneous appeal.

7. I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal including the award impugned.

8. Respondent No.1, who is father of the deceased, has stated in paragraph 2 of his statement that his son was admitted for treatment in M.M.I. Hospital Raipur on 01.08.2015 and he continuously remained in hospital till 09.08.2015, but his condition was so critical and he was in coma, therefore, for better treatment he wanted to shift the victim to Vedanta Hospital, Gurgaon and due to this reason, he called the air ambulance but unfortunately his son died.

9 A careful perusal of the statement of the respondent No. 1 (father of the deceased) and the medical treatment papers produced before the Tribunal show that the deceased was in critical condition; he was in coma and he was required to be taken to higher institute for better treatment and therefore, air ambulance was called. Aforesaid evidence goes to show that there was an urgent need for shifting the victim to Vedanta

Hospital, Gurgaon but the doctor of M.M.I., Hospital, Raipur as well as the team of doctor who came with the Air Ambulance at Raipur ariport after due examination of the victim advised the father of the victim that there is no situation to shift him to Vedanta Hospital, Gurgaon, therefore they could not use the air ambulance and went back to Korba and on the way to Korba, Pradeep Agrawal died.

10. Considering the entire material available on record particularly the evidence of father of the deceased; further considering the finding recorded by the learned Tribunal in paragraph 15 of its award that for the better treatment of the deceased, his father wanted to shift deceased to Vedanta Hospital, Gurgaon and due to this reason, he called the air ambulance but unfortunately his son died, I do not find any illegality in the award passed by the tribunal in awarding the amount of Rs. 5,57,000/- towards AIR Ambulance Charges and fastening the liability to pay compensation upon the insurance company.

11. No other points have been raised.

12. For the reasons mentioned hereinabove, the appeal being devoid of substance is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge