

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 769 of 2014**

ICICI Lombard General Insurance Company Limited, Registered Office- ICICI Bank Towers, Bandra Kurla Complex, Mumbai, 400051, through its Legal Manager, ICICI Lombard General Insurance Company Limited, Ground Floor, Vanijaya Bhawan, Devendra Nagar Road, Raipur C.G.

---- Appellant

Versus

1. Smt. Dashoda Dhruv W/o Late Ramu Singh Dhruv Aged About 48 Years Caste Gond
2. Ishwari Dhruv D/o Late Ramu Singh Dhruv Aged About 28 Years Caste Gond

Both are R/o village Gargatti Parsuli (Parsuli Khurd), P.S. and Tahsil Gariyaband, District Gariyaband C.G.

3. Umendra Kumar Nagesh @ Michel S/o Mahesh Kumar R/o Pairi Colony, Gariyaband, P.S. and District Gariyaband C.G.
4. Afroz Meman S/o Ishaq Meman Aged About 32 Years R/o village Broiler Shop Bus Stand, in front of Madhuban Hotel, Gariyaband, Tahsil and P.S. Gariyaband, District Gariyaband C.G.

--- Respondents

For Appellant	: Mr. Sourabh Sharma, Advocate.
For Respondents No.1 & 2	: Mr. Malay Kumar Bhaduri, Advocate
For Respondents No.3 & 4	: Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

16/05/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 03/04/2014 passed by Additional Motor

Accident Claims Tribunal, Gariyaband (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.17/2013 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,09,000/- as compensation to claimants in a death case.

2. Brief facts necessary for disposal of this appeal are that on 25/02/2012 Ramu Singh Dhruv was travelling on a Scorpio Jeep bearing registration No.CG-04/FC/7005 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.2.
3. Ramu Singh Dhruv was going from village Gargatti Parsuli to village Bendkura, on the way, offending vehicle met with an accident in between village Vedkura and village Kajansara and it turned turtle. In aforementioned accident, Ramu Singh Dhruv sustained injuries on his head, jaw and spinal bone and other different parts of body. He was admitted in the hospital where he took treatment continuously for about 10 days and thereafter at Kanha Hospital, Gariyaband. Ramu Singh Dhruv being poor and looking to the fact that injuries and health did not recover, he took discharged from Kanha Hospital on 25/03/2012 and thereafter on 28/03/2012, he died. The matter was reported to concerned police station, based on which, crime No.30/2012 for commission of offence punishable under Sections 279, 337, 304-A of IPC was registered.

4. On account of death of Ramu Singh Dhruv, claimants have filed claim application before the competent Claims Tribunal seeking compensation of Rs.24,20,000/- against non-applicants therein.
5. Non-applicants No. 1 and 2 submitted their reply to claim application and denied all the adverse allegation levelled against them. They have pleaded that on the date of accident, offending vehicle was insured with respondent No.3/Insurance Company and there was valid and effective driving licence with the driver of offending vehicle, therefore, they have no liability to pay the amount of compensation.
6. Appellant/Insurance Company submitted reply to claim application and pleaded specifically that death of Ramu Singh Dhruv was not due to injuries sustained by him in accident and on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence. It was further pleaded that offending vehicle is being used for commercial purpose, therefore, Insurance Company is not liable for payment of any amount of compensation.
7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that death of Ramu Singh Dhruv took place due to accidental injuries suffered by him, there was no violation of conditions of insurance policy, accident took place due to rash and negligent driving of driver of offending vehicle by its driver and awarded a total sum of Rs.3,09,000/- as compensation.

8. Learned counsel appearing for appellant/Insurance Company submitted that accident took place on 25/02/2012, thereafter, Ramu Singh Dhruv was admitted to Government Hospital, Raipur wherein in bed-head ticket, spinal injury has not been mentioned. He further submitted that as the death of Ramu Singh Dhruv took place on 28/03/2012, whereas deceased was discharged from hospital on 25/03/2012, therefore, there is no co-relation between death and injuries suffered by deceased Ramu Singh Dhruv. He further submitted that in the bed-head ticket of initial admission of Ramu Singh Dhruv, injury with respect to jaw and his treatment has been mentioned in Ex.P-6, therefore, subsequent prescriptions (Ex. P-7 & Ex. P-8) and discharged ticket of Kanha Hospital (Ex. P-9) cannot be taken into consideration to hold that death of Ramu Singh Dhruv was due to accidental injuries suffered by him on 25/02/2012. He lastly submitted that claimants have not filed postmortem report in support of their claim to prove that death of Ramu Singh Dhruv is due to accidental injuries.
9. Per contra, learned counsel appearing for respondents No.1 and 2/claimants submitted that Ramu Singh Dhruv suffered multiple injuries on his person and injury of jaw is one of the others. He further submitted that X-ray of Ramu Singh Dhruv of spinal bone has been done by Ruprela X-ray and Sonography Centre on 27/07/2012 vide Ex.P-22, in which, it is mentioned that X-ray of backbone/spinal bone has been conducted. He further referred to

other prescriptions of Government Hospital dated 06/03/2012 and 12/03/2012 wherein in medical prescription of 12/03/2012, doctor has opined Neurosurgery and further X-ray of L-S spine and X-ray of cervical spine. He further submitted that on 13/03/2012 deceased Ramu Singh Dhruv got himself admitted at Kanha Hospital, Gariyaband which is near to his village. He further submitted that claimants and deceased Ramu Singh Dhruv belongs to a poor family and looking to their financial condition as well as condition of Ramu Singh Dhruv, which was not showing any improvement, they got the patient discharged from the Hospital and therefore, it cannot be said that death of deceased is not on account of accidental injuries sustained by deceased on 25/02/2012. He further submitted that learned Claims Tribunal has passed the impugned award after taking into consideration of facts, circumstances and material available on record, which does not call for any interference.

10. Learned counsel appearing for respondents No. 3 and 4 supported the award impugned.
11. I have heard learned counsel appearing for parties and perused the record carefully.
12. From the arguments raised by learned counsel for appellant, it appears that impugned award is challenged only on the ground that there is long gap between date of discharge and date of death of

deceased and that on the first medical discharge ticket, no spinal injury has been mentioned or diagnosed by doctor.

13. So far as first discharge ticket i.e. Ex. P-6 is concerned, perusal of which shows that it is discharge ticket of Government Dental College, Raipur. It appears that the first visible injury was found by the doctor at the time when Ramu Singh Dhruv rushed to the Hospital i.e. injury of jaw, therefore, he has been admitted to Government Dental College, Raipur for oral surgery. Dental College is an exclusive College where diagnosis of dental problems related to jaw and oral surgery is only diagnosed and therefore, if the spinal injury is not mentioned in the discharge ticket Ex. P-6, then it cannot be presumed that Ramu Singh Dhruv did not suffer any spinal injury.
14. Ex. P-22 which is X-Ray of Ramu Singh Dhruv conducted by Ruprela X-Ray and Sonography Centre, Raipur, perusal of which shows that X-Ray has been done on 27/02/2012 i.e. immediately after two days from the date of accident wherein slip attached to X-Ray shows that X-Ray of Tvr, L1, L2, L5 and Ay has been made.
15. Perusal of Ex. P-6 itself shows that patient/Ramu Singh Dhruv was referred to the Department of Orthopedic and ENT Department for further treatment. Ex. P-6 also shows that he consulted to the doctor on 06/03/2012 and 12/03/2012 thereafter Ex. P-7 is available on record which is dated 06/03/2012 of ENT Department. This is based on the reference made in Ex. P-6 by doctor who

examined deceased. On 12/03/2012, Ramu Singh Dhruv again visited as outdoor patient at Doctor Bhimrao Ambedkar Hospital, Raipur, which is a Government Hospital where on his examination, doctor suggested for X-Ray of L-S spine and cervical_spine. The opinion has also been given for neurosurgery and medicine. Looking to continuation of medical prescription available on record, it is apparent that Ramu Singh Dhruv suffered spinal injury on account of accident dated 25/02/2012.

16. From the documentary evidence, it emerges that Ramu Singh Dhruv took continuous treatment in the Government Hospital at Raipur, but for some reason, after diagnosis of his neurosurgery and looking to the injury of spine and cervical spine, he came back to his district place i.e. Gariyaband which is near to his village and got himself admitted immediately on next day i.e. 13/03/2012 (after discharge from Government Hospital, Raipur).
17. Ex. P-9 is a discharge ticket of Kanha Hospital, Gariyaband where Ramu Singh Dhruv got himself admitted on 13/03/2012 wherein it has been mentioned that on diagnosis DRTA with comparison dorsal lumber. It has also been mentioned that complaint of traumatic dorsal lumber spine paraplegia. From the diagnosis as mentioned in Kanha Hospital, Gariyaband, it is evident that due to spinal injury, deceased Ramu Singh Dhruv suffered paraplegia. It has also been mentioned that Ramu Singh Dhruv was discharged on 24/03/2012 and thereafter died on 28/03/2012.

18. Looking to the nature of injuries and suffering of deceased with spine paraplegia, it cannot be said that deceased Ramu Singh Dhruv recovered from the accidental injuries, but the documentary evidence available on record shows that he was continuously under treatment, but even then, his health could not be recovered from the injuries and subsequently, he succumbed to the injuries within three days from the date of discharge.
19. In view of aforementioned material and documentary medical evidence available on record, it cannot be said that the death of Ramu Singh Dhruv is not due to accidental injuries suffered by him, therefore, the argument raised by learned counsel for appellant is not sustainable and is repealed.
20. For the foregoing reasons, I do not find any error in the finding recorded by learned Claims Tribunal that death of Ramu Singh Dhruv is due to accidental injuries suffered by him on 25/02/2012. Though the finding recorded by learned Claims Tribunal that it is the duty of insurer to prove that the death of deceased due to accidental injuries is not correct but for the reason as discussed above, I do not find any good ground to interfere with the impugned award passed by learned Claims Tribunal. The appeal being devoid of any substance is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge