

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 456 of 2013**

- Vikash Agrawal (Since Deceased)
Through : Legal Representative
- 1. Surajbhan Agrawal S/o Trilok Chand Agrawal aged about 50 years (Since Deceased)
- 2. Nirmaladevi Agrawal W/o Surajbhan Agrawal age 47 years,
Both R/o Checkpost Jhilmila, Saraypali, District – Mahasamund (C.G.)

---- Appellants**Versus**

1. Dasmohamad S/o Lal Mohamad, aged about 30 years, R/o Bankatti, Thana Dubrajpur, District Veerbhum (W.B.) **(Non Applicant No. 1)**
2. Tej Singh S/o J. Singh R/o 42/6/1 Paddapukhur Road, Kolkata-20 (W.B.) **(Non Applicant No. 2)**
3. The New India Insurance Co. Ltd., Kolkata, Through Mandal Office Jail Road, Madina Building, Raipur (C.G.) **(Non Applicant No. 3)**

---- Respondents

For Appellant	:	Shri Sanjay Agrawal, Advocate.
For Respondent No 3.	:	Shri Saurabh Sharma, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****19.06.2019**

This appeal is by the claimant/mother of deceased-Vikash Agrawal against the award dated 22/01/2013, passed by Motor Accident Claims Tribunal, Mahasamund (C.G.) in Claim Case No. 144/2007.

02. As per averments made in the claim petition, on 24.02.2007 at about 11.30 pm when Vikash Agrawal was going on his motor-cycle

alongwith his servant from his house to Mahalpara Saraipali, near Jhilmila rest house Non-applicant No. 1/driver of the offending vehicle (Truck) bearing No. W.B. 41-B/7167 by rash and negligently driving dashed them from front side as a result thereof he (Vikash Agrawal) sustained grievous injuries on head, both leg thigh & right hand and other parts of the body. For treatment of the injuries sustained by him he was admitted in Ramkirashna hospital at Raipur from 25.02.2007 to 23.03.2007. Since his condition did not improve he was shifted to Khemka Hospital Devendra Nagar Raipur. During treatment after about 1 year, 7 months he died on 28.09.2008. The offending vehicle is owned by non-applicant No. 2 and insured with non-applicant No. 3.

03. Injured Vikash Agrawal first filed claim petition under Section 166 of the Motor Vehicle Act, on 16.09.2008 the learned Chief Motor Accident Claims Tribunal, Mahasamund had passed an award in tune of Rs. 9, 49,730/- alongwith 6% interest from the date of application till its realisation and that amount is deposited by the Insurance Company and accepted by the claimant/ parents of the deceased.

04. Before challenging the above said award (dt. 16.09.2008) Vikash Agrawal died on 28.09.2008. After the death of the injured, parents of the deceased- Vikash Agrawal aggrieved by the award for seeking enhancement filed an appeal bearing MAC No. 1680/2008 and on 06.11.2012, Division Bench of this Court remitted back the said case to the learned Tribunal by setting aside the award with a direction that this case has to be decided afresh on the issue whether the death of the deceased-Vikash Agrawal has nexus with the accident occurred on 16.09.2008 or not.

05. Thereafter as the case is remanded back by that order, learned Tribunal given an opportunity to both the parties and after considering the evidence adduced by the appellant passed a fresh award on

22.01.2013 and gave a finding that the death of Vikash Agrawal has no nexus with the said accident and amount of compensation awarded in the previous order is just & proper which need not be interfered. Aggrieved by this award (dt. 22.01.2013) the instant appeal has been filed by the claimant/mother of the deceased- Vikash Agrawal.

06. Learned counsel for the appellant/claimant submits that in this case the accident occurred on 24.02.2007 and Vikash Agrawal died on 28.09.2008 due to chronic infection leading lungs infection & kidney failure. He further submits that after the accident till his death the deceased was continuously getting treatment from hospitals of Raipur and Saraipali and the treatment papers and bills vide Exs. P/5 to P/662 were produced before the Tribunal but the learned Tribunal has not considered the evidence and erroneously passed impugned award (dt. 22.01.2013). He also submits that in this case the learned Tribunal has not suitably awarded compensation towards the other heads.

07. Opposing the above contention, learned counsel for the respondent/insurance company submits that Vikas Agrawal was discharged from the hospital as per discharge receipt dt. 07.03.08 and thereafter no any prescription and medical bills or follow up documents produced by the appellant. He submits that PM report was also not submitted before the Tribunal and his treating doctor, Dr. Sunil Khemka (AW No. 3) in paragraph 6 of his statement deposed that he does not remember whether after the death of Vikash Agrawal postmortem was conducted or not. Therefore, there is no need for enhancement by this Court.

08. Heard learned counsel for the parties and perused the material

available on record.

09. Only issue before this Court as per evidence adduced by the appellant is whether there was any nexus between the accident & death of the deceased or not. As per statement of Dr. Sunil Khemka (AW No. 3) who was first examined on 24.02.2007 he deposed that after discharge of Vikash Agrawal on 07.03.2008 he was capable of moving with the help of artificial heel. Thereafter in the second round of his examination conducted on 25.12.2012, in paragraph 5, he admitted this fact that due to his treatment the deceased survived and he suffered permanent disability to the extent of 30 to 40%. After the matter was remitted back by the appellate Court to the Tribunal Dr. Sunil Khemka stated that 10 days prior to death of the deceased he was brought to him for treatment but no any prescription and medical bills of the said period was filed by the appellant/claimant.

10. Thus, considering the overall oral and documentary evidence available on record this Court does not find any legally admissible evidence which could substantiate the fact that death of Vikash Agrawal on 28.09.2008 was the result of injuries suffered by him in the motor vehicular accident occurred on 24.02.2007. Admittedly the accident occurred on 24.02.2007 and Vikash Agrawal died on 28.09.2008 i.e. after about 1 years 7 months and that he was discharged from the hospital on 07.03.2008. Had the deceased been suffering from any complication due to the injuries sustained by him in the accident and the claimant got him treated for the same, there has to be evidence to this effect on record particularly when the case of the

claimant is that the death of Vikah Agrawal had a direct nexus with the injuries sustained by him in the accident which took place on 24.02.2007. However there is complete lack of such evidence on record. Being so, this Court is of the opinion that the Tribunal was fully justified in not holding that the death of the deceased was on account of injuries suffered by him in the said accident.

11. As regards the contention of learned counsel for the claimant that sufficient amount towards heads has not been granted, considering the period of hospitalisation of the injured/deceased, the pain and suffering undergone by him during treatment, the accident occurred on 24.02.2007, the expenses incurred on conveyance for medical treatment as well as on special diet, this Court is of the opinion the additional amount of Rs. 70,000/- under the aforesaid heads would meet the ends of justice in the given facts and circumstances of the case. The claimants are held entitled for additional compensation of Rs. 70,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge