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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 750 of 2014

1. Branch Manager- Bajaj Allianz General Insurance Company Limited, through its authorized officer Bajaj Allianz General Insurance Company Limited, Branch Office, Shiv Mohan Bhawan, Vidhansabha Road Pandri, Raipur District- Raipur (C.G.).

---- Appellant

Versus

1. Smt. Sumtee Yadav D/o Late Bhodro Yadav, Aged 48 years, Cast- Mahkul R/o Village- Putu Kela P.S. Narayanpur, Tehsil-Kunkuri, District- Jahspur C.G.
2. Kunjan Ram @ Kunjram S/o Panch Ran aged- 37 years, Cast-Satnmai R/o Village Godhi Kala P.S. Pathalgaon, District-Jashpur C.G.
3. Murari lal Agarwal S/o Hariram Agarwal aged- years Cast-Agarwal R/o Village- Kunkuri, P.S. and Tehsil Kunkuri, District-Jashpur (C.G.).

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.
For Respondent No. 1 & 2	:	Shri Hemant Gupta, Advocate.
For Respondents No. 3	:	Shri Sanjay Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13.02.2019

(1) This is insurer's appeal filed under Section 173 of the Motor Vehicle Act against the award dated 21.04.2014, passed by Additional Motor Accident Claims Tribunal, Kunkuri, District Jashpur (for short 'the Tribunal') in Claim case No. 01/2010.

(2) As against the compensation of Rs.16,05,000/- claimed by unfortunate mother of deceased - Krishna Yadav, aged about 30 years, by filing claim petition under Section 166 of the Motor Vehicles Act,1988 (for short 'the Act') for his death in the motor accident dated 1.12.2008, the Tribunal awarded a total sum of Rs. 3,24,867/- as compensation along with interest @ 6% from the date of filing of claim petition till its reliazation.

(3) The Tribunal, on a close scrutiny of the evidence led by the parties, held: the accident had occurred due to rash and negligent driving of offending vehicle Mahindra Pick-up bearing registration No. CG14-A/1877 by its driver i.e. respondent No. 2- Kunjan Ram @ Kunjram; Krishna @ Ugre died on account of the injuries sustained by him in the said accident; appellant- Bajaj Allianz General Insurance Company/non-applicant No. 3 & Non applicant No. 2 jointly and severally are liable for payment of compensation to the claimant as it could not establish violation of policy conditions; assessed and awarded aforesaid sum as compensation in favour of the claimant.

(4) Learned counsel for the appellant/Insurance Company submits that this appeal is filed on two grounds: *(i)* the breach of policy conditions and *(ii)* there is no nexus between the death of the deceased and the accident occurred on 1.12.2008. He further submits that the doctor has not been examined to prove the injuries sustained by deceased in the accident and no postmortem of deceased was conducted to prove the nexus between the death of deceased and accident, therefore petition is not maintainable.

(5) Learned counsel for the appellant/Insurance Company is challenging the award mainly on the ground that there is no nexus between death of the deceased- Krishna Yadav and the aforesaid accident occurred on 01.12.2008. He further submits that neither postmortem report & other medical documents were produced and proved by the claimant regarding

death of deceased Krishna @ Ugre Yadav nor any doctor was examined to prove the fact that Krisha Yadav died on account of the injuries sustained by him in the said accident. He also submits that accident occurred on 01.12.2008 whereas according to death certificate (Ex. P/15) Krishna @ Ugre Yadav died on 15.01.2009 i.e. after one and half months from the date of accident, as such, it has been proved and established that there is no nexus between the death of the deceased and the said accident, therefore, the Insurance Company is not liable to indemnify the compensation for the death of the deceased- Krishna Yadav.

(6) Learned counsel for the respondent No. 1/claimant would submit that in the same accident one Mukundram has died, the chargesheet was also filed against the non-applicant No. 1/driver of the offending vehicle under Sections 279, 337, 338 and 304-A of the Indian Penal Code, and as per chargesheet Krishna Yadav @ Ugre sustained grievous injuries and succumbed to those injuries. He further submits that claimant Smt. Sumiti Yadav, mother of deceased, who is illiterate rustic villager, has stated in her statement in paragraphs 1, 2 and 3 regarding seriousness of the injuries caused to her son. She has further stated in her statement that during long treatment after one and half months from the date of accident her son died; and this statement of mother of the deceased was unchallenged and no any suggestion was given in her cross-examination which could make her version doubtful or untrustworthy. As per death certificate, it has been proved that Krishna Yadav died on 15.01.2009 i.e. after one and half months from the date of accident i.e. 1.12.2018, therefore, best evidence available on record is of illiterate lady, who is mother of deceased – Krishna @ Ugre, whose son died in the motor accident. In these circumstances, the claimant filed claim petition and proved this fact that the accident occurred on 1.12.2008 and thereafter the deceased was under continuous treatment for the injuries

sustained by him in the said accident. This statement of the claimant remains uncontroverted in cross examination. He further submits that the mother of the deceased is an illiterate lady having no knowledge about the procedure to inform the investigating Officer for taking the body of deceased for postmortem and therefore on this ground it cannot be said that the death of the deceased had no nexus with the accident.

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

(8) It has been noticed that accident occurred on 1.12.2008 in which one another person- Mukundram Yadav also died and on claim petition being filed by his dependents before the Claims Tribunal, the Tribunal fastened liability to pay compensation to the claimants upon the Insurance Company, against which, the Insurance Company preferred miscellaneous appeal being MAC No. 1159/2011 {Bajaj Allianz General Insurance Company Ltd. Vs. Smt. Raywati Yadav} before this Court challenging the finding recorded by the Tribunal regarding breach of policy conditions, which was dismissed by the Coordinate Bench of this Court on 02.02.2012 fastening the liability upon the Insurance Company. In the instant case also, looking to the particulars of driving licence vide Ex. D/3 & D/4 it is apparent that at the time of accident, the driver of the offending vehicle had valid & effective driving licence, therefore, this Court is also of the view that the aforesaid finding recorded by the Coordinate Bench has attained finality in the instant case.

(9) Now, it is not disputed by both the parties that accident occurred on 1.12.2008 and due to negligence on the part of the Non-applicant No. 1/driver of the offending vehicle- Kunjram, deceased- Krishna Yadav sustained grievous injuries and the chargesheet to this effect has been filed against the driver of the offending vehicle under Sections 279, 334, 338 and 304-A of IPC. As per documents Ex. P/1, P/5 to P/7, which are the passes

issued in favour of Krishna Yadav in which name of patient as Krishna Yadav has been mentioned in the Dr. Bhemrao Ambedeker Hospital, Raipur as indoor patient from 02.12.2008 to 03.12.2008 vide Ex. P/2. As per Ex. P/4 the treatment was taken from 13.12.2008 to 17.12.2008 at Holly Cross Hospital, Ambikapur wherein name of deceased Krishna Yadav @ Ugre is mentioned as indoor patient. These documents filed by the illiterate lady, who is mother of deceased, was not questioned by other side. Thus, in the opinion of this Court that the claimant has successfully proved that there is nexus between the death of the deceased and the accident and there is no substance in the arguments advanced on behalf of the appellant/Insurance Company that death of deceased had no nexus with the accident occurred on 1.12.2008.

(10) Accordingly, the miscellaneous appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)

Judge

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