

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1068 of 2017

1. Smt. Rukmani Dhruw W/o Late Naresh Singh Dhruw, aged about 43 years,
2. Ravishankar Dhruw S/o Late Naresh Singh Dhruw Aged About 20 Years
3. Kumari Sushma Dhruw D/o Naresh Singh Dhruw Aged About 17 Years
4. Ravindra Dhruw S/o Late Naresh Singh Dhruw, Aged About 14 Years

No. 3 & 4 are minor, represented through mother Smt. Rukmani Dhruw, all are resident of Village Khapri, Tahsil Takhatpur, Distt. Bilaspur (CG)

---- Appellants/claimants

Versus

1. Mukesh Bhardwaj S/o Aatmaram Bahndwaj, Aged About 28 Years R/o Village Bharni Police Station Chakarbhatha, Tahsil Takhatpur, District- Bilaspur, Chhattisgarh Driver Of Motorcycle No. C.G. 10 Z E 9051.
2. Sachine Kumar Pandey, S/o Kanti Kumar Pandey, R/o Masturi, P. S. and Tahsil Masturi, District Bilaspur, Chhattisgarh. Owner Of Motorcycle No. C.G. 10 Z E 9051
3. Oriental Insurance Company Ltd. Through Branch Manager, Branch Office Rama Trade Centre, In Front Of Rajeev Plaza, Near old Bus Stand, Tahsil And District- Bilaspur, Chhattisgarh Insurer Of Motorcycle No. C.G. 10 Z E 9051

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent Nos 1 & 2	:	None though served.
For Respondent No.3	:	Shri NK Malviya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

26/03/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30.6.2017 passed by Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.928/14 awarding total compensation of Rs.3.50 lacs with interest @ 7.5% per annum from the date of application till realization, fastening liability on non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 1.8.2013 Naresh Singh Dhruv, aged 45 years, earning Rs.25,581/- per month as Assistant (Cash Caring) in National Insurance Co. Ltd., was riding his motorcycle and was going from his house at Khapri to his office. When he reached main road at the turning of Jaroudha Basti, non-applicant No.1 Mukesh Bharadwaj by riding motorcycle bearing No. CG 10 ZE 9051 in a rash and negligent manner came from opposite direction and hit the motorcycle of Naresh Singh. As a result of this accident, Naresh Singh suffered grievous injuries on head, left leg and other vital parts of the body. He was immediately taken to Mundra Hospital, Mangla Road, Bilaspur. However, during the course of treatment he died on 26.10.2013. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, wife and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that in this case though the deceased died on account of injuries sustained by him in the above accident but the Tribunal considering it as an injury case awarded only medical expense, amount towards pain and suffering, special diet and transportation. From the evidence on record, it is clear that the deceased was under continuous treatment for the injuries sustained by him in the accident and he died after discharge from Narayan Hospital on 26th October, 2013. Therefore, the present being a death case, the Tribunal ought to have considered the income of the deceased, applied applicable multiplier after deducting towards personal and living expenses of the deceased looking to the dependency but it has not been done. He submits that either this Court may award suitable compensation by treating the present as a death case on the basis of evidence available on record or the matter may be remanded to the Tribunal for decision afresh after giving due opportunity of hearing to the parties to lead evidence in this regard.

05. On the other hand, learned counsel for the respondent/insurance

company supports the impugned award and submits that in this case the deceased died 36 days after discharge from hospital. The claimants have utterly failed to prove any nexus between the death of the deceased and the injuries sustained by him in the said accident. No any evidence in this regard has been adduced by the claimants. Therefore, the Tribunal was fully justified in awarding compensation to the claimants by treating the present case as an injury case.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

07. Heard learned counsel for the parties and perused the material available on record.

08. It has not been disputed by the parties that the deceased suffered grievous injuries in the accident occurred on 1.8.2013 due to rash and negligent driving of the offending vehicle by non-applicant No.1 Mukesh Bharadwaj. As per Ex.P/1, non-applicant No.1 was also charge sheeted for the offence under Sections 279, 337 and 338 of IPC. Ex.P/5 i.e. intimation given by Mundra Hospital to Police Station – Civil Lines, goes to show that on 1.8.2013 itself the deceased was admitted in Mundra Hospital for treatment of severe head injury sustained by him in the vehicular accident. Thereafter, considering his serious condition, he was taken to higher medical center Shree Narayan Hospital on 12.8.2013 in unconscious condition where he remained hospitalized till 20.9.2013 vide Ex.P/23 & P/24. Documents Ex.P/9 to P/95, filed by the claimants, clearly go to show that the deceased was under continuous treatment, initially in Mundra Hospital and thereafter in Shree Narayana Hospital and was discharged from hospital on 20/21.9.2013. As per Ex.A/1 i.e. death certificate, the deceased died on 26.10.2013. True it is that he died about 36 days after discharge from the hospital, however, in the given facts and circumstances of the case, in particular the documents of medical treatment available on record, it cannot be said that the injuries suffered by the deceased had no nexus at all with his death. Therefore, this Court is of the opinion that the Tribunal was not justified in treating the present case as an injury case and awarding compensation only for

the medical expenses and other conventional heads, without even assessing the income of the deceased. In view of above, the matter needs to be remanded to the Tribunal for deciding the claim case afresh after giving proper opportunity of hearing and adducing evidence to the parties in support of their case, in accordance with law.

09. In the result, the appeal is allowed in part. The impugned award is hereby set aside the matter is remanded to the Tribunal with a direction to decide the claim case afresh after giving due opportunity of hearing and adducing evidence to both the parties, within a period of six months from the date of appearance of the parties. The parties shall also be permitted to amend their pleadings, if so required, and adduce evidence thereon.

10. Registry is directed to send the record to the concerned Tribunal without delay.

11. Parties to appear before the concerned Tribunal on 6th May, 2019.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal to decide the claim case strictly on the basis of material available before it in accordance with law.

Sd/

(Gautam Chourdiya)

Judge

Khan