

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 990 of 2013**

1. Smt. Poona Bai W/o Bansilal Jangde, aged about 62 years
2. Ganeshram Jangde son of late Bansilal Jangde, aged about 46 years

Both resident of Parsada, Post Palod, Police Station Mandir Hasoud, Civil and Revenue District Raipur C.G.

-----Appellants/Claimants**VERSUS**

1. Dilip Kumar Chandrakar, son of Shri B.P. Chandrakar resident of Ward No. 21, B.T.I. Road, Fareshtar Colony, Mahasamund, District Mahasamund, Chhattisgarh
2. The New India Insurance Company limited, through Divisional Manager, Division No. 2, The New Indian Assurance Company Limited, Jeevan Bima Marg Pandari Raipur, District Raipur C.G.

-----Respondents

For Appellants	:	Mr. Amiykant Tiwari, Advocate
For Respondent 2	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****09/06/2020**

1. The appellants-claimants have filed this appeal for enhancement of the award challenging the award dated 12-08-2013 passed by Motor Accident Claims Tribunal, Raipur in claim case No. 249/2011.
2. Facts giving rise to this appeal are, that on 04-05-2010, when Bansilal (now deceased) was getting off from a Bus bearing Registration No. CG06 C 7422 (hereinafter referred to as "offending bus") driven by Respondent 1/ non-applicant 1 rashly and negligently, due to which deceased Bansilal fell down and suffered

injuries on his right hand thumb and fracture injury over his right hand along with injuries on other parts of his body. He was taken to Ambedkar Hospital, Raipur, where he remained under treatment for few days. Doctor of the said hospital advised to take treatment in private hospital to the family members of the deceased. Due to lack of finances, they brought deceased Bansilal from hospital to their home after about 5 days of treatment and on 27-12-2010 injured Bansilal died. They have pleaded that the motor accident dated 04-05-2010 was reported to concerned police station on 06-05-2010. The claimants are widow and son of Bansilal who filed claim application mentioning therein that on the date of death, Bansilal was aged about 65 years and engaged in the work of Mason cum contractor, earning Rs. 6,000/- per month and claimed for Rs. 3,45,000/- as total compensation on various heads.

3. Non-applicant 1/ Respondent 1 even after service of notice, did not appear before the learned Claims Tribunal and he was proceeded *ex parte*.
4. Non-applicant 2/ Respondent 2-Insurance Company submitted reply to the claim application and pleaded that the offending bus was being plied in breach of conditions of insurance policy as there was no valid and effective driving licence with the driver of the offending bus, valid fitness and permit were also not possessed by him on the date of accident. Death of Bansilal took place after seven months from the date of alleged accident which could not be treated as death caused due to motor accidental injuries dated 04-05-2010. Post mortem report of the deceased has not been placed on record to prove that the death was a result of motor accidental injuries suffered by the deceased.
5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the injuries suffered by deceased Bansilal in a motor accident dated 04-05-2010 with the offending bus to be proved but the death of Bansilal, on account of injuries suffered by him in the aforesaid accident, could not be proved. The issue with regard to having valid

and effective driving licence on the date of accident with driver of offending vehicle, was not proved. Learned Claims Tribunal awarded Rs. 22,686/- as compensation.

6. Learned counsel for the appellants-claimants submits that the learned Claims Tribunal erred in holding that the claimants failed to prove that death of Bansilal was on account of the injuries suffered by him in a motor accident occurred on 04-05-2010. He submits that the claimants have specifically pleaded the reason in their claim application that due to their poor financial conditions, they brought Bansilal back to their home. In evidence also, Appellant-2 has stated similar fact, but the learned Claims Tribunal had not taken into consideration the reason for bringing injured Bansilal to their home. He submits, that on account of unavailability of post mortem report of deceased, the entire death claim ought not have been rejected by the learned Claims Tribunal. Learned Claims Tribunal after conducting the enquiry under Section 168 of the Motor Vehicles Act, 1988 could have awarded just amount of compensation. He further submits, that deceased Bansilal suffered amputation of his right thumb and fracture of right hand shaft, but the learned Claims Tribunal has awarded only amount incurred on medical expenses and not awarded any sum towards non-pecuniary damages suffered by the deceased.
7. Per contra, Mr. Raj Awasthi, learned counsel appearing on behalf of Respondent 2-Insurance Company submits, that the submission made by the learned counsel for the appellant is not correct in view of the evidence of AW-1 who is Appellant-2 here, wherein he admitted the fact regarding bringing back his father home after recovery of injuries suffered by him in the said accident. He further pointed out that there is admission from the part of AW-1 that no post mortem of body of the deceased was conducted, and further, he has not produced any document or certificate showing the cause or reason of death of Bansilal. Learned counsel submits that as the cause of death has not been proved, the learned Claims

Tribunal has not committed any error in arriving at a finding that death of Bansilal on account of motor accidental injuries suffered by him in a motor accident dated 04-05-2010 to be not proved, cannot be said to be erroneous finding.

8. We have heard learned counsel for the respective parties and also perused the record with utmost circumspection.
9. There is no dispute with regard to motor accident took place on 04-05-2010 and death of Bansilal on 27-12-2010; post mortem of the deceased Bansilal was not conducted, cause/ reason of death is not ascertained, the evidence of AW-1 would show that he admitted that after recovering from the injuries, he took his father to home. Looking to the fact that death of Bansilal took place after about 7 months from the date of accident, deceased was discharged from the hospital within 5 days from the date of admission; after looking to recovery from injuries as admitted by AW-1 and further there is no document to show the cause/ reason of death, we do not find any error in the finding recorded by the Claims Tribunal that Bansilal died on account of motor accidental injuries suffered by him in the accident dated 04-05-2010 not proved. Other submission made by the learned counsel for the appellant that the learned Claims Tribunal has not awarded any sum for the injuries suffered by Bansilal i.e. amputation of thumb, fracture of right hand shaft, but awarded only Rs. 17,686/- towards medical expenses and Rs. 5,000/- on other heads lump-sum. From the material and evidence available on record, would reveal that the accident took place at Village Nawagaon from where the injured was brought to the Hospital at Raipur. The appellants are residents of village Parsada, Police Station Mandir Hasoud, deceased Bansilal was given treatment as an in-patient for about 7 days, one attendant might be there to look after him, but the learned Claims Tribunal has not taken note of it and not awarded any amount towards diet and conveyance expenses of the attendant as well as no amount for pain and sufferings.

10. In view of the above, we find it appropriate to award Rs. 10,000/- as compensation towards pain and sufferings to family members of the deceased, towards attendant cost, his diet and conveyance in addition to the amount of Rs. 22,686/- already awarded by the learned Claims Tribunal. The enhanced amount will carry interest @ 7% p.a. from the date of filing of the claim application till its realization.

11. In the result, the appeal is allowed in part and the impugned award passed by the learned Claims Tribunal is modified to the extent as indicated hereinabove.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge