

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1168 of 2015**

1. Pratap Rupda, aged about 54 years, S/o Shri Tribhuwandas Rupda.
2. Smt. Pramoda Rupda, W/o Shri Pratap Rupda aged about 49 years

The above appellants are R/o - P/o - Rupda Misthan Bhandar, Gandhi Chowk, Balodabazar, Tahsil & PS Balodabazar, Civil Distt. & Revenue Balodabazar

---- Appellants**Versus**

1. Laxminarayan Vaishnav, aged 29 years, S/o Shri Manik Das Vaishnav, R/o Village - Ghodari, P.S. Mahasamund, Civil Distt. & Revenue Distt. Distt. Mahasamund (CG) [Driver of Fiat-Palio Car No. CG04/ B/6650]
2. Chaitanya Kumar Sharma, age-40 years, S/o Shri Narottamlala Sharma, R/o Divya Beauty Parlour, Sector-02, Avanti Vihar, Vridawan Apartment, P.S. Avanti Vihar, Raipur, Civil District & Revenue District Raipur (CG) [Owner of Fiat-Palio Car No. CG04/ B/6650]
3. United India Insurance Company Ltd., Divisional Office at Madina Building, Jail Road, Raipur, Civil District and District Raipur (CG) [Ins. Com. Fiat-Palio Car No. CG04/ B/6650]

---- Respondents

For Appellant	:	Mr. Jameel Akhtar Lohani, Advocate
For Respondent No.3	:	Mrs. Chitra Shrivastava, Advocate

Single Bench: Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****29/10/2020**

1. Claimants/appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 26.2.2015 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.83/12 thereby dismissing claim application filed by claimants/appellants.

2. Facts relevant for disposal of this appeal are that on 27.6.2011 at about 6.00 p.m. Piyush Rupda was going on his motorcycle to Balodabazar from Raipur. When he reached near DPS School, Police Outpost Vidhan Sabha, one Fiat Palio Car bearing registration number CG04-B-6550, driven by non-applicant No.1 rashly and negligently, dashed his motorcycle from behind as a result Piyush Rupda suffered grievous injuries on the head, leg and other parts of body. He was immediately taken to Balaji Super Speciality Hospital, Raipur where he was given treatment from 27.6.2011 to 06.11.2011. During the entire period of hospitalization, Piyush Rupda remained in coma and never regained his consciousness till his death on 6.11.2011. Accident was reported in concerned police station based upon which crime bearing No.456/11 was registered against non-applicant No.1 for commission of offence under Sections 279, 337 & 304A of the IPC.
3. Claimants/appellants filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.54,98,000/- pleading therein that on the date of accident, deceased was 22 years old able bodied boy and was the only son of of claimants, he was running a hotel in the name of 'Rupda Misthan Bhandar' and earning Rs.12,000/- per month.
4. Non-applicants No.1 & 2, driver & owner of offending vehicle, did not appear before the Claims Tribunal, therefore, they were proceeded ex-parte.
5. Non-applicant No.3-Insurer of offending vehicle, submitted its

reply to claim application, while denying the pleadings made therein, has further pleaded that the deceased could not be able to control his motorcycle near speed breaker, fell down and suffered injuries on account of his own negligence. Even if it is found that the offending vehicle was involved in the accident, there was contributory negligence to the extent of 90% on the part of the deceased, driver of motorcycle. It was denied that deceased was treated at Balaji Super Speciality Hospital, Raipur from 27.6.2011 to 6.11.2011. Death of deceased due to motor accidental injuries suffered by him in a road accident has also been denied.

6. The Claims Tribunal on appreciation of pleadings and evidence placed on record held that it has not been established that deceased Piyush Rupda died due to motor accidental injuries suffered by him in a road accident occurred on account of rash and negligent driving of offending vehicle by non-applicant No.1 and consequently, dismissed claim application without deciding other issues formulated for disposal of claim case.
7. Mr. J.A. Lohani, learned counsel for appellant-claimant submits that basis of rejection of claim application by the Claims Tribunal is that report of accident was lodged by claimants/appellants after about four months of the accident and no acceptable reason has been offered for such an inordinate delay in lodging FIR. No medical document, except medical bills, has been placed on record to show what injuries deceased had suffered and what treatment had been given to

him. In absence of these documents, the accident and death cannot be correlated. He further contended that the Claims Tribunal has failed to consider FIR (Ex.P-1) lodged by claimant No.1 which after investigation has been culminated into filing of final charge sheet (Ex.P-2) against driver of offending vehicle. He further contended that claimants in support of their application has placed on record post-mortem report (Ex.P-7) in which injuries suffered by deceased are clearly mentioned. As per post-mortem report, cause of death of deceased was 'cardio respiratory failure as a result of head injury and its complications'. The doctor, who conducted post-mortem, has also opined that injuries noticed on the body of deceased are sufficient to cause his death in ordinary course of nature. Claimants have also placed on record the letter dated 12.11.2011 issued by Dr. Anindo Roy (treating doctor) certifying admission of deceased in the hospital on account of head injury from 27.6.2011 at 7.00 p.m., showing date of discharge to be 25.8.2011 and readmission on 25.8.2011. He contended that the documents available on record are sufficient to show nature of injuries suffered by deceased on 27.6.2011. Filing of charge sheet by the police against driver of offending vehicle is also suggestive of the fact that deceased suffered motor accidental injuries on 27.6.2011. He submits that cash receipt bills issued by Balaji Institute of Medical Sciences, Raipur, where deceased took treatment from 27.6.2011 to 25.8.2011, have also been filed as Ex.P-51 and the document filed as Ex.P-52 shows the payment of charge towards use of oxygen in the treatment of

deceased between 25.8.2011 & 7.11.2011. He contended that the claimants-appellants have moved an application before the Claims Tribunal for summoning Dr. Anindo Roy, treating doctor of deceased, but even after service of notice, said doctor did not turn up, but thereafter the Claims Tribunal has not taken any steps or action as per provisions of Section 168 of the Act of 1988 and Rule 226 of the Motor Vehicles Rules, 1994 (for short 'the Rules of 1994') and erroneously dismissed claim application by recording a finding that application under Section 166 of the Act of 1988 and the death of deceased on account of motor accidental injuries have not been proved. Said finding of the Claims Tribunal is erroneous and liable to be set aside. He submits that in the background of the case where claimants have taken all steps and measures to call treating doctor for recording of evidence before the Claims Tribunal, but said doctor did not turn up despite service of notice, therefore, in such a situation, one opportunity may be given to appellants to prove their case by examining treating doctor of deceased before the Claims Tribunal and at the same time a direction may also be issued to the Claims Tribunal to take all necessary steps for recording of evidence of treating doctor.

8. Per contra, Mrs. Chitra Shrivastava, learned counsel for respondent No.3 Insurance Company, submits that the Claims Tribunal has correctly arrived at a finding that FIR has been lodged after four months of accident which makes the facts narrated in claim application suspicious. She further contended

that though some bills have been placed on record by the claimants but all the medical documents relating to treatment of deceased have not been placed on record, which was taken seriously by the Claims Tribunal to arrive at a conclusion that the claimants failed to prove their case, which cannot be said to be erroneous. To buttress her submission, she places his reliance on the decision of Hon'ble Supreme Court in the matter of **Anil & ors vs. New India Assurance Company Ltd.** reported in **(2018) 2 SCC 482** and **T. Kocha Vs. State of Kerala & ors** reported in **2016 (2) SCCD 816 (SC)**. She further contended that appellants-claimants have set up a false case which was rightly dismissed by the Claims Tribunal after analysing facts, circumstances and evidence placed on record by the appellants-claimants. She submits that the impugned award does not call for any interference.

9. I have heard learned counsel for the parties and perused the record.
10. Perusal of record reveals that FIR (Ex.P-2) of accident dated 27.6.2011 was lodged on 19.10.2011 and after conclusion of investigation, final report/charge sheet (ExP-1) was filed against driver of offending vehicle by the police on 01.11.2011. Name of accused in the charge sheet is mentioned as 'Laxmi Narayan' i.e. non-applicant No.1/respondent No.1 herein. Copy of post-mortem report is placed on record as Ex.P-7. In the post-mortem report, which was conducted on 7.11.2011, description of body is given as under:

“dead body of a lean thin built male, naked. Both ...were surgically removed and donated under consent of his parent. from private sector. Hips approximate. cold stiffening all over body. Hypo-stasis present on back and fixed multiple old head scare mark or patches present on Lt. forearm. Bed sores present on both buttocks.”

11. From perusal of above it is clear that the doctor, who conducted post-mortem examination, had noticed bed sores on both buttocks of deceased which is indicative of fact that deceased was bedridden for long time. Under the heading 'Injuries' it is mentioned as under:-

“(1) old infected wound on posterior aspect of upper 1/3 at left thigh 10x6.5 cm, right buttock 10x7 cm and left hip region 5x3cm;

(2) tracheotomy wound present on mid line of neck region about 2.5 cm and in diameter.....”

Apart from this, number of injuries were found on head and brain of deceased. Dr. Anindo Roy issued letter dated 12.11.2011 (Ex.P-8) certifying that on 27.6.2011 at 7 p.m. the deceased with head injury was admitted in Shri Balaji Super Speciality Hospital, Raipur and he was discharged on 25.8.2011. In the bills produced by claimant-appellants name of Dr. Anindo Roy is mentioned as treating doctor.

12. Perusal of order sheets dated 17.7.2014 would show that after service of summons, when Dr. Anindo Roy did not appear for recording of his evidence as a witness, the Claims Tribunal issued arrest warrant, without handcuffs, against him. The order sheet dated 17.7.2014 further reflects that arrest warrant issued against Dr. Anindo Roy has been received back with a note that 'after showing arrest warrant, when Dr. Anindo Roy

was asked to accompany Warrant Server, he refused to accompany on the ground that there was an emergency case'. The Claims Tribunal thereafter again directed for issuance of arrest warrant, without handcuffs, against Dr. Anindo Roy for his production. In the order sheet dated 22.9.2014 it is recorded that summon issued not returned served or unserved, therefore, again it was directed to issue summons. The Claims Tribunal vide order sheet dated 02.02.2015 recorded that despite grant of several opportunities, non-applicant No.3- Insurance Company failed to produce witness for recording of evidence and now it does not appear proper to grant further time in this regard and rejected prayer for grant of last opportunity for recording of evidence and fixed the case for final hearing. Thereafter, the claim case was finally heard and dismissed by the Claims Tribunal by the impugned award.

13. The Claims Tribunal dismissed claim application on two grounds, firstly on the ground that FIR has been lodged with inordinate delay and secondly, the claimants have not been able to place on record any document showing treatment of deceased and the deceased died due to injuries suffered by him in a motor vehicular accident.

14. So far as lodging of FIR with delay is concerned, the deceased was the only son of claimants and he met with accident, sustained injuries, became unconscious and remained in coma till his death. In such a situation, the claimants cannot be expected to rush police station to first lodge report of accident

instead of making efforts to provide best available treatment to their only son. From the facts and circumstances of the case it appears that appellants-claimants were running after the hospital to get best treatment to their son so that he can recover from injuries suffered by him and come out from coma. Issue of delay in lodging FIR of a road accident has been considered by Hon'ble Supreme Court in case of **Ravi vs. Badrinarayan & others** reported in **(2011) 4 SCC 693** and held thus:-

“17.It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

19. Lodging of FIR certainly proves the factum of accident so that the victim is liable to lodge a case for compensation but delay in doing so cannot be the main ground for rejected the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kind of the victim are able to regain a certain level of tranquillity of mind and are compared to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

15. Taking into consideration the facts and circumstances of case,

in the light of documents available on record of claim case as well as ruling of Hon'ble Supreme Court, in the considered opinion of this Court, the Claims Tribunal erred in taking 'delay in lodging FIR' as one of the grounds for dismissal of claim application. Said finding recorded by the Claims Tribunal is not sustainable and it is hereby set aside.

16. So far as second ground based on which the Claims Tribunal dismissed claim application i.e. claimants have not placed on record copy of medical bills of the hospital where the deceased was treated after the accident, is concerned, post-mortem report of deceased shows that he suffered head injury and the doctor conducting post-mortem has noticed complications in his head and brain. In the post-mortem it is also mentioned that apart from head injury, deceased had also suffered injuries on other parts of his body like thigh, hip, buttock etc. Bed sores were also found on buttock of deceased which shows that the deceased was continuously on bed. Apart from this, what the Claims Tribunal has failed to consider is that the claimants have paid process fee to call Dr. Anindo Roy, treating doctor of deceased, as a witness to prove motor accidental injuries suffered by their son, but he did not appear even after service of arrest warrant, without handcuffs, stating that on the date of his appearance, there was emergency case or call for him. The proceedings of claim case recorded by the Claims Tribunal would show that the claimants have taken all steps within their command or available to them under the law to get the

statement of treating doctor recorded, but the treating doctor did not appear before the Claims Tribunal for recording of his evidence. In such a situation, claimants-appellants could not be held responsible for non-recording of evidence of the doctor before the Claims Tribunal. Under the Act of 1998 a duty is cast upon the Claims Tribunal to take all measures for inquiring into application filed under Section 166 of the Act of 1988 and pass just and proper award. A further duty is cast upon the Tribunal to call for the documents if not placed on record by claimant and to examine witness (s) which the Tribunal feels to be important for just & fair disposal of claim case and passing just & reasonable award in favour of claimant.

17. In the case at hand, the Claimants have made all efforts to get the treating doctor examined as a witness but even after service of arrest warrant, without handcuffs, said doctor did not appear before the Claims Tribunal for recording of his evidence. In the aforementioned facts and circumstances of the case and going through the order sheets recorded by the Claims Tribunal, in the considered opinion of this Court, the Claims Tribunal has not conducted proper enquiry as envisaged under Section 168 of the Act of 1988 and Rule 226 of the Rules of 1994 and dismissed claim application in a very casual manner and thereby committed mistake.

18. So far as the case law relied upon by learned counsel for the respondent No.3 is concerned, in that case apart from delay in lodging of FIR, there was no post-mortem placed on record by

claimants therein, no hospital records were filed before the Claims Tribunal. In the case at hand, the claimants have placed on record bills of hospital, certificate issued by the treating doctor, paid process fee for calling treating doctor as witness before the Claims Tribunal etc. Thus the claimants-appellants have made all efforts to call the treating doctor as a witness, but all in vain. They have also prayed for further time but the Claims Tribunal has closed their right to examine and fixed the case for final hearing and decided the case finally which resulted into dismissal of claim application on one of the grounds that claimants failed to correlate death of deceased with the alleged injuries suffered by him. The manner in which proceedings were drawn by the Claims Tribunal, in the opinion of this Court, the Claims Tribunal has not exercised its power under Section 169 of the Act of 1988 to achieve the object of the Act of 1988. Under the Act of 1988 the Claims Tribunal is also having equal duty and responsibility to pass appropriate award taking into consideration facts of each case, in which it failed.

19. For the foregoing reasons, the appeal is allowed. Impugned award passed by the Claims Tribunal dismissing claim application is hereby set aside. The matter is remanded back to the Claims Tribunal with a direction to consider and decide Claim Case No.83/12 afresh in accordance with law, after providing opportunity of hearing to the parties. It is made clear that the Claims Tribunal shall grant opportunity to all the parties

to make additional pleadings, examine additional witness including treating doctor etc., place on record additional documents. Respondents will also be at liberty to file additional documents, pleadings and examine additional witness, if any, in support of their respective cases. It will be the duty of the Claims Tribunal to ensure presence of witnesses by exercising powers under Section 169 of the Act of 1988 and Rule 226 of the Rules of 1994. Since the accident pertains to the year 2011, the Claims Tribunal is directed to make all endeavour to decide the claim case as early as possible, preferably within a period of five months from the date of receipt of copy of this order.

20. The Registry to forthwith send back records of claim case.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-