

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1366 of 2014

1. Dinesh Kumar Kashyap, S/o Late Paraswatilal Kashyap Aged About 27 Years
2. Ramesh Kumar Kashyap S/o Late Paraswatilal Kashyap Aged About 25 Years

Both R/o Village- Basha, P.S. Sipat, Tah. And Distt. (Revenue & Civil)
Bilaspur Chhattisgarh

---- Appellants/Claimants

Versus

1. Sukhdev Rao, S/o Lakhan Rao, R/o Village- Bhadi, P.S. Sipat, Tah. And District (Revenue & Civil) Bilaspur, Chhattisgarh (Driver of Auto No.CG 12Y-0482)
2. Suraj Patel, S/o Shiv Kumar Patel R/o Village- Nonpulali, Post- Pali, P.S. And Tah. Korba, District (Revenue & Civil) : Korba, Chhattisgarh (Owner of Auto No.CG 12Y-0482)
3. Bajaj Alliance General Insu. Co. Ltd. S/o Thru- Branch Manager, Branch Office, Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandari, Raipur, Tah. And District (Revenue and Civil) : Raipur, Chhattisgarh (Insurer of Auto No.CG 12Y-0482)

----Respondents

For Appellants	: Shri Anand Kesharwani, Advocate
For Respondents-1 and 2	: None appears
For Respondent-3	: Shri SS Rajput, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
06.10.2020

1. This appeal under Section 173 of Motor Vehicles Act, 1988 is filed by sons of the injured Sakun Bai aged about 48 years, challenging the impugned award dated 30.09.2014 passed by 3rd Additional Member of the 1st Additional Motor Accidents Claims Tribunal, Bilaspur (for short, Claims Tribunal) in Claim case No.34 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.36,000/- as compensation.

2. Facts relevant for disposal of this appeal are that on 23.02.2012 Sakun Bai was travelling in an Auto Rickshaw bearing No.CG12Y-0482 (hereafter, referred to 'offending vehicle') and going to Pali from village Podi. When the offending vehicle reached in front of Electricity Office of village Kera, NA-1 driver of offending vehicle drove his vehicle rashly and negligently, met with an accident. In the said accident Sakun Bai fell down from the vehicle and suffered injuries over her head. She was admitted to CIMS hospital, Bilaspur. Looking to the seriousness of injuries, she was referred to Dr.Ambedkar Hospital, Raipur.

3. Injured/Claimant Sakun Bai filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.23,70,000/- pleading therein that on account of head injuries suffered by her in the motor accident, she suffered head injury, went in coma, her jaws were repaired by affixing fixators and after about one month, she was discharged from the hospital with instructions of bed rest. She became permanently disabled and unable to do her earlier work as labourer. On account of head injury, she was continuously feeling headache and dizziness. During the pendency of claim application, original claimant- Sakun Bai died on 17.10.2012 and thereafter the appellants herein were impleaded as Legal Representatives of late Sakun Bai in her place.

4. NA-1 and 2, driver and owner of offending vehicle remained *ex-parte*.

5. NA-3 insurance company submitted reply to claim application and denied the pleadings made therein. The Insurance Company specifically

pleaded that no accident occurred from the vehicle insured by it. It was pleaded that original claimant Sakun Bai was not travelling as passenger in the offending vehicle, in alternate, it was pleaded that claimant Sakun Bai was sitting in the vehicle negligently. As there was no valid and effective driving license with NA-1, driver of offending vehicle, there was breach of policy conditions. Application is filed claiming compensation for personal injury, hence the legal representatives of the deceased are not entitled for any amount of compensation.

6. Upon appreciation of pleadings and evidence recorded by respective parties, learned Claims Tribunal allowed the claim application in part, awarded Rs.36,000/- as compensation on different heads i.e pains and suffering Rs.5,000/-, Rs.15,000/- towards medical expenses (upchaar), Rs.10,000/- towards attendant, transportation and Special Diet, Rs.6,000/- towards loss of income during the period of treatment for a period of two months.

7. Shri Kesarwani, learned counsel for the appellants/ LRs of original claimant submits that on account of injuries suffered by Sakun Bai, she became permanently disabled and was bed ridden. He further argued that Late Sakun Bai suffered paralysis, unable to move on her own and her death was a result of accidental injuries suffered by her. He further contended that learned Claims Tribunal has not awarded sufficient amount of compensation in view of the nature of injuries suffered, treatment taken by her as in-patient. Looking to her disability resulting into her death, learned Claims Tribunal ought to have considered her death as motor accidental death. In alternate, he submits that from the documents placed

on record, it is apparent that after the date of discharge also she was advised for bed rest, hence, the Claims Tribunal ought to have awarded loss of income for that period also, attendant and other monetary loss suffered by the claimant.

8. Shri SS Rajput, learned counsel for the respondent/ Insurance Company submits that the claim application is filed for compensation on account of injuries suffered by Sakun Bai and date of accident is of 23.02.2012. After taking treatment Sakun Bai was discharged from the hospital and she died after considerable long period, ie on 17.10.2012. There was no nexus of death due to the accidental injuries, no disability certificate or any document of treating doctor mentioning that the injured suffered permanent disability is brought on record. The claimants have even not sent the dead body of Sakun Bai for post-mortem and in absence of post-mortem report, it cannot be said that she died only on account of accidental injuries. There is no evidence to connect the death of Sakun Bai who suffered injury in motor accident about more than 7 months ago. He submits that claimants being legal representatives of Sakun Bai, they can only be entitled for monetary loss, if proved, by admissible piece of evidence. He places reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Melepurath Sankunni Ezhuythassan Vs Thekittil Gopalankutty Nair** reported in AIR 1986 SC 411 and in a case of MP High court in the matter of **Bhagwati Bai and another Vs Bablu @ Mukund and others** reported in AIR 2007 MP 38, in support of his contention.

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. There is no dispute with regard to the date of accident i.e. 23.02.2012. Sakun Bai was initially admitted to CIMS hospital, Bilaspur and upon diagnosing head injury, she was referred to Dr.Ambedkar Hospital, Raipur. Medical prescriptions mention about the head injury suffered by her and Ex.P16 available on record shows that apart from the head injury, she also suffered loss of lower tooth. The appellants have not pleaded that on which date Sakun Bai discharged from Ambedkar Hospital Raipur, have not examined any doctor nor placed on record any medical document showing continuous treatment taken by Sakun Bai. The appellants have even not sent the dead body of Sakun Bai to get post-mortem report, so as to ascertain the cause of death. In absence of any specific medical evidence in this regard, and particularly considering the date of accident and date of death ie 22.02.2012 and 07.10.2012 respectively, we are of the view that appellants failed to prove, nexus of death with the motor accidental injuries suffered by late Sakun Bai by placing clinching evidence..

11. In view above, no compensation can be awarded to the appellants treating the death of late Sakun Bai as motor accidental death.

12. So far as the amount of compensation to the appellants in a personal injury case is concerned, only the injured himself / herself is entitled for non-pecuniary damages along with pecuniary damages. In personal injury cases, if the injured dies during the pendency of the claim application, then

legal representatives of the deceased / injured will be entitled only for pecuniary loss suffered by her out of the motor accidental injuries of injured / deceased. The claimants have not produced any medical bills to prove the medical expenditure as pleaded and stated by them in their claim application.

13. Learned Claims Tribunal has awarded Rs.15,000/- towards medical expenses. In absence of any evidence we do not find that Rs.15,000/- awarded to the claimant towards medical expenses to be on lower side, therefore, we confirm the said finding of awarding **Rs.15,000/-** towards medical expenses.

14. Learned Claims Tribunal has awarded consolidated amount of Rs.10,000/- on the heads of attendant, transportation and special diet which in the opinion of this court appears to be on lower side. There is no dispute that after accidental injuries suffered by late Sakun Bai, she was brought from Pali to Bilaspur and admitted in CIMS Hospital, Bilaspur. From CIMS Hospital Bilaspur she was referred to Dr.Ambekdar Hospital, Raipur and after discharge she again came back to her house at Village Podi. Taking into consideration nature of injury as appearing from medical documents available on record and after the discharge injured has returned back to her house, we find it appropriate to award **Rs.10,000/-** towards conveyance expenses.

15. There is no material available on record to arrive at a conclusion that from which date the injured was discharged from Dr.Ambedkar Hospital, Raipur. Taking note of head injury suffered by Sakun Bai, her loss of

income can very well be taken as loss of income during the period of treatment for four months which comes to **Rs.12,000/-** (3000 x 4).

16. Learned Claims Tribunal has not awarded any amount towards inconvenience suffered by the family members and loss of income for the attendant appropriately. We find it appropriate to award **Rs.10,000/-** towards loss of income and inconvenience caused to the attendant and family members during the period of treatment and **Rs.10,000/-** towards pains and sufferings to family members. The claimant-injured will be further entitled for amount of compensation on the head of special diet to the tune of **Rs.5,000/-**.

17. Now, the appellants, legal representatives of original Claimant-Sakun Bai will be entitled for a total sum of **Rs.62,000/-** (Rs.15,000/- towards medical expenses, Rs.10,000/- towards transportation, Rs.10,000/- towards attendant and inconvenience caused to the family members, Rs.12,000/- towards loss of income during the period of treatment, Rs.10,000/- towards pains and sufferings and Rs.5,000/- towards special diet), as compensation, instead of Rs.36,000/- as awarded by learned Claims Tribunal.

18. The aforementioned compensation shall carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge