

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 1161 OF 2019

1. Shriram General Insurance Company Limited,
having its Head Office at E-8 EPIP, RIICO Industrial
Area, Sitapura, Jaipur, Rajasthan
having its Branch Office at Shraddha House,
Third Floor, 345, Opp. Kasturchand park, Nagpur,
Through its Legal Officer. Appellant

.....Vs.....

1. Smt. Yashodabai Natthuji Jadhao,
Aged about 60 years, Occ. Housewife,
R/o. Ward No. 3, Pachwad, Tah. Ner,
District Yavatmal.
2. Prabhakar Kisan Bhagat,
Aged about 43 years, Occ. Driver Owner,
R/o. Pimpri, Ijara, Tah. Ner,
District Yavatmal. Respondents

Shri H. N. Verma, Advocate for the appellant.
Shri Vivek Awchat, Advocate for respondent no. 1
None for respondent no. 2

RESERVED ON : 28/01/2020

DELIVERED ON : 31/01/2020

JUDGMENT

Heard.

2. **Admit.**
3. With the consent of learned Advocates appearing for the

parties heard finally.

4. The appeal is against the judgment of Motor Accident Claim Tribunal, Yavatmal (for short the "Tribunal) in M.A.C.P. No. 139/2013 dated 28.07.2016.

5. The facts giving rise to the present appeal can be summarized as under:

The deceased-Natthuji Bhagwan Jadhav was running grocery shop. On 22.09.2012, deceased - Natthuji went to Ner from village Pachwad for purchasing grocery articles. He had gone to Ner on the motor cycle of Swapnil Rathod. Deceased - Natthuji was pillion rider on the motor cycle bearing no. MH-27/AA-9702. When they reached at Pimpri Ijara Shiwar on Ner Jawalgaon Road, near the house of one Shankar Wasnik, that time at about 11.30 a.m. offending vehicle Ape Auto bearing no. MH-29-M-2916 driven by the respondent no. 2 (in this appeal) rashly and negligently and gave dash to the motor cycle. Deceased - Natthuji and Swapnil Rathod both were thrown away. Both sustained grievous injuries. Deceased - Natthuji sustained fracture to his right leg. After the accident, Natthuji was shifted to Government Hospital, Ner. But, due to his critical condition, he was admitted in Samyak Orthopedic Hospital, Yavatmal. Dr. Kamble operated him. He was indoor patient from 22.09.2012 to 29.09.2012. Thereafter, due to

the said accidental injury, he was suffering from breathlessness and other complication. Natthuji was again admitted in Criti Care Hospital, Yavatmal on 29.10.2012 and he was discharged on 02.11.2012. Again his condition was deteriorated. He was shifted to Ashwini Kidney & Dialysis Cetner, Nagpur, where he was treated on 03.11.2012. He was admitted in the Super-Specialty Hospital. Lastly, Natthuji was shifted to Acharya Vinoba Bhave Rural Hospital, Sawangi, Wardha. He was admitted there on 05.11.2012. Due to grievous injuries, fracture, septicaemia developed and he died due to said accidental injury on 17.11.2012.

Deceased – Natthuji himself lodged report against respondent no. 2 (driver and owner of offending vehicle). Crime was registered against him for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code. He was prosecuted in the Court by filing the charge-sheet.

After the death of Natthuji, his wife filed claim petition claiming compensation of Rs.6,00,000/-. Insurance Company (appellant in this appeal) contested the claim. Learned Tribunal partly allowed the claim petition and granted compensation of Rs.3,25,000/- alongwith interest at the rate of 7% p.a. Hence, the present appeal by the Insurance Company.

6. Heard Shri Verma, learned Advocate for the appellant (Insurance Company). He has submitted that deceased died due to pneumonia and chronic renal failure. Death was not the result of accident. Therefore, Insurance Company is not liable to pay the amount of compensation. Learned Advocate has pointed out the Medical Certificate (Exh. 54) issued by Dr. Kamble and submitted that this certificate shows that the fracture was completely healed and, therefore, it was not the cause of death of Natthuji. Learned Advocate has pointed out the cross-examination of Dr. Raisingani and submitted that Natthuji was admitted in the Hospital at Sawangi Meghe, that time he was suffering from pneumonia. Learned Advocate has submitted that death was not caused due to the accident and, therefore, claim petition ought to have been rejected.

7. Learned Advocate Shri Awchat for respondent no. 1 has pointed out the evidence of Dr. Sudarshan Kamble. He has submitted that on the date of accident itself deceased was admitted in the hospital. Right leg of the deceased was fractured. Dr. Sudarshan Kamble operated the deceased - Natthuji after obtaining the fitness certificate. Evidence of Dr. Raisingani shows that death of Natthuji had taken place due to septicaemia. Septicaemia was developed due to fracture and, therefore, death is result of the accidental injuries sustained by the deceased.

8. There is no dispute about the accident. FIR, Spot Panchnama, copy of charge-sheet are filed on record vide Exh. Nos. 35, 36 and 37. These documents show that accident took place due to rash and negligent driving of respondent no. 2, driver of offending vehicle. There is no dispute about the Insurance Policy (Exh. 40) filed on record. Death Certificate issued by Dr. Leny Thomas Mathew, Resident Medicine, Sawanghi (M), Wardha shows that death was caused due to (i) septicaemia (ii) Bilateral Pneumonia (iii) Chronic Renal Failure.

9. Evidence of claimant (respondent no. 1 in this appeal) shows that deceased was immediately taken in the hospital at Ner but, due to his critical condition, he was shifted in the hospital of Dr. Sudarshan Kamble. On the day of accident itself, his right leg was completely fractured. Dr. Sudarshan Kamble operated on his right leg. Deceased was discharged on 29.09.2012. Thereafter, health of deceased was deteriorated and he was admitted in the Criti Care Hospital, Yavatmal on 29.10.2012 and discharged on 02.11.2012. Again his health was deteriorated, therefore, he was shifted to Ashwini Kidney & Dialysis Cetner, Nagpur. He was treated there on 03.11.2012. Lastly, deceased was admitted in the Acharya Vinoba Bhave Rural Hospital, Sawangi, Wardha on 05.11.2012. He died on 17.11.2012.

10. Evidence of Dr. Raisingani shows that death of Natthuji was taken place due to septicaemia. Natthuji had developed septicaemia and

there was chronic renal failure and, therefore, he died. Learned Advocate Shri Verma has pointed out his cross-examination and submitted that as per his admission septicaemia may be due to pneumonia and, therefore, accident is not cause of death of the deceased - Natthuji. Particular admission cannot be taken as wholly truth. The whole evidence is to be read together. Evidence of Raisingani in the examination-in-chief clearly shows that death of Natthuji was due to septicaemia. In his cross-examination, he has stated that he had not given personal treatment to the deceased. He has stated on the basis of documents of the hospitals, therefore, particular admission cannot be taken into consideration. There is no dispute that Natthuji sustained fracture injury in the accident. There is no evidence to show that before accident deceased was having any health problem and he was admitted in any hospital.

11. Learned Advocate Verma has pointed out cross-examination of Dr. Kamble and submitted that before the accident deceased was having blood pressure, C.O.P.D. and chronic obstruction pulmonary disease. He was having disease of lungs since before he received injuries. This particular admission of Dr. Kamble cannot be said that deceased died due to other health problems. On the other hand, evidence of Dr. Kamble in examination-in-chief shows that before operating the right leg of deceased, he obtained fitness certificate. This itself shows that

deceased was fit before operation on his right leg. Therefore, it cannot be said that accidental injury was not the result of the death. Evidence of Dr. Kamble shows that deceased had sustained accidental injuries. His right leg was fractured. Deceased was operated. As per the evidence of Dr. Nitin Raisingani deceased died due to septicaemia. Septicaemia was result of accidental injury. Learned Tribunal rightly came to the conclusion that deceased died due to accidental injury. Therefore, appeal is without any merit.

12. Hence, appeal is **dismissed** with no order as to costs.

Civil Application (CAF) No. 128 of 2019

In view of the dismissal of the First Appeal, Civil Application praying for grant of stay does not survive. Accordingly, it is **disposed** of.

Civil Application (CAF) No. 3774 of 2019

In view of the dismissal of the First Appeal, Civil Application praying for withdrawal of amount is allowed. The claimant/respondent no. 1 is permitted to withdraw amount of compensation deposited before this Court alongwith accrued interest, if any.

Accordingly, it is **disposed** of.

JUDGE