

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 770 of 2015**

1. Sandeep Kumar Gupta S/o late Ramu Prasad Gupta, aged about 24 years, occupation-Agriculture
2. Smt. Sushila Gupta W/o Ramu Prasad Gupta, aged about 44 years

both are R/o Village Durga Para, Tahsil-Bagicha, P.S. Bagicha,
District Jashpur Chhattisgarh

At present-Bhagalpur, District Jashpur, civil & Revenue District
Jashpur Chhattisgarh

---Appellants/claimants**VERSUS**

1. Mohd. Farukh S/o late Abdul Rasid R/o Kharsiya Road, Ambikapur Chhattisgarh, Civil and Revenue District Ambikapur Chhattisgarh
2. Samsul Khan S/o Anus Khan, aged about 44 years, Occupation-Driver R/o village & Police Station- Narayanpur, Tahsil-Kunkuri, District Jashpur, Chhattisgarh civil and revenue district Jashpur Chhattisgarh
3. The New India Insurance Co. Ltd. Local Branch Office-Raigarh, District Raigarh Chhattisgarh, Civil and Revenue District Raigarh Chhattisgarh

----Respondents

For Appellants	:	Mr. Rishikant Mahobia, Advocate
For Respondent 3	:	Mr. Anil Gulati, Advocate

(proceedings through Video Conferencing)

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

19/08/2021

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 04.05.2012 passed by learned Motor Accident Claims Tribunal, Jashpur, C.G. (for short "Claims Tribunal") in claim case no. 53/2010, whereby learned Claims

Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, awarded Rs. 25,000/- as total compensation.

2. Facts relevant for disposal of this appeal are, that on 24.04.2004, Ramu Prasad Gupta was travelling on a bus bearing registration no. CG15 ZA 0142 (henceforth "offending bus") and going to Bagicha from Durgapara. On the way, offending bus met with an accident due to rash and negligent driving of non-applicant 2 and dashed with a tree standing on the side of the road. In the accident, he suffered fracture injuries over his left hand. Injured Ramu Prasad Gupta died on 24.07.2006.
3. Appellants-claimants filed an application under Section 166 of the Act of 1988 pleading therein that prior to date of accident, late Ramu Prasad Gupta was working as driver and earning Rs. 6000/- per month. In the accident, he suffered grievous fracture injuries over his left hand, it was operated but due to sugar disease (diabetes) his injuries could not be cured. He was thereafter taken to hospital at Raipur, Banaras, Lucknow and Mumbai for treatment. On account of motor accidental injuries, he died on 24.07.2006. They have claimed total compensation of Rs. 27,17,396/-
4. Non-applicants 1 and 2/ Respondents 1 and 2, who are owner, driver of the offending bus submitted reply to the claim application and denied the fact of accident and the deceased to be passenger in offending bus. They have further denied other pleadings with regard to death of Ramu Prasad Gupta due to complications of motor accidental injuries. Offending bus was insured with non-applicant 3, as such, liability to satisfy the

amount of compensation, if any, would be upon non-applicant 3/ Insurance Company.

5. Non-applicant 3/ Respondent 3/ Insurance Company submitted its reply, denying the facts pleaded in the claim application further denied the fact of death of Ramu Prasad Gupta due to motor accidental injuries suffered by him. Offending bus was plied in breach of policy conditions.
6. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties, held that Ramu Prasad Gupta suffered grievous injuries on his person due to rash and negligent driving of offending bus by non-applicant 2. Death of Ramu Prasad on account of complications from motor accidental injuries due to diabetes was not found to be proved. Breach of policy conditions was also not found to be proved and awarded Rs. 25,000/- as compensation towards grievous injuries.
7. Mr. Rishikant Mahobia, learned counsel for the appellants-claimants would submit that the Claims Tribunal erred in arriving at conclusion that death of Ramu Prasad was not on account of motor accidental injuries and its complications. He submits that in motor accident, deceased suffered grievous injuries on his person for which medical documents are also placed on record. Deceased took treatment continuously at different hospitals of Raipur, Banaras, Lucknow and Mumbai and after suffering motor accidental injuries deceased died on account of complications from injuries, hence, Tribunal ought to have allowed the application for compensation treating it to be application for grant of compensation in a death case. It is also pointed out that the

appellants have placed on record Ext. A-6 to A-28 which are the medical prescriptions and discharge ticket of different hospitals to prove the continuous treatment taken by deceased after accident. Tribunal has not appreciated the documentary and oral evidence placed on record and erroneously dismissed the claim of appellants towards death of Ramu Prasad Gupta. The amount of compensation be suitably enhanced.

8. Mr. Anil Gulati, learned counsel for Respondent 3-Insurance Company would submit that learned Claims Tribunal discussed in detail with regard to date of accident, the date from which documents of treatment is placed on record and has rightly arrived at a finding that death of Ramu Prasad Gupta was not due to complications of motor accidental injuries. He submits that the amount of compensation awarded by the Tribunal treating motor accidental injuries to be grievous in nature is based on the appreciation of documentary and oral evidence placed on record, hence, it does not call for any interference.
9. I have heard learned counsel for the respective parties and also perused the record of claim case.
10. Admittedly, the date of accident as pleaded in claim application and appearing from the documents of criminal case ie. Ext. A-1 to A-5 was of 24.04.2004. Ext. A-2 is MLC report dated 19.05.2004 wherein it was diagnosed as fracture of humerus bone. It is also mentioned as old injury of one month. Ext. A-30 is cash memo issued by Agrasen Hospital, Raipur showing the date of admission of injured Ramu Prasad on 20.05.2004 and date of discharge from hospital as 24.05.2004 mentioning fracture of

humorous bone. In this cash memo total expenditure incurred on treatment is mentioned as Rs.23,200/-. In view of the cash memo of Agrasen hospital, Raipur, showing treatment and incurred expenditure, in the considered opinion of this Court, appellants shall be entitled for Rs. 23,200/- towards medical expenses incurred by them for treatment of injured Ramu Prasad Gupta. Other marked documents placed on record are of July 2005 onwards. Claimants have not examined any medical expert to prove their claim as to whether injuries suffered in the year 2004 in any manner contributed in the death of Ramu Prasad Gupta on 24.07.2006 ie. after more than 2 years of accident. Document shows the treatment with regard to Neuro problem, hence, in the opinion of this Court, death of Ramu Prasad Gupta on 24.07.2006 cannot be co-related with the accidental injuries which he suffered on 24.04.2004. In absence of any proof of death of Ramu Prasad Gupta is result of complication of motor accidental injuries of the year 2004, appellants-claimants will not be entitled for amount of compensation towards death of Ramu Prasad Gupta but they will be entitled for amount of compensation towards medical expenses incurred on treatment of accidental injuries as appearing from Ext. A-30 which is cash memo of Agrasen Hospital, Raipur. It is ordered accordingly. Claimants will further be entitled for Rs. 10,000/- towards conveyance expenses as late Ramu Prasad Gupta after suffering accidental injuries had to travel from Bagicha to Raipur for his treatment; Rs. 8,000/- towards loss of income for a period of 2 months, Rs. 5,000/- towards attendant and special diet.

11. For the foregoing reasons, appeal is allowed in part. Now the

appellants-claimants shall be entitled for total sum of **Rs. 46,200/-** [Rs.23200+Rs.10000+Rs.8000+Rs.5000] instead of Rs. 25,000/- as awarded by learned Claims Tribunal. The said amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact. Impugned award is modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan