

NAFR

**HIGH COURT of CHHATTISGARH, BILASPUR****MAC No. 407 of 2015**

- Branch Manager Bajaj Allianz Insurance Company Limited, Plot No. 2/7 Second Floor New Gandhi Chowk, G.E. Road Akash Ganga Supela, Bhilai, District Durg Chhattisgarh

**-----Appellant/ Non-applicant 2****VERSUS**

1. Smt. Jyotsna Bai W/o Gyaneshwarmani Motaghare, aged 45 years.
2. Kamlesh Kumar S/o Gyaneshwarmani Motaghare, Minor through natural guardian Mother Jyotsna Bai

Respondent 1 and 2 are R/o in front of Mere Gaon High School, Ambagarh Chowki, District Rajnandgaon Chhattisgarh

3. Rajkumar Sahu S/o S.S. Sahu (Sadashiv), aged 52 years, R/o Nehru Nagar Quarter No. 91/1 Bhilai, District Durg Chhattisgarh

Presently R/o O/o Sub-Engineer Nagar Panchayat, Dongargaon, Tahsil, District and post Dongargaon, District Rajnandgaon, Chhattisgarh

**-----Driver****-----Respondents**


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|----------------------|-------------------------------------------------------------------------|
| For Appellant        | : Mr. Abhishek Sinha, Advocate with Mr. D.L. Dewangan, Advocate         |
| For Respondent 1 & 2 | : Mr. Shalvik Tiwari, Advocate on behalf of Mr. Parag Kotecha, Advocate |
| For Respondent 3     | : Mr. Resham Lal Jaiswal, Advocate                                      |

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**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice****Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****27/01/2021**

1. Appellant/ Non-applicant 2 /Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short " Act of 1988") challenging the impugned award dated 24.12.2014 passed by learned First Additional Motor Accident Claims Tribunal, Rajnandgaon, C.G. in claim case no. 19/2014, whereby learned Claims Tribunal allowed the application, filed under Section 166 of the Act of 1988, in part and awarded Rs. 11,23,000/- as total compensation.
2. Facts of the case in nutshell are that, on 07.12.2012, Gyaneshwarmani

was travelling on a motor cycle bearing registration no. CG08H2622 as pillion rider and going to Rajnandgaon from Ambagarh chowki. While so, when they reached near Singarpur square, one Indica car bearing registration no. CG07M5989 (henceforth "offending car"), coming from Rajnandgaon, driven by non-applicant 1 rashly and negligently, dashed the motor cycle and caused accident. In the said accident, Gyaneshwarmani suffered grievous injury over his left leg. Initially, he was taken to district hospital, from where he was referred to Appollo hospital, Nehru Nagar, Bhilai, where he took treatment for about 8 to 10 days. Thereafter, he took treatment at Suraaj Hospital for about 30 days. Accident was reported to concerned police station based on which, crime no. 287/12 was registered against non-applicant 1. Injured initially filed an application under Section 166 of the Act of 1988 on 28.10.2013, seeking compensation on account of motor accidental injuries suffered by him. During the pendency of claim application, injured died on 16.03.2014, thereafter, legal heirs of deceased Gyaneshwarmani were substituted and sought compensation of Rs. 40,00,000/- against the death of injured Gyaneshwarmani to be motor accidental death.

3. Non-applicant 1/ Respondent 3 submitted reply to claim application, while denying the pleadings made therein, further pleaded that there was no negligence on his part. Amount of compensation claimed is highly exaggerated. Offending vehicle was insured with non-applicant 2, as such, liability to pay the amount of compensation is upon non-applicant 2/ Insurance Company.
4. Non-applicant 2/ appellant/ Insurance Company submitted its reply, denying the facts pleaded in the claim application, it was further pleaded that accident was a result of negligence on the part of driver of motor cycle and in alternate, it was pleaded that there was contributory negligence on the part of driver of motor cycle as well. Non-applicant 1 was not

possessed with valid and effective driving licence. It was also pleaded that the claim application was filed for personal injuries and after death of claimant, during the pendency of claim application, cause of action for claiming compensation itself came to an end. It was also pleaded that the injured suffered simple injuries in the accident and the death of Gyaneshwarmani was after a long interval of time.

5. Upon appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal held that late Gyaneshwarmani died on 7.12.2012 on account of motor accidental injuries suffered by him due to rash and negligent driving of offending car by non-applicant 1. Breach of policy conditions was not found to be proved and awarded Rs. 11,23,000/- as total compensation.
6. Mr. Abhishek Sinha, learned counsel for appellant submits that learned Claims Tribunal erred in allowing the claim application treating it that deceased died on account of motor accidental injuries suffered by him, overlooking the entire material and documents available on record. He submits that in motor accident deceased suffered only fracture injury over his left leg, he did not suffer any injury on vital part of body. Accident took place on 07.12.2012 whereas Gyaneshwarmani died on 16.03.2014 ie. after more than one year from the date of accident. He pointed out that no document is placed on record with regard to his treatment at Appollo showing the dates of treatment to connect/ co-relate the death of late Gyaneshwarmani, arising out of motor accidental injuries suffered by him. He pointed out that the claimants have even not placed on record the post-mortem report to prove the fact that deceased died on account of complications arising out of the motor accidental injuries. He submits that the impugned award, in the facts and circumstances of the case, is liable to be set aside.

7. Per contra, Mr. Shalvik Tiwari, learned counsel for Respondents 1 and 2/ claimants submits that the Claims Tribunal upon appreciation of pleadings and evidence, oral and documentary, has rightly arrived at a finding that the deceased died on account of motor accidental injuries suffered by him and passed the impugned award. He submits that deceased was in continuous treatment since the date of accident. He was bedridden and died on account of complications from motor accidental injuries suffered by him. He further pointed out that the impugned award passed by Tribunal is just and proper in the facts and circumstances of the case which does not call for any interference.
8. Mr. Resham Lal Jaiswal, learned counsel for Respondent 3 would support the impugned award.
9. We have heard learned counsel for respective parties and also perused the record of claim case.
10. To appreciate the rival submissions made by learned counsel for appellant as well as Respondents 1 and 2, we have perused the record of claim case. Perusal of record would show that the claimants have filed copy of criminal case as Ext. P-1 to P-5, in which, Ext. P-4 and P-5 are the MLC reports available on record. In Ext. P-5, MLC report of deceased, major injury has been shown to be on his left leg, multiple abrasion on arm, lacerated wound on left knee joint. He was initially admitted to District Hospital, Rajnandgaon. Upon x-ray, initial Diagnosis was of fracture on left femur. Looking to the nature of injury, he was shifted to Appollo BSR, hospital at Bhilai, where it was diagnosed as *communited supracondylar, intercondylar, fracture with bone loss (compound grade); developed infection in wounds*. No other injuries except above have been mentioned in the Admission Form of deceased. He was discharged from Appollo hospital on 18.12.2012 after about 8 days of his admission. Some of the medical documents would show that the deceased took treatment for

some abdominal ailment and some ailment has been found in his kidney and Ranel function test was advised. Claimant in support of her case has examined herself as AW-1, affidavits under Order 18 Rule 4 CPC have been filed by her. In her evidence in chief, she has not stated as to what treatment was taken by deceased after discharge from hospital or the nature of infection and the condition of deceased. In cross-examination, she admitted that after discharge from the hospital, deceased was at home. She also admitted that after the death, body of deceased was not sent for post-mortem. She stated that deceased died after about one year and three months from the date of accident. No other witness was examined on behalf of claimants.

11. From the aforementioned facts and documents available on record, what cannot be lost sight of the fact that the deceased suffered fracture injury over his left femur bone. In the medical documents available on record, it is not mentioned that deceased suffered any head injury or chest injury. He died after about one year and three months from the date of accident. There is no post-mortem report or any other document to show/ co-relate death of injured to motor accidental injuries.

One another aspect of the case is that the deceased (then injured) himself filed claim application before the Claims Tribunal during his life time, after seven months from the date of accident. There is no post-mortem report available to know the cause of death, in fact, document available on record as Ext. P-71 dated 25.01.2014 would show that deceased suffered with some kidney ailment. Claims Tribunal has erroneously recorded a finding that from the evidence of claimant no. 1, it does not appear that injuries suffered by deceased on left leg have been cured after the accident, and he was living normally. Only on that basis, Tribunal held that deceased died on account of motor accidental injuries suffered by him during the course of his treatment. Tribunal has not

considered the entire medical prescription and documents available on record and has arrived at a wrong finding.

12. In absence of any documentary evidence available on record to connect the death of deceased with the motor accident, moreso when injury is on femur and he died after about one year and three months, we are of the view that claimants failed to prove that death of late Gyaneshwarmani was on account of motor accidental injuries suffered by him. The finding recorded by the Claims Tribunal with regard to issue no. 1 that the deceased died on account of motor accidental injuries suffered by him is not sustainable and it is hereby set aside. Claimants would be entitled for the amount, treating the claim case to be an injury claim and not as a death claim.
13. The exercise to assess the amount of compensation treating the claim to be injury claim is to be done at the end of Claims Tribunal after considering the evidence and material available on record or to be placed on record by the respective parties.
14. The case is **remitted back** to the concerned Claims Tribunal to decide the claim application treating it to be the injury claim after giving opportunity of hearing to all the parties concerned. It goes without saying that the parties will be at liberty to amend their pleadings, adduce additional evidence on record. Looking to the date of accident, Claims Tribunal is directed to decide the claim application within a period of 6 months from the date of receipt of copy of this order.
15. Records of the claim case be sent back to the concerned Claims Tribunal, forthwith.

Sd/-

**(P.R. Ramachandra Menon)**  
Chief Justice

Sd/-

**(Parth Prateem Sahu)**  
Judge