

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2349 OF 2011

New India Assurance Co. Ltd.	)	
Kirloskar Bldg., 8 th Floor, Cooperage, Mumbai	)	
Cover Note No. 124625	)	Petitioner
(Insurer of M/Ca No.MP-23-L-7436)	)	(Insurer No.1)

versus

1 Usha @ Vaishali Vijay Jadhav	)	
Aged 33 years, widow of the deceased	)	
2 Abhishek V. Jadhav	)	
Aged 14 years, son of deceased	)	
	)	
Minor through his mother and next friend,	)	
Usha @ Vaishali Vijay Jadhav,	)	
Both residing at Johny Castle Bldg.,	)	
Room No.15, Nathalal Parekh Marg, Colaba,	)	
Mumbai – 400 001	)	
3 Nisar Hussain Habib Bhayani	)	Respondents
Transport Nagar, Indore, M.P.	)	(Resp.No.1 & 2
	)	are orig.
AND	)	Applicant &
Royal Dry Fruit Range, Shop No.538,	)	Respdtd.No.3 is
First Lane, Mahatma Phule Marg,	)	Orig.Opp.No.1
Mumbai – 400001.	)	resply)

Ms. Poonam Miital, Advocate for the Appellant.

Mr. T. J. Mendon, Advocate for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is death of deceased was not due to accidental injuries.

2. It is contention of learned counsel for the appellant-Insurance Company that the accident occurred on 17th February 1997 and deceased died on 25th March 2003. There is a gap of six years between the date of accident and death of deceased but the Tribunal has considered that deceased died due to accidental injuries and awarded compensation, which is erroneous. Learned counsel further submitted that AW3 – Doctor Pravin Amin has stated that the cause of death of deceased was shown as natural death but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos.1 and 2/claimants that due to the accidental injuries, the spleen of the deceased was removed and he was admitted in the hospital several times for treatment of accidental injuries. he died while taking treatment. AW3-Doctor has stated about it. The Tribunal has considered all the aspects and, on that basis, judgment and order is passed, which is legal and valid.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

5. It is claimants’ case that on 17th February 1997 at about 1.20 hours, the deceased was travelling as a passenger in motor-taxi bearing No.MMT-4643, when he reached at Godrej Junction, Churchgate, the offending car bearing No.MP-23-I-7436 came in high speed, in rash and

negligent manner and gave dash to the car, in which, the deceased was travelling. Due to the said dash, deceased Vijay sustained injuries viz. 1) fracture of right clavicle, 2) fracture of right 3rd, 4th, 5th, 6th and 7th ribs, 3) fracture of left 9th and 10th ribs, 4) spleen tear, rupture of capsule resulting in hemoperitoneum. After the accident, he was admitted in Bombay Hospital from 17th February 1997 to 3rd March 1997, during this period, he was operated for splenectomy. Thereafter, the deceased was suffering from pains and was readmitted to Bombay Hospital from 12th March 1997 to 19th March 1997. Again, he was admitted in the hospital for treatment. Lastly, the deceased was admitted in Bombay Hospital on 23rd February 2003 for medical treatment, where he died on 25th March 2003.

6. It is contention of the learned counsel for the appellant that the death of the deceased occurred six years after the date of accident, so it cannot be considered as death was due to accidental injuries. While dealing with this issue, the Tribunal has observed that after scrutiny of evidence of Doctor-Pravin in the light of all medical papers placed on record, there is sufficient material indicating that there is nexus between the accidental injuries and death of deceased – Vijay. Hence, the Tribunal held that the deceased-Vijay died due to accidental injuries. I do not find infirmity in it.

In my view, it has come in the evidence of AW3- Dr.Pravin Amin that the deceased was admitted in their hospital in February 1997, he was injured in car accident and he was admitted in ICU. He had

blunt injury on abdomen, there were fractures at clavicle and 3 to 7,9 and 10 ribs. The patient had injury on spleen and there was bleeding, therefore, his spleen was removed. He was readmitted in their hospital in the month of March 1997 as fluid was collected in lung. The fluid was removed and he was discharged. He further stated that the patient was admitted for about 25 times between 17th February 1997 till 25th March 2023. The patient-Vijay expired in the hospital on 25th March 2023. The cause of death of the patient was Renal (kidney) failure due to amyloidosis. The cause of death certificate is at "Exhibit-55". In cross-examination, this witness has stated that deceased - Vijay was admitted in the hospital under his supervision. The post-mortem examination of the deceased was conducted. This witness admitted that in death certificate, the cause of death of deceased was shown as natural death. When Vijay was admitted in the hospital, he was not suffering from amyloidosis, however, it was developed subsequently. Amyloidosis was detected for the first time after eight months from his admission. When the spleen was removed, there was no abnormality in liver function. It is difficult to say the exact cause of amyloidosis. From the evidence of this witness, it appears that due to accidental injuries, the claimant was admitted in the hospital for 25 times and he was taking treatment for injuries sustained in the accident. Though in death certificate, the cause of death is shown as natural but it has come on record that the spleen of the deceased was removed, he was taking treatment and while taking treatment, he died.

7. Considering the above reasons, the appeal is devoid of merit and I pass following order:

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)