AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1079 of 2012

Smt. Shail, W/o. Late Rambharosi Shriwas, Aged About 43 Years, Aadarsh Nagar, Ward No.3, Kawardha, Police Station & Tahsil Kawardha, Distt. Kabirdham, Chhattisgarh

--- Appellant

Versus

1. Nasib Khan, S/o. Kamaluddin Musalman, Aged About 25 Years, Darripara, Ward No.19, Police Station & Tahsil Kawardha, Distt. Kabirdham, Chhattisgarh
2. Vinod Kumar Sahu, S/o. Rajkumar Sahu, Aged About 28 Years, Ramnagar, Ward No.1, Kawardha, Police Station & Tahsil Kabirdham, Distt. Kabirdham, Chhattisgarh
3. The Oriental Insurance Company Limited, Madina Manjil, Kachhari Chowk, Jail Road, Raipur, Distt. Raipur, Chhattisgarh

--- Respondents

For the Applicant : Mr. Malay Kumar Bhaduri, Advocate.

For the Respondent No.3 : Mr. H.S. Patel, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.04.2018

1. This appeal is against the order dated 11th October, 2012 passed by the learned Claims Tribunal, Kabirdham, Chattisgarh in Claim Case No.47/ 2011 whereby the claim petition filed by the claimant was dismissed.

2. The facts of the case are that the claim petition was preferred by Smt. Shail, wife of Rambharosi Shriwas that her son Raja @ Rajkumar who was 22 years used to earn Rs.4000/- per month and was unmarried. On 06.08.2009 the deceased Raja @Rajkumar along-with his friend had gone in Maruti Van C.G. 04 ZD 0568 to visit Banjari Mandir which was

driven by non-applicant No.1 Nasib Khan. While they were coming back, the vehicle has turned turtle whereby the persons who were traveling in the vehicle sustained injuries. The deceased had sustained injury on his leg and waist. He was initially taken to Bodla Government Hospital but since the nature of injury was grievous as such he was referred to Government Hospital, Kawardha and ultimately he was admitted in hospital of Suryakant Bharti at Kawardha. He was admitted in the Hospital from 06.08.2009 to 14.08.2009 and eventually on 14.08.2009 he succumbed to the injuries. The vehicle at the relevant time was driven by Nasib Khan, was owned by non-applicant No.1 and was insured with Oriental Insurance Company. Consequently, the amount of Rs.22,70,000/- was claimed.

3. In reply to the claim petition, the owner and driver admitted the accident and stated that because of the technical fault the accident happened whereby all the persons who were traveling in Maruti Van sustained injuries. It was further stated that the cause of death of Raja @ Rajkumar was not due to the injury sustained by him but he died for other reasons. It is further stated that no postmortem was carried and the death was suspicious as such, the liability cannot be fastened. Further, it was contended that since the vehicle was insured with non-applicant No.3, the Insurance Company, therefore, the Insurance Company would be liable to pay the compensation, if any.

4. The Insurance Company admitted the fact that the vehicle was insured with them but it is stated that the insurance was

for the private car liability policy. It is further stated that the driver of the vehicle was not having valid and effective driving licence therefore the insurer is not liable to pay the compensation. It is further stated that the liability to pay compensation was limited and the death of Raju was not because of any injury sustained on the head, therefore, it cannot be stated that because of the injury in the accident, the death took place.

5. Learned counsel for the appellant would submit that the learned Tribunal has completely failed to understand the spirit of the Motor Vehicles Act and failed to appreciate the evidence which is available on the record, which unmistakably points out that because of the accident, the death occurred and in claim cases strict provisions of the Evidence Act cannot be insisted upon. He further submits that by dismissal of the petition, the object benevolent act of the statute to grant compensation in accident cases has been defeated.

6. Per contra, learned counsel for the respondent insurance company supported the order of dismissal and would submit that the order of the Tribunal is well merited which do not call for any interference.

7. Perused the order as also the evidence in this case. The fact as would reveal that the deceased Raju @ Rajkumar was son of the applicant, aged about 22 years, suffered an accident on 06.08.2009 while he was traveling in the Maruti Van bearing No.C.G.04 ZD 0568 is not in dispute. The vehicle was being driven by Nashib Khan, the driver. The accident

occurred because the vehicle turned turtle and all the inmates of the vehicle sustained injuries. The deceased Raju also sustained injuries on his waist & leg and he was eventually taken to Bodla Government Hospital but since the injury was grievous, as such, he was referred to Government Hospital Kawardha. Thereafter, he was shifted to the Hospital of Dr. Suryakant Bharti, which is named as Fracture Hospital at Kawardha. The applicant Smt. Shail Shriwas, mother of the deceased, stated that her son was admitted to the Hospital from 06.08.2009 to 14.08.2009 and on 14.08.2009, he died in the Hospital itself. The document of the criminal case has been marked as Ex. A-1 to A-15. Ex.A-1 to A-15 shows that it is a document of the criminal case which arose out of the FIR No.142/2009 for the accident occurred on 06.08.2009 of the offending vehicle. The FIR purports that the deceased Raju sustained severe injury on his waist & legs. Ex.A-3 is the death certificate from Nagar Palika Parishad Kawardha. The medical report shows the fracture of femur & tibia and lacerated wounds are present over the leg. The merg intimation is also filed which records that after the accident, the deceased was admitted to the Hospital and he was under treatment wherein during the treatment he died on 14.08.2009 and was cremated on 15.08.2009. The merg intimation also record that the death of Raju was not intimated by the Doctor to the Police.

8. In the criminal case record, the Nakshapanchayatnama also record the same facts and records that after the accident on 06.08.2009, the deceased was being treated in the Hospital and he died on 14.08.2009. The document of treatment was

seized alongwith the death certificate. The statement of Doctor Suryakant Bharti is also on record in criminal case which is marked as Ex.A-15. Reading of the statement of Doctor would show that the deceased was admitted for the injury on his leg & waist and sustained fracture. Importantly it also records the fact that he was treated for the reason that he had injury on his head and was advised for C.T. Scan. The statement of Doctor further states deceased was referred for C.T. Scan and after C.T.Scan he was advised for higher medical center. Therefore, the statement of the Doctor would show that after the accident, deceased was admitted to the Hospital and was also advised for better treatment to the higher center eventually he succumbed to the injuries.

9. The learned Tribunal has dismissed the petition on the ground that the deceased was not subjected to post mortem and the injuries were on leg & waist, therefore, it was held that death was not proved for the reason of accident. It appears that the learned Tribunal failed to appreciate the fact that after the accident on 06.08.2009, Raju died on 14.08.2009 and during such period, he was continuously treated by the Doctors and was admitted to the Hospital and not discharged. The evidence is also on record that injury was also on head for which C.T.San was advised. The injury on the head is also corroborated by the witness Sanjay AW-2. They have stated that the deceased had also sustained injuries on his head. The Tribunal went for dismissal of claim by picking up the statement of the mother of the deceased, the applicant, wherein she deposed that the deceased died

due to negligence of the Doctor. This fact cannot be ignored that the claimant, mother of the deceased, was not a medical expert but fact which emerges out from the evidence that after the accident, the deceased was continuously admitted in the Hospital and for the head injury, he was referred for the C.T. Scan too.

10. The inference can be drawn that if the accident would not have happened, there was no reason for the deceased to be admitted in the Hospital but because of the accident, he was admitted to the Hospital and eventually died after few days during his treatment. Therefore, naturally inference has to be drawn from the facts of this case that after the accident the deceased succumbed to the injuries sustained in accident and died at Hospital within 8 days.

11. The document of criminal case of vehicle are enclosed and marked as exhibits in evidence. Learned Claims Tribunal failed to appreciate the fact that according to Section 74 of the Evidence Act, the documents forming acts on records of the acts of public officers are public documents. Section 77 of the Evidence Act provides that the contents of public documents may be proved by producing their certified copies. The Supreme Court in case of ***Madamanchi Ramappa v. Muthaluru Bojjappa***[1] observed that if a document is certified copy of public document, it need not be proved by calling the witness. In the instant case, the criminal records of the Court undisputedly points out the fact that after the accident on 06.08.2009 the deceased when was admitted in the Hospital, he died on 14.08.2009. The

1 AIR 1963 SC 1633

statement of the Doctor also corroborated the fact that the deceased also sustained head injury for which he was referred to C.T.Scan and thereafter was advised for higher medical center. The Tribunal has failed to appreciate the benevolent object of the Motor Vehicle Act and failed to appreciate that the strict provisions of the Evidence Act are not insisted by the Tribunal on limited jurisdiction. The Tribunal while dealing the cases for compensation arising out of the motor vehicle accident are required to follow such summary procedure as it thought fit and the certified copy of FIR, inspection, maps, panchnama, injury report etc. as the case may be and other relevant documents including the statement and the document prepared by the police while discharging the official duties would be admissible in evidence without their being a formal proof. No objection was raised at the time of marking the exhibits of those documents by the respondent as such the reliance can be safely placed on the document of the criminal record which was produced before the Court.

12. The maxim *res ipsa loquitur* would lead to substantiate that because of the accident and the injury sustained, the deceased Raju, son of the applicant, died. The Supreme Court in case of ***Bimla Devi & Ors. v. Himachal Road Transport Corpn & Ors***.[2], has laid down that the Tribunal has to take a holistic view of the matter. It has been held that the Tribunal must borne in mind that strict proof of an accident caused in a particular manner may not be possible to be done by the claimants. The claimants were merely to

2 AIR 2009 SC 2819

establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

13. Therefore, applying the aforesaid principles, reading the statement of the claimant namely Smt. Shail, the witness Sanjay and the document of the criminal case which includes the statement of Dr. Suryakant Bharti, the conclusion can be safely drawn that because of the accident on 06.08.2009, during the treatment of Raju who sustained injury died and accident by the offending vehicle was the only cause. The drawing an inference in facts of the case that due to accident the deceased died would be more of recognition of inevitable reality of chain of events.

14. The Tribunal has further held that as per the evidence of non-applicant No.1, the driver, though the mechanical failure was pleaded but it has not been proved and hence it was held that because of the rash and negligent driving of the non-applicant No.1, the driver of the offending vehicle bearing No.C.G.04 ZD 0568 the accident occurred and with the entire reading of the evidence, the claimant was able to prove the fact that because of the accident the death eventually occurred.

15. Now coming to the quantum of compensation, the claimant mother has stated that deceased was getting a salary of Rs.4000/- being the driver. Admittedly, in this case, no documents was placed on record in support of the income. In order to arrive at notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of

the Motor Vehicles Act are looked into, it has fixed the notional income to the extent of Rs.15,000/- in the year 1994. As the Central Government has failed to amend the second schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the second schedule in the year 1994 and the date of accident in the given case.

16. Therefore, the income of the deceased at Rs.4000/- per month appears to be reasonable and cannot be said to be exorbitant taking into the price index which was prevailing in the society at the relevant time of accident.

17. It has been stated that the deceased was self-employed and was below 40 years, therefore, applying the principles laid down in case of ***National Insurance Company Limited v. Pranay Sethi & Ors.***[3] 40% has to be added as future prospects which comes to Rs. 19,200/- and total income after adding future prospect comes to Rs.67,200/-.

18. According to the statement of the mother, the deceased was unmarried, therefore, as per the law laid down in case of ***Sarla Verma v. Delhi Transport Corporation***[4] there will be deduction of 50% towards personal and living expenses of the deceased, which comes to Rs.33,600/-. The deceased was aged about 22 years as would be evident from the MLC Ex.A-4, therefore, the multiplier of 18 would be applicable, which comes to Rs. 6,04,800/-. Further for the loss of estate

3 AIR 2017 SC 5157
4 (2009) 6 SCC 121

an amount of Rs.15,000/-, for love & affection Rs.25,000/- and for funeral expenses an amount of Rs.15,000/- is awarded. Thus, the total compensation works out as under : -

S.No	Heads	Calculation
(i)	Income of the deceased @ Rs.4000/- per month.	(Rs.4,000 x 12) Rs.48,000/- per annum
(ii)	40% of (i) above to be added as future prospects	(48,000 + 19,200) Rs.67,200/-
(iii)	50% of (ii) deducted as personal expenses of the deceased.	(67,200 – 33600) Rs.33,600/-
(iv)	Compensation after multiplier of 18 is applied.	(Rs.33,600 x 18) Rs.6,04,800/-
(v)	Loss of love & affection.	Rs. 25,000/-
(vi)	Loss of estate	Rs. 15,000/-
(vii)	Funeral expenses	Rs. 15,000/-
	Total compensation	**Rs. 6,59,800/-**

19. The claimant is entitled to receive an award of Rs.6,59,800/-. The amount of award will carry interest @ 9% per annum till its realization.

20. The Registry is further directed to communicate the claimant in writing “the amount of award” in this appeal as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language and the help of paralegal workers may be availed with a co-ordination of Secretary, Legal Aid of the concerned area wherein the claimant resides.

21. Further now referring to the evidence adduced by the insurance company, the insurance company has examined one witness Vijay Kumar and the insurance papers have been proved and exhibited as NAC3. It is not in dispute that

at the relevant time the vehicle was insured and it has been stated to be 'liability only policy' wherein the liability of the insurance company has been shown to be limited to Rs.1 Lakh as only premium of Rs.50/- was obtained for liability only policy. Thereby, the insurance company has stated that their liability was limited to the extent of Rs.1 Lakh for an accident.

22. In the instant case, the accident was of 2009 and till date no amount of compensation has been paid to claimant. Even after 9 years, no compensation has been received therefore following the benevolent provisions and the principles as has been laid down by their lordship in case of ***Manager, National Insurance Co. Ltd. v. Saju P. Paul & Anr.***[5] and recently in case of ***Manuara Khatun & Ors. v. Rajesh Kumar Singh & Ors.***[6], it is directed that the insurance company shall satisfy the entire claim of compensation and thereafter the insurance company shall be entitled to recover the amount over and above of Rs.1 Lakh from the owner & driver of the offending vehicle i.e. Nashib Khan & Vinod Kumar Sahu.

23. With such observation, the appeal stands allowed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok

5 AIR 2013 SC 1064
6 (2017) 4 SCC 796