

Manoj Kumar and anr. Vs. Manish Kumar Rajput and ors.

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Court : Chhattisgarh

Decided On : Aug-16-2005

Reported in : 2006ACJ568

Judge : A.K. Patnaik, C.J. and Dhirendra Mishra, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166 and 173

Appeal No. : M.A. No. 607 of 2004

Appellant : Manoj Kumar and anr.

Respondent : Manish Kumar Rajput and ors.

Advocate for Def. : Avinash Mishra, Adv.

Advocate for Pet/Ap. : Yashwant Tiwari, Adv.

Judgement :

A.K. Patnaik, C.J.

1. This is an appeal against the order dated 18.3.2004 passed by the Motor Accidents Claims Tribunal, Rajnandgaon in Claim Case No. 32 of 2000, filed under Section 173 of the [Motor Vehicles Act, 1988](#).

2. Relevant facts in brief are that on 28.11.1997 at about 9 p.m. Mangilal was travelling in a jeep bearing registration No. CG 24-174 which was being driven by

respondent No. 1. Respondent No. 2 is the owner of the jeep and respondent No. 3 is the insurer. The said jeep dashed against a standing truck and as a result of the accident Mangilal suffered some injuries. After treatment in the District Hospital, Rajnandgaon, for two days and thereafter in Soubhaghya Hospital, Durg for about a month, he returned home and died on 11.2.1998. Appellants, the two major sons of deceased Mangilal, filed the aforesaid claim case before the Tribunal, but the Tribunal held in the impugned award that the appellants have not been able to establish a nexus between the injuries suffered by the deceased in the said accident and his death and accordingly dismissed the claim case filed by the appellants.

3. Mr. Yashwant Tiwari, learned counsel for appellants submits that it will be clear from the evidence of Ayurvedic doctor, Dr. P.S. Bhaghel, who was examined as AW 1, that deceased after return from Soubhaghya Hospital at Durg was placed under his treatment at home. He submits that from the evidence of AW 1 it is clear that the deceased was complaining of pain in his chest and stomach and ultimately died due to failure of his kidney and liver. He further submits that it is also evident from the evidence of AW 1 that the internal organs of the deceased, namely, liver and kidney were damaged on account of the said accident. He further argued that on account of overdoses of medicines taken by the deceased while he was under treatment at Soubhaghya Hospital, Durg, his kidney was damaged and he died. He cited the decision of Gujarat High Court in *Shantaben Ambalal Sutaria v. Valjibhai Harjibhai Patel* : (1991)1GLR597 , in which the Tribunal had rejected the claim application on the ground that there was no nexus between the injuries suffered by the deceased in the accident and death of the deceased but the High Court set aside the order of the Claims Tribunal and held that deceased died on account of the development of fat embolism due to the fracture injuries suffered by him in the accident. He also relied on the decision of Gujarat High Court in *Gujarat State Road Trans. Corporation. v. Mariambai A. Adamji* : (2003)1GLR574 .

4. Mr. Avinash Mishra, learned counsel appearing for the insurance company, respondent No. 3, on the other hand submits that the Tribunal was right in coming to the conclusion that the appellants have not been able to establish the linkage

between the injuries suffered in the accident and the death of the deceased and, therefore, it is not a fit case in which the High Court should interfere with the impugned award of Tribunal rejecting the claims of appellants. He further submits that in any case the appellants who were major sons of the deceased, were not dependent on him and as such they are not entitled for any compensation. He cited the decision of M.P. High Court in *Champabai v. Bajpai Road Lines* , in support of his contention that major sons are not entitled to any compensation.

5. We have perused the aforesaid decision of the M.P. High Court in *Champabai v. Bajpai Road Lines*, and we find that in the said case, Tribunal had awarded compensation of Rs. 70,000 to the widow of the deceased and found that the other claimants who were major sons of the deceased were not dependent upon him and, therefore, were not entitled to receive any compensation. The widow as well as the major sons preferred an appeal for enhancement of compensation before the High Court and the High Court enhanced the compensation to Rs. 2,20,000 in favour of the widow. In the aforesaid decision, the High Court has not recorded a finding as to whether major sons would not be entitled to compensation in the absence of the widow of the deceased. Under section 166 of [Motor Vehicles Act, 1988](#) a legal representative can file an application for compensation and hence an application for compensation would be maintainable at the instance of major sons of the deceased who has died in a motor accident. As to what would be the amount of compensation payable to the major sons who were not dependent on the deceased, however, would be a matter for determination by the Tribunal on the facts and circumstances of each case.

6. Coming to the contention of Mr. Y. Tiwari, learned counsel for the appellants that AW 1, the Ayurvedic doctor, who had treated the deceased at the residence of the deceased, in his evidence has proved the linkage between the injuries caused in the accident and the death, we find on reading of evidence of AW 1 that the deceased had ultimately died on account of failure of his kidney and liver and the liver and the kidney of the deceased may or may not have been affected by the injuries in the said accident. It appears from the evidence that the deceased soon after the said accident was admitted in the District Hospital, Rajnandgaon and thereafter was admitted a Soubhaghya Hospital, Durg where he underwent

treatment for about a month. The doctors of the District Hospital, Rajnandgaon and Soubhaghya Hospital, Durg are material witnesses who could have deposed before the Tribunal about the kind of injuries the deceased suffered and as to whether on account of said injuries, the liver and kidney of the deceased could in any way be affected. Doctor of the District Hospital at Rajnandgaon and Soubhaghya Hospital at Durg could also throw some light on the nature of the treatment that was given to the deceased including the medicines that were administered to him and could also show as to whether the overdoses of the medicines given to the deceased, if any, could affect his liver and kidney. But unfortunately, the doctors of neither District Hospital, Rajnandgaon nor of Soubhaghya Hospital, Durg have been examined in this case. In the two cases cited by Mr. Tiwari, learned counsel for the appellants, the High Court after going through the evidence of the doctors who were examined at length came to the conclusion that there was some nexus between the injuries suffered in the accident and the death of the deceased but in the present case, we find no material to arrive at such a finding.

7. For the aforesaid reasons, we set aside the impugned award of the Tribunal and remand the matter to the Tribunal for giving an opportunity to the appellants to examine the doctors and adduce other evidence to establish that there was in fact a linkage between the injuries suffered in the accident by the deceased and his death. The Tribunal will do well to complete the inquiry and make a fresh award within six months from the date of receipt of the records from this court. The appellants and the respondents will appear before the Tribunal on 9.9.2005 when the Tribunal will either take up the hearing of the case on that date or fix some other date as per his convenience.