

(2016) 03 GUJ CK 0037
In the Gujarat High Court
Case No : First Appeal No. 4593 of 2006

National Insurance Co. Ltd

APPELLANT

Vs

Goswami Lilaben Dashrathbhai

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2016) AAC 2046

Hon'ble Judges : Mr. R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr. Dakshesh Mehta, Advocate, for the Appellants No. 1; Mr. J.M Barot, Advocate, for the Defendants No. 1 and 5; Rule Served, for the Defendants No. 1 and 7

Final Decision : Dismissed

Judgement

Mr. R.P. Dholaria, J. (Oral)—This is an appeal by the appellant insurance company against the judgment and award rendered by the learned Motor Accident Claims Tribunal (Auxiliary), Presiding Officer, 6th Fast Track Court at Mehsana (?the Tribunal? for short) dated 29.04.2006 in MACP No.1087 of 1994, wherein the learned Tribunal has awarded compensation of Rs. 1,89,000/- with interest at the rate of 9% per annum.

2. The brief facts of the case are that on the date of alleged incident, i.e. on 09.08.1994 at about 11.00 a.m., deceased Dashrathbharti Laxmanbharthi Goswami was travelling in auto rickshaw bearing registration No. GJ2U2169 towards Lodra. The opponent No.1 driver was driving the said auto rickshaw in rash and negligent manner and when this rickshaw reached near Lodra High School, it turned turtle. Due to said incident, the deceased sustained injuries on his head and on his right knee and due to such head injury he was having headache. Therefore, he was admitted in the hospital and he died on 11.02.1996 on account of such accidental injuries. Hence, the present claimant has filed the aforesaid claim petition, wherein, the learned Tribunal has been pleased to pass

the impugned order. Hence, the present appeal.

3. Heard learned Counsel Shri Dakshesh Mehta for the appellant insurance company and learned Advocate Shri J.M. Barot for the Respondents.

4. This Court has perused the material on record as well as the impugned judgment and award passed by the learned Tribunal.

5. Learned Advocate Shri Dakshesh Mehta for the Insurance company has submitted that the learned Tribunal has failed to appreciate that the deceased died due to accidental injuries and the claimants have failed to establish nexus between the accidental injuries and the death of injured Dashrathbharthi Laxmanbharthi Goswami. He has further submitted that the learned Tribunal has therefore erred in awarding the amount of compensation as if the deceased died due to accidental injuries and he has prayed to allow the present appeal. He has further submitted that even though, the FIR came to be lodged by the injured Dashrathbharthi Laxmanbharthi Goswami he has described the accidental injuries over his hand and leg but he has not mentioned any injury over his head. He has further submitted that no subsequent medical evidence are produced on record that the injuries has been sustained on his head and due to which over prolonged period of 2 years, he succumbed to the injuries. He has therefore, submitted that this finding of the learned Tribunal suffers from infirmity and is not in accordance with law. He has further submitted that the claimants have failed to bring out nexus between the accidental injuries and death caused to injured Dashrathbharthi Laxmanbharthi Goswami.

6. Per contra, learned Advocate Shri J.M. Barot for the respondents original claimants has supported the judgment and award passed by the learned Tribunal and submitted that the learned Tribunal has considered the evidence on record in detail and thereafter, it has recorded the reasons and has rightly established nexus between the accidental injuries and death of the claimant, which calls for no interference at the hands of this Court.

7. In view of the aforesaid factual position, this Court is only called upon to examine as to whether there is any nexus between the accidental injuries and death of the claimant Dashrathbharthi Laxmanbharthi Goswami or as to whether he died due to accidental injuries or died naturally.

8. In order to appreciate the contentions raised by the learned Advocate for the insurance Company, this Court has gone through the reasons recorded by the learned Tribunal in the impugned judgment and award as well as the documentary evidence adduced by the claimants in the nature of medical certificates, FIR, panchnama of the scene of offence etc. From the perusal of FIR, it appears that nothing has been mentioned even though the claimant has lodged the FIR after about 7 days. Though he failed to narrate that he had sustained injury on his head in the FIR, as the FIR was lodged by the claimant to describe as to how the incident took place, wherein he was not suppose to narrate what and where he has sustained injuries due to such accident. Therefore, as the

claimant failed to narrate what injury had he sustained, cannot be considered to be a fatal omission on the part of the claimant.

9. So far as the accidental injuries sustained by the claimant soon after the accident, he was immediately taken to Dr. Nirav Shah, Orthopedic Surgeon and he was examined by him on the date of accident i.e. 09.08.1994, whereupon his examination, the doctor has found that there were head injuries as well due to which he was unconscious and he has also narrated other injuries sustained due to such accident. He has also sustained fracture over his finger and he was discharged from the hospital from the following day. Thereafter, the certificate is issued which is produced at Exh.37. He had also taken treatment from Dr. Bashir Ahmadi, Dr. Jatin Parikh, Dr. Ranjit Acharya, Dr. Dhiren Vyas and he had also undergone CT scan, wherein the CT scan report at Exh.38 came to be issued on 24.01.1996 clearly mentioned the finding that ill defined, hypodense lesion is seen in right frontal region. The same finding is also revealed from the report of Dr. Ahmadi as well as he was also taken to Magnetic Resonance Imaging Centre, Gujarat Cancer & Research Institute, wherein also clear and categorical finding recorded by Dr. Gaurang Shah as the findings are that :

"Impression:

The above described findings are suggestive of acute hemorrhagic disseminated encephalomyelitis."

Dr. Ranjit Acharya has also issued certificate at 23.01.1996 indicating that hypodense lesion is seen in right frontal region. Ultimately, Dr. Dhiren Vyas has issued certificate indicating that Mr. Dashrathbharti died on 11.02.1996 due to encephalomyelitis.

10. In view of the aforesaid consistent medical findings and on the date of accident also orthopedic surgeon Dr. Nirav Vyas has also recorded that due to head injury he became unconscious and thereafter all subsequent and successive treatments also indicate that he sustained injury over his frontal region on head due to which he died. All the medical certificates as well as certificate issued by MRT centre are indicative of the fact that due to aforesaid injury over the head, he succumbed to the injuries.

11. Arguments advanced by the learned Advocate for the Insurance Company that even though he sustained head injury on 09.08.1994, all the medical certificates are of January February, 1996 and therefore also, this Court may consider that there is no nexus between the death and accidental injuries sustained by the claimant, such contention cannot be accepted for the simple reason that on the very day the head injury was found to be there and because of that injury the claimant become unconscious. It is evident that the very part was mentioned by the orthopedic surgeon and various other parts on which the claimant sustained injuries. Further, all the medical certificates issued by the different doctors are corroborative to each other and indicative that the injured had died due to head injury. I am of the opinion that therefore the arguments

advanced by the learned Advocate for the insurance company cannot be accepted and the claimants have successfully established that the death of deceased Dashrathbharthi was due to accidental injury.

12. For the reasons recorded above, the appeal devoid of any merits and deserves dismissal and accordingly stands dismissed. The impugned judgment and award of the Tribunal dated 29.04.2006 is hereby confirmed. No order as to costs. R&P be sent back to the concerned Tribunal, forthwith.