

(2020) 02 GAU CK 0014

In the Gauhati High Court

Case No : Motor Accident Appeal No. 272 Of 2016

Oriental Insurance Company Ltd

APPELLANT

Vs

Oriental Insurance Company Ltd

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2020) 02 GAU CK 0014

Hon'ble Judges : S. Hukato Swu, J

Bench : Single Bench

Advocate : C Mozumdar, B Chakravartyr

Final Decision : Allowed

Judgement

,

1. Heard Ms. R.D. Mozumdar, learned counsel for the appellant and Mr. B. Chakravarty, learned counsel for the respondent Nos. 1 to 3.",

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (M.V. Act) challenging the award passed by the learned Motor Accident",

Claims Tribunal, Cachar, Silchar, Assam dated 18.05.2016. The facts stated in brief is that on 17.01.2007, deceased Saukat Ali Barbhuiya, 45 years",

old transport driver of Assam State Electricity Board (ASEB), while returning from Chaurangi Bazar, at Katogorah met with an accident on National",

Highway-44, JB road. When he reached Katirail Garage, all of a sudden Maxi-Cab which was going from Chaurangi Bazar hit the back side of the",

victim. As a result, the victim sustained multiple injuries in the head, chest and other parts of the body. After alarming the people nearby, the injured",

was shifted to Kalain CHC wherefrom he was referred to SMCH, Silchar. However, he was again shifted to Advance Neuro Science Hospital,",

Kahilipara road, Guwahati for clotting of blood inside the head and for undergoing further treatment. Thereafter, he was referred to B. Borooah",

Cancer Institute/Silchar Medical College & Hospital for course of radiotherapy. Thereon, he was shifted to SMCH and Cachar Cancer Hospital and",

Research Centre, Silchar for undergoing treatment. The treatment continued, however, he died on 23.08.2007. Under the above facts, the dependents",

of the claimant filed the claim petition against opposite party Nos. 1 to 3. During the trial, the offending vehicle, Tata Sumo, bearing Registration No.",

AS-11-B-2466 was found to be responsible for the cause of the accident wherein, the deceased Saukat Ali Barbhuiya was grievously injured. The",

learned Tribunal, on appreciating the evidences came to the conclusion that the deceased should be compensated because there was a casual",

connection even though not immediate between the accident and the eventual death of the deceased. The victim died after lapse of about 7 (seven),

months of the occurrence of the accident. Relying on the judgment passed by our own High Court, the learned Tribunal cited the case of Union of",

India & Another vs. Bholi Rai, reported in 2012 (3) TAC 546 (Gau) has come to the conclusion that the instant case being similarly situated, the",

victims cannot be denied of the compensation. He, further ruled that in the case of Bholi Rai (supra), the victim after 3 (three) years of the occurrence",

of the accident which happened on 17.11.1998 and ultimately died in the year, 2001. In the Death Certificate, the cause of death was shown as",

â??Diabetic CRF with Peripheral failureâ?. But the High Court held that once the claimant/respondent is able to create a high degree of probability,

on the basis of battery of witnesses that after the deceased met with the accident, he was under prolonged medical treatment and had never resumed",

duty due to his inability to produce Medical Certificate, the onus of proving that he died due to the combined effect of the injuries sustained by him in",

the said vehicular accident and his uncontrolled blood sugar, shifts to the appellant. Further, reliance was placed in the case of Bimla Vevi vs.",

Himachal Road Transport Corporation, reported in 2009 ACJ 1725 and Shivaji Dayanu Patil vs. Vatschala Uttam More, reported in 1991 ACJ 777,"

wherein it was held by the Apex Court that the claim petition under Section 166 of the M.V. Act was merely to establish the case on the stand of,

preponderance of probability because the standard of proof beyond all reasonable doubt cannot be applied. With the above decision to support the,

claim of the appellant, the learned Tribunal computed a compensation of Rs. 21,23,444/- to be paid to the claimants by the respondents, i.e. Oriental",

Insurance Company Ltd., who insured the Policy No. 2007/647 in favour of the offending vehicle. Aggrieved by the decision of the learned Tribunal,"

the appeal petition is before this Court for disposal.,

3. The appeal petition is mainly focused on the medical evidences to ascertain whether the deceased/claimant died due to the injuries sustained in the,

accident in question. It is necessary to examine the medical evidence that was laid before the Tribunal for answering this issue. Medical evidence that,

was placed before the Tribunal are as follows:-,

â??13. In support of medical treatment and death of the deceased the claimant side examined 3 (three) medical officers. Let me peruse and,

reproduce evidence of all the medical officers below. PW4 Dr. Pinakpani Dhar, Assistant Professor of Department of Surgery, Silchar",

Medical College & Hospital (SMCH) deposed in support of medical records as below:-,

â??I received summon from the Tribunal. I have come to depose in this case before this court. On 18-01-2007 I was working as Registrar of,

Surgery, SMCH. Saukat Ali sustained injury on 17-01-2007. Saukat Ali attended Surgery OPD, SMCH on 18-01-2007 vide Hospital No.",

361879 with alleged history of RTA. The patient was conscious and oriented and found the following injuries:-,

1. Tenderness over left side of posterior chest wall,
2. Abrasion over left buttock measuring 5 x 3 cm,
3. Lacerated injury over the left parietal region measuring 4 x 2 x 1 cm,

X-Ray Skull reveals linear fracture left parietal bone.,

Injury No. 1,2 and 3 are caused by blunt weapon and fresh. Injury No. 1 and 2 are simple in nature. Injury No. 3 is grievous nature. Ext-6",

is the Injury report issued by me and Ext-6(1) is my signature. Ext-6 was prepared on the basis of medical record (OPD of SMCH). Ext-9 is,

the treatment slip of Saukat Ali. The patient attended SOPD on 01-02-2007. Ext-28 (proved in original) is the said OPD card and Ext-28(1),

is signature of Dr. A. Paul. I know his signature from official correspondence. Neurological infrastructure such as CT Scan and MRI are,

available in SMCH. We did not refer the patient to other higher hospital for better management. I have no comment whether in view of Ext-,

10 the doctor rightly referred the patient to Advance Neuro Science Hospital. Ext-19 is the discharge certificate of SMCH. In the diagnosis,

it is mentioned anaplastia astrocytoma?/ Choroid Plexuxca (?). The Injury mentioned in Ext-28 has no relation with the injury mentioned in,

this Ext-19. In Ext-19 it is mentioned that the said patient was advised to attend radiotherapy department. I do not agree that cancer is,

resultant effect of injury sustained by the patient.â??,

14. During cross-examination by the OP Insurance Company he replied as below:-,

â??Ext-18 is the OPD Card showing that a patient by the name of Saukat Ali, son of Late Mokaddas Ali attended out patient department of",

SMCH for alleged history of RTA at Katigorh on 17-01-2007. I was not attending doctor on that day and the said patient was diagnosed as,

sustained multiple injury but particular injury is not mentioned in the OPD card. I have brought the OPD card which was asked to bring.,

On the face of the OPD card my signature is not available. I did not have occasion to treat the patient. On the rear side of Ext-28 the,

patient was asked to continue the said treatment on 01-02-2007. I have no knowledge about the treatment and or any development in the,

case.â??,

15. PW5, Dr. Gopal Dutta of Cachar Cancer Hospital deposed as below:-",

â??I have been authorized by the authority of Cachar Cancer Hospital to depose before the court. Accordingly I have appeared with,

Registration Card. Other documents as mentioned in the summon are not traced out from the hospital record. It is mentioned in the,

registration card that the patient MD. Saukat Ali Barbhuiya, c/o Late Makaddas Ali, Mohanpur Part-II, Katrail, aged about 45 was an",

outdoor patient for treatment by radiation only. Patient was diagnosed by Advance Neuro Science Hospital by CT and MRI and there is no,

record for second visit. So treatment was incomplete. Ext29 is the said Registration Card (proved in original). The patient was registered as,

a patient of Cachar Cancer Hospital as outdoor patient on 06-03-2007. Thereafter on 24-05-2007 he also palliative and patient received,

supportive treatment on 08-03-2007. The treatment of radiation was done for brain tumour. The patient received 25 traction of radiation up, to 30-04-2007. The supported treatment is also written. As per advice of Ext18 and Ext19 doctor of Cancer Hospital done. A document has, been shown to me vide Ext18. On reading I found that the patient is admitted into Neuroscience hospital on 24-02-2007 with history of, trauma by RTA. Ext23, Ext24 are issued by Cachar Cancer Hospital. Ext25 (33), (37) to (60) are the cash memo issued by Cachar Cancer", Hospital.,

To Court: Due to vehicular accident if a person sustained injury in scalp the said injury can not turn into Brain Tumour. Cancer can not be, the resultant effect of any injury.â??,

16. PW6, Dr. Manzurul Haque, Medical & Health Officer (M&HO) of Katigorh PC deposed as below:-",

â??On receiving summon I have appeared today to depose in this case. Ext-10 is the summon. Ext-10 was issued by me wherein Ext-10(1) is,

my signature. In Ext-10 name of the patient Saukat Ali Barbhuiya is mentioned. The patient appeared in my chamber with complaint of,

headache (head injury) due to RTA on 17-01-2007. I could not detect injury on clinical examination. On suspicion that he had neurological,

problems, I referred him to Advance Neuro Science Hospital, Guwahati on request. Otherwise, I could refer him to Medicine Department of",

SMCH. I know that the patient went to Advance Neuro Science Hospital because after treatment at Advance Neuro Science Hospital he,

revisited me. In Ext-6 (Injury report) it is mentioned that the patient sustained injury on left parietal region and it was grievous in nature. In,

Ext-8 it is mentioned that there was possibility of analplastic astrocytoma/ Choroids plexus carcinoma. External injury was detected on left,

side of the parietal region but analplastic astrocutoma/Choroids plexus carcinoma was suspected on right side. It is a fact that if an injury,

is caused on left side of parietal region it may affect right side also. Annexue-2 is issued by me and Annexure-2(1) is my signature. The,

patient expired on 23-08-2007 at home at about 3:30 AM. I declared him dead. It is mentioned in the Cause of Death Certificate that the,

patient died due to brain tumour and fatal injury resulted from RTA. Annexure-2

is a Xerox copy. The death certificate vide Ext-7 is issued, by me wherein Ext-7(1) is my signature. As per my opinion haematoma may turn into cancer or carcinoma but I am not Oncologist. As, General Physician I have opined. The original of Annexure-2 is marked as Ext-31 (proved in original) and Ext-31(1) is my signature. Ext-32, is the relevant page from the death register (2007-2014) (extract copy and proved in original). Ext-32(1) is the endorsement of the deceased, under Serial No.38.,

17. During cross-examination by learned counsel of the Insurance Company the medical officer replied as below:-,

â??I have not submitted any document to show that I treated the patient. I have not referred the case to referral board but I voluntarily,

referred him to ANS Hospital not of referral board. I did not advise him to undergo X-ray examination. I examined him externally and could,

opine that he needs special treatment at Neurosurgery but on what basis it is not written in my prescription whereby I referred him to ANS,

Hospital. I have not gone through the contents of Ext-14 (Late the MO voluntarily replied that he had gone through the contents). I do not,

know what treatment was given at SMCH. I did not have any knowledge about the treatment at Cachar Cancer Hospital. I do not know on,

what basis I have stated that if a patient sustains injury on head the effect will be on opposite side. I can not say what treatment papers and,

it is not mentioned in the Cause of Death Certificate. The patient was referred from ANS Hospital for radiotherapy to SMCH and Cachar,

Cancer Hospital. The deceased died at his own residence at night and on being informed I went to his house at about 3 AM. Cause of Death,

certificate was issued by me on 28-08-2007. I have not mentioned the description of fatal injury in the cause of death certificate. It was,

issued without help of post mortem examination. At present I could not recollect which document I consulted to opine that the deceased died,

due to brain tumour and fatal injury. I can not say specifically what document I consulted to form the opinion that death was resultant,

affect of fatal injury and brain tumour. It is not a fact that I ignored the report of ANS Hospital. I do not avail non practice allowance so I,

can practice outside the hospital. It is not a fact that as I was private doctor of

the patient I am deposing falsely.,

18. In view of evidence of PW4, deceased Saukat Ali attended Surgery OPD, SMCH on 18-01-2007 vide Hospital No. 361879 with alleged",

history of RTA and X-ray of Skull revealed linear fracture. However the deceased also sustained lacerated injury over left parietal region,

measuring 4 x 2x 1 cm which is according to Medical Officer grievous in nature. The PW1 being widow of the deceased replied on cross-,

examination that after the incident her husband was taken evacuated to Kalain CHC and on the following day he was taken to SMCH,

outpatient department and after examination by doctors he was discharged by prescribing medicines. That after 7/8 days he was again,

brought to SMCH. After perusal of the case record it reveals that the Ext-9 is an OPD slip of SMCH showing visit to SMCH on 18-01-2007,

i.e. on the following day of the accident, Ext-19 is the discharge certificate of SMCH showing date of admission of the deceased as 02-03-",

2007 and date of discharge as 03-03-2007. Diagnosis is Analplastic Astrocytoma (?)/Choroid Plexus Ca (?) with repeated vomiting. The,

medical officer from SMCH deposed that they did not refer the patient to any higher hospital for better management. But in view of,

evidence of PW1 the deceased was shifted to Advance Neuro Science Hospital, Guwahati. Ext-14 is the CT scan of brain conducted at",

Advance Neuro Science Hospital which reveals an irregular right enhancing lesion with perilesional oedema and mass effect in right,

parietal lobe. Possibility of Astrocytoma was opined in the CT Scan report. Ext-15 MRI report of brain conducted at Primus, Guwahati",

reveals predominantly T2 Hypointense mass lesion in the right parieto-occipital region involving also the occipital horn and trigone of the,

right lateral ventricle with significant mass effect. MR features suggested the possibilities of anaplastic Astrocytoma/choroid plexus,

carcinoma.,

19. Ext-18 is the Discharge certificate issued by Advance Neuro Science Hospital which reveals that the deceased was admitted on 24-02-,

2007 and discharged on 28-02-2007. In the discharge certificate it is written as below:-,

DIAGNOSIS :- " Anaplastic Astrocytoma ? Choroid Plexus Carcinoma,

Case History â?" C/C Headache â?" 1 month,

Weakness (L) â?" 1 month,

History of Present Illness: Md. Saukat Ali Barbhuiya, 45 years old male is being admitted with history of headache and weakness in left",

sided of the body for last 1 month and also history of trauma by RTA and also fall 1 month back. No history of loss of consciousness,"

vomiting ENT Bleeding etc.â??",

4. Learned counsel, Ms. R.D. Mozumdar appearing for the appellants have contended that the learned Tribunal has erred in law as well as in facts for",

not considering the evidence adduced by the Doctors which clearly shows that cancer cannot be the result of an injury and death was due to brain,

tumor. All the medicines that were purchased by the claimant was related to cancer treatments and not for the injury. She has further argued that the,

total expenditure on the injury that was sustained by the victim is only a sum of Rs. 1,200/-. PW-4, Dr. Pinakpani Dhar, Assistant Professor of",

Department of Surgery, Silchar Medical College & Hospital has clearly given the opinion that â?"I do not agree that cancer is resultant effect of",

injury sustained by the patientâ?. Further, PW-5, Dr. Gopal Dutta of Cachar Cancer Hospital has also clearly deposed that â?"due to vehicular",

accident, if a person sustained injury in scalp, the said injury cannot turn into brain tumor. Cancer cannot be the resultant effect of any injuryâ?. These",

are the opinions rendered by the experts in the field of cancer and this information cannot be overruled by substituting our own concept. She has also,

contended that the claimant should satisfy that the cancer was pre-existing the injury or accident which may lead to the finding that the death has been,

accelerated by the injury due to accident causing the death. However, in the instant case, the facts clearly show that the victim was diagnosed of",

cancer only after the accident occurred. Therefore, it is not possible to say that the accident has precipitated the death of the deceased. In a nutshell,"

her argument is that there is no connectivity between the death of the claimant and the accident. Therefore, the claimant has not died due to the",

accident but due to cancer,

She has relied upon the case of New India Assurance Company Ltd. vs. Smt. Sushila Shubhashchandra Sharma & Ors., reported in 2011 STPL 1231",

(Delhi) wherein it was held that the claimant Subhashchandra Sharma met with

an accident on 09.09.2003 and subsequently died on 17.05.2005. It, was held that there is no nexus between the incident and the death of the deceased. In the absence of proof of nexus between the death of the, deceased and accidental injuries, compensation cannot be given. She has also placed reliance on the decision of our own High Court where the", Division Bench in National Insurance Company Ltd. vs. Chandraprana Burman & Others, reported in 2001 (1) GLT 2007, the Court held that", claimants can be awarded compensation only in connection with the liability of the insurer or the insured which arises out of vehicular accident and not, in remote cause. The claim that the death of father who died out of heart attack caused by the death of his wife in an accident would be too far-, fetched. The proposition is held to be too remote for consideration of compensation in the Claims Tribunal. In such cases, the matter could be only", taken up in the Civil Court which is the competent Court and not in the Claims Tribunal where the power is limited to deal with claims arising out of, accidents. Again in Shaila @ Shilavathi Patil & Ors vs. K.H. Manjunath & Ors., reported in 2013 STPL 17238 (Karnataka,)the High Court of", Karnataka disallowed the compensation where the claimant was shown to have died out of lung infection and the same is not due to the fracture of, the femur bone or injuries caused in the accident. Therefore, she has argued that there must be nexus between the death and the accident for seeking", compensation.,

In the instant case, there is nothing which suggests that the deceased died out of the accident. Therefore, it is argued that the impugned order must be", set aside. She is, however, not adverse to the payment of medical expenses incurred by the appellant and other admissible loss which the victim might", have incurred during the treatment.,

5. Mr. B. Chakravarty, learned counsel for the respondent Nos. 1 to 3 submits that the fact is that the vehicle involved in the accident which occurred", on 17.01.2007 grievously injured the victim. The injury report is exhibited as Ext-6, the FIR is exhibited as Ext-1 and MVI report is also exhibited as", Ext-5. PW-4, the Medical Officer of Silchar Medical College Hospital has methodically made it clear that evidences are there that the victim received", injury in the said road accident, of which lacerated injury on the left parietal region measuring 4 x 6 x 1 cm is grievous in nature and is placed as Ext-6.",

Ext-9 clearly shows that the victim was undergoing continuous treatment in SMCH until his demise on 23.08.2007. The Tribunal discussed the, evidences and have valid reasons why the claim was justified. The victim developed headache and trauma after the accident and he had no previous, history of headache before the accident. The doctor issuing the Death Certificate opined that the death was due to brain tumor and fatal injury. All the, investigation related to the cancer are post-accidental and there is no evidence to show that the victim was having headache prior to the accident., Even though death may have occurred because of cancer, the Tribunal opined that it cannot be ruled out that there is no nexus of death with the", accident so even if there are 2 (two) views possible, the view taken by the Tribunal needs to be upheld considering that the Act is a beneficial piece of", legislation. The Tribunal has passed its finding on preponderance of probability and not on microscopic evaluation of evidence unlike that of cases of, criminal nature where the prosecution is subject to prove the case beyond reasonable doubt. This is the principle adopted in an enquiry under the Act., The conclusion that is arrived at by the Tribunal is not contrary to the evidence led by the claimants and the award should be upheld. The word, "arising out of an accident" has wide connotation and even if remote proximity can be established claimants are entitled to the relief. In the instant, case, the claimant has been able to establish a reasonable proximity of the accident with the death and the Tribunal has given thought and ample", reasons for allowing the claim. Therefore, the present appeal is not a fit one where interference is warranted. The learned counsel, to substantiate his", case has relied upon the following judgments:-,

1. Union of India & Another vs. Bholi Rai, reported in 2011 (2) GLT 601 wherein at para 6 & 7 it was held that if the claimant can create a high", degree of probability on the basis of evidence in establishing a casual relationship between the use of motor vehicle with the accident resulting in, death, then it is not necessary to establish a direct and close proximity but a casual relationship can suffice.",
2. Shivaji Dayanu Patil & Another vs. Vatschala Uttam More, reported in 1991 (3) SCC 530 wherein at para 34, 35 & 36 it was held that for words", "arising out of" which are used in statutes requires a less proximate relationship injury to the use of the vehicle than for the words "caused,

byâ??.,

3. Ramathal & Ors. Vs. Managing Director Cheran Transport Corporation, Coimbatore, reported in 2003 (10) SCC 53 wherein at para 15 it was held",

that the insurer did not bring any material on record to show that there was a link between the accident and death i.e. the accident which occurred on,

14.01.1991 and the patientâ??s subsequent death on 26.02.1992 after undergoing treatment for some time. Therefore, the view of the Tribunal needs",

to be upheld when there are no contrary findings.,

4. Smti. Hilaria Malong vs. Sajahan Ali & Another, in MAC Appeal No. 152/2014 dated 11.08.2017, where victim had sustained head injury and",

fracture of right radius from an accident that occurred on 11.03.2009 and eventual death on 09.02.2013 (relevant para 8 & 9).,

5. National Insurance Co. Ltd. vs. Smt. Kasheni & Ors., reported in 2005 (3) GLT 465 wherein it was held that while death caused by the use of",

vehicle requires strict proximate relationship, the same is not required in cases when the death or bodily injury is caused arising out of the use of the",

vehicle.,

6. Jogendra Ch. Kar & Another vs. Hardhan Saha & Ors., reported in 2009 (4) GLR 47,4 wherein it was held that the use of vehicle need not be",

immediate cause of death or bodily injury but a casual relationship will be sufficient.,

6. On considering the arguments forwarded by the parties and on considering the ratio laid down by the Apex Court, I am of the view that any",

accident claims where the victim does not succumb to injuries instantly, the victim has to prove that he was in continuous treatment in connection with",

the said accident as is shown in the case of Bholi Ram (supra). From the evidences laid before the Tribunal, it is seen that there has been no",

continuous treatment for the accident where injury was caused but only for cancer which is ruled out as subsequent effect of the accident by the,

experts on the subject matter. 2 (two) doctors testified that cancer cannot be resultant development of an accident. The view taken by an expert in the,

subject, until and unless there is gross irrational conclusion that can be drawn from the facts of that particular case cannot be substituted by any other",

view. However, in this case, no inference can be drawn at all. The learned Tribunal, on examination of the Medical Report has also abstained himself",

1. Medical Expenses,"Rs. 1,200/-
 2. Nourishment,"Rs. 15,000/-
 3. 7 Months salary after deduction of taxes", "Rs. $9,361 \times 7 = \text{Rs. } 65,528/-$
- Total,"Rs. 81,728/-