



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



**S.B. Civil Miscellaneous Appeal No. 4047/2016**

**1.** Late T. P. Vishvnath Naiyar

**1/1.** Smt. Radha '

**1/2.** Vinod Naiyar

**1/3.** Vineet Naiyar

----Appellant

Versus

**1.** United India Insurance Company Limited, Regional Office,  
Shahara Chamber Tonk Road, Jaipur.

**2.** Suphul Kumar Vishvash

**3.** Shankar Lal Sharma

**4.** Dinesh Sachdeva Through Suphul Kumar

----Respondent

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For Appellant(s) : Mr. Dileep Singh Jadaun, Adv.  
For Respondent(s) : Ms. Chitra Goel, Adv.

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**HON'BLE MR. JUSTICE BIRENDRA KUMAR**

**JUDGMENT**

**JUDGMENT RESERVED ON : 08.12.2022**

**DATE OF PRONOUNCEMENT : 01.02.2023**





1. The appellants are not satisfied with the quantum of compensation decided by the Motor Accident Claims Tribunal Jaipur City, Jaipur in Claim Petition No.504/2015 vide award dated 05.05.2016. Hence this appeal Under Section 173 of The Motor Vehicles Act, 1988.

2. One Mr. T.P. Vishvnath Naiyar met with motor vehicle accident while crossing the road on 22.11.2006. As per the eye-witness the accident was caused due to rash and negligent driving of the vehicle bearing Registration No.RJ-14-1C-4052. For the accident aforesaid FIR No.224/2006 was registered with Adarsh Nagar Police Station against the driver of the offending vehicle. After investigation of the case, the Police submitted charge-sheet against the driver. Copy of the FIR and charge-sheet are exhibited documents on the record.

3. In the Accident aforesaid, Mr. T.P. Vishvnath Naiyar sustained fracture on shaft of right tibia and right fibula as well as fracture of right fifth and sixth ribs. Mr. T.P. Vishvnath Naiyar filed a claim case on 18.01.2007 before the Motor Accident Claims Tribunal. On 15.12.2008, Mr. T.P. Vishvnath Naiyar died. Thereafter, the appellants who are widow and two sons of Mr. T.P. Vishvnath Naiyar got themselves substituted in the claim case on 16.09.2009 and raised claim under Section 166 of The Motor Vehicle Act.

4. The owner and driver of the vehicle, though party in the claim case, did not appear to contest the claim case, only insurer contested the case. The defense of the insurer was that the driver had violated the terms and conditions of the Policy, hence the insurer is not liable.



5. The claimants examined witnesses including eye-witness of the incidents and got several documents exhibited. However respondents led no evidence.

6. The Tribunal on consideration of the evidence on record accepted the factum of accident caused due to rash and negligent driving of the vehicle. The Tribunal further held that the vehicle was insured at the time of accident with United Insurance Company Limited. However, the Tribunal was of the view that there was no nexus between the injuries sustained during the accident and the death of Mr. T.P. Vishvnath Naiyar, therefore, the claimants were not entitled for compensation for death in the motor vehicle accident. However, the Tribunal awarded Rs.2,00,000/- for loss to the estate, Rs.50,000/- for transportation during the long treatment and Rs.50,000/- for special diet to the deceased. Total Rs.3,00,000/- was awarded along with interest @ 9% from the date of application dated 18.01.2007.

7. Learned counsel for the appellants contends that there was/is overwhelming evidence on the record to substantiate that the fracture of Mr. T.P. Vishvnath Naiyar was not cured, due to serious infection, till his death. Since fracture had not been cured, Mr. T.P. Vishvnath Naiyar, who was a patient of hypertension and glycemia remained on bed leading to further complication of kidney failure at the time of his death. Therefore, consequences of accident, i.e., fracture of leg bone was there all along till his death and that was the main reason for premature death even after two years' treatment of Mr. T.P. Vishvnath Naiyar. Learned counsel contends that the learned Tribunal has wrongly relied on the opinion of Dr. Anil Choudhary, who was one of the panelist



doctor of the insurer. According to the doctor, there was no nexus between the injury and death.

Learned counsel has drawn attention of the Court to the cross-examination of Dr. Anil Choudhary, wherein he has admitted that it is a fact that both bones of right leg of Mr. T.P. Vishvnath Naiyar were fractured and for that reason Mr. T.P. Vishvnath Naiyar was unable to move. The witness further admitted that he had not seen any document which showed that the bones of the leg had already got unioned nor he had ever seen the patient.

8. Learned counsel for the insurer-respondent contends that there is a gap of two years in between the accident and death and the doctor has opined that the death was due to failure of organ, therefore, it cannot be accepted that Mr. T.P. Vishvnath Naiyar died in a motor vehicle accident. Learned counsel has relied on the evidence of Dr. Anil Choudhary.

As has been noticed above, the opinion of Dr. Anil Choudhary cannot be considered as expert opinion as neither the doctor got an opportunity to see the patient nor had ever treated the patient.

9. The main point for consideration in this appeal is whether the finding of the Tribunal that there is no nexus between the accident and death is based on material on the record.

10. The Board of doctors of S.M.S. Medical College and Hospital, Jaipur had issued opinion dated 09.06.2007 stating therein that due to infection, it was a case of non-union of right leg bones. The certificate is at Exhibit-11. Exhibits-30 to 33 are final bills of medical expenses issued by Jaipur Hospital. The bill is dated 11.12.2007 and the discharge slip dated 20.04.2008 at Exhibit-26 would show that the treatment of Mr. T.P. Vishvnath Naiyar was for



infection and non-union of the fracture bones of right leg. The discharge slip dated 11.12.2007 goes to show that Mr. T.P. Vishvnath Naiyar was suffering from infection leading to non-union of fractured right leg bones.

11. Thus, there is no material on record to substantiate that prior to his death on 15.12.2008, Mr. T.P. Vishvnath Naiyar had already got cured of the fracture of his leg which was caused during accident. Therefore, death due to development of other complications, cannot be said to have no connection with the injury caused rather, consistent material on record speaks volume that fracture of both upper and lower bones of right leg was continuing till death due to infection and that the fracture had led to non-movement of body creating further medical complication including kidney failure.

12. Therefore, this Court is of the view that death of Mr. T.P. Vishvnath Naiyar was a consequence of the motor vehicle accident and the learned Tribunal has erred in not considering the material on record in a correct perspective.

13. In **The State of Haryana and Ors vs. Sukhpal and Ors., reported in 2008 ACJ 158**, the death of injured took place after one year and seven months. The injured had suffered fracture of spine and became paraplegic with 100% disablement, the Hon'ble Punjab and Haryana High Court rejected the contention that the death was natural. In **National Insurance Company Limited vs. Anthony (since deceased) & Ors, reported in IV (2015) ACC 750 (Madras)**, initially the claim case was filed to obtain compensation for injuries. During pendency of the claim case the injured died and before death, he was under continuous medical



treatment. The Hon'ble Madras High Court held that only due to non-production of postmortem report, the claim for compensation would not be defeated.

14. At the time of his death, Mr. T.P. Vishvnath Naiyar had his own business named as Honda Care. Though the claimants have stated in the claim petition that he was earning Rs.20,000/- per month, however, copy of the income tax returns filed by Mr. T.P. Vishvnath Naiyar shows that his yearly income in the financial year 2005-2006 was Rs.1,05,741/- taken in round figure of Rs.1,10,000/-. The date of birth of Mr. T.P. Vishvnath Naiyar is 25.05.1951, as such at the time of death he was aged between 55 to 60 years. Therefore, as per the guidelines in **National Insurance Company Limited vs. Pranay Sethi and Ors., reported in (2017) 16 SCC 680**, he is entitled for 10% addition under the head "future prospects". Since the deceased left three dependents, one third is deductible for his personal expenses as held in **Sharla Verma (Smt) and Ors vs. Delhi Transport Corporation and Ors. reported in (2009) 6 SCC 121**. Considering the age group of the deceased, multiplier of 9 would be appropriate as per the judgment in Sharla Verma's case (supra) aforesaid.

Thus, calculation would be Rs.1,10,000/- plus 10% which is equal to Rs.1,21,000/-, minus one third, quotient being Rs.80,667/-, multiplied by nine, the amount comes to Rs.7,26,000/-. Besides the aforesaid, all the three claimants are entitled for Rs.40,000/- each for loss of spousal and filial consortium, Rs.25,000/- is payable for funeral expenses and the same amount of Rs.25,000/- is for loss to the estate.



15. The appellants have produced medical expenses bill of Rs.55,000/- which is also payable to the claimants. This Court affirms the award of Rs.50,000/- for transportation charges and Rs.50,000/- for special diet during the treatment of the deceased. However, the amount of Rs.2,00,000/- as loss to the estate awarded by the Tribunal is modified and reduced to Rs.25,000/- as discussed above.

This Court is not inclined to interfere with the quantum of interest awarded by the Tribunal.

The compensation amount would be payable after deducting the already paid amount. The total compensation is calculated as Rs.10,51,000/- minus the amount already paid.

16. The award of the Tribunal stands modified accordingly and this appeal is allowed.

**(BIRENDRA KUMAR),J**

Ashwani /-23