



2026:AHC:17075

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1642 of 2011

The New India Assurance Co. Ltd.

.....Appellant(s)

Versus

Smt. Luxmi Devi Dubey And Others

.....Respondent(s)

Counsel for Appellant(s)	:	Rahul Sahai
Counsel for Respondent(s)	:	Rakesh Kumar Porwal

A.F.R.

Court No. - 38

HON'BLE SANDEEP JAIN, J.

Order on Civil Misc. Application No. Nil of 2025

1. Learned counsel for the appellant-insurance company submitted that respondent no. 3- Gaurav Dubey, has died on 25-4-2024, and his legal heirs are already on record, as such, an endorsement to this effect be recorded in the memo of appeal in the array of parties after his name.
2. Learned counsel for the claimants-respondents has not opposed the above application.
3. In view of this, the application is **allowed**.
4. Learned counsel for the appellant-insurance company is directed to incorporate the required endorsement in the memo of appeal today.

Order on Appeal :-

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the Insurer of the offending car no. UP-78-Q-9280 against the impugned Judgment and Award dated 25.01.2011 passed by Motor Accidents Claims Tribunal/ District Judge, Etawah, in Motor Accident Claim Petition No. 403/2008 (Smt. Luxmi Devi Dubey and three others v. Smt. Anwari Begum and another), whereby for the untimely death of Ramakant Dubey on 12.02.2008 due to the injuries suffered in a road accident which occurred on 21.01.2008, a

compensation of Rs. 13,57,000/- along with interest at the rate of 6% per annum has been awarded to the claimants which has been ordered to be indemnified by the Insurer of the aforesaid offending vehicle.

2. Learned counsel for the appellant- Insurance Company submitted that there was no negligence of the offending driver in the alleged accident, but the Tribunal has held otherwise. Learned counsel submitted that at the time of accident, an ox suddenly crossed the road, and in order avoid collision with it, the driver swerved his car and hit the deceased, in which, there was no negligence on the part of the offending car driver. It was further submitted that the deceased did not suffer any fatal injury in the accident. In fact, after treatment, he was discharged from the hospital on 3-2-2008, but due to tetanus, he was again admitted to the hospital on 4-2-2008, where he died during treatment on 12-2-2008. He further submitted that there was no nexus between the injuries suffered by the deceased and his cause of death, which was tetanus, as such, the Tribunal has erred in concluding that the deceased died due to the injuries suffered in the accident. With these submissions, it was prayed that the appeal be allowed and the impugned judgment and award of the Tribunal be set aside.

3. *Per contra*, learned counsel for the claimants-respondents submitted that the deceased suffered grievous injuries in the accident, due to which, he developed tetanus and died subsequently, as such, there was close nexus between the injuries suffered by the deceased and his cause of death, which was duly proved by documentary evidence on record. As such, the Tribunal has not erred in ordering the appellant to indemnify the compensation payable to the claimants. It was further submitted that the Tribunal has, in fact, awarded less compensation to the claimants, which be enhanced in accordance with law.

4. I have heard the learned counsel of both the sides and perused the record of the lower court.

5. From the perusal of the record of the lower court, it is evident that the owner of the offending car- Smt. Anwari Begum, in her written statement, has accepted the factum of the accident and has stated that it occurred due to divine intervention, since a stray animal suddenly came on the road.

She further averred that the accident occurred due to the sole negligence of the deceased, who was driving his motorcycle in a rash and negligent manner. It was further averred that the car driver- Raghvendra Pal Singh, was having a valid and effective driving licence at the time of the accident and further, the car was insured with The New India Assurance Company Ltd, as such, if any liability is imposed on her, it will be indemnified by the insurer of the offending car. It was further averred that the deceased died due to the sole negligence of the doctors, for which the owner, driver, and insurer are not responsible.

6. Before the Tribunal, the wife of the deceased- Smt. Luxmi Devi, examined herself as PW-1, Jagdish Prasad as PW-2 and Ramakant as PW-3, whereas no oral evidence was led by the owner, driver, and insurer of the offending car. PW-3 is not an eyewitness of the accident.

7. PW-1 very fairly accepted that she was not an eye witness of the accident. Jagdish Prasad, PW-2, deposed that on 21-1-2008, at about 6.00 pm, he was coming by bicycle from Jaswant Nagar to his village Barra, and when he reached near petrol pump at Kantihar, he saw a motorcycle no. UP-75-F-5736 coming from Saifai and going towards Etawah. At the same time, a car no. UP-78-Q-9280, which was being driven in a rash and negligent manner, swerved towards the left side in order to avoid an ox which was passing from the right, collided with the above motorcycle from behind, due to which, the motorcycle driver suffered grievous injuries. He further deposed that at the spot, the police personnel of police station- Vaidpura were also present, who took the injured- Ramakant to the Etawah district hospital, and his motorcycle was taken to the police station. He further deposed that the accident occurred due to the sole negligence of the car driver because had he driven his car at a normal speed, then the accident would not have occurred. In the cross-examination, he deposed that the accident occurred after the motorcycle of the deceased and the car had crossed his cycle. He further deposed that prior to the arrival of the ox on the road, the motorcycle of the deceased had crossed, and the car hit the motorcycle from behind.

8. From the testimony of eye-witness PW-2, it is evident that the accident occurred when the offending car hit the motorcycle of the deceased from

behind, as such, there was no contributory negligence of the deceased in the accident. It is further evident that had the offending driver been driving his car at a controlled speed, then the accident could have been averted. The driver of the offending car has not been examined to prove he was not negligent in driving the offending car at the time of the accident.

9. In view of this, the contention of the learned counsel for the appellant that there was no negligence of the offending car driver in the accident is **rejected**.

10. From the perusal of the treatment papers of the deceased on record, it is evident that the deceased was admitted to Jai Devi Hospital and Research Centre, Agra, from 23-1-2008 to 3-2-2008, where he was treated for a commuted fracture of the right patella, for which he was operated upon. The deceased was examined by Dr. A.N. Tiwari on 04-2-2008, 06-2-2008, 08-2-2008 and 10-2-2008, who continuously diagnosed high fever and prescribed appropriate treatment, as per his wisdom. On 12-2-2008, due to tremor and jerks in the whole body, which was bending like bow, he diagnosed that the deceased was suffering from tetanus with fever, and referred him to the I.D.H. Department, GSVM Medical College, Kanpur but he died on 12-2-2008 at his house. It is apparent that the deceased remained under treatment from 4-2-2008 till his death on 12-2-2008 and he ultimately died due to tetanus.

11. This Court has to examine whether there was a nexus between the cause of death of the deceased and the injuries suffered by him in the accident.

12. The High Court of Karnataka in the case of **Jayarathnamma and others vs Mukhtiar Singh and another 2005 SCC OnLine Kar 639**, where the deceased died due to tetanus as a result of the injuries suffered in a accident, held as under:-

6. The evidence of PW 2 discloses that the deceased was admitted to Government Hospital, Chitradurga on the date of the accident, i.e., on 3.11.1992 and he was in the said hospital as an inpatient for three days. Thereafter, he was discharged from Government Hospital, Chitradurga,

and was admitted to Government Medical College and Hospital at Bellary. No doubt, the discharge certificate shows that deceased was discharged against medical advice. From that, it cannot be inferred that there was any negligence on the part of the persons who discharged the deceased from the Government Hospital at Chitradurga. The deceased is from Sriramasetthihalli village, Sandur Taluk, Bellary District. The fact that the discharge was against the medical advice indicates that the nature of injuries sustained by the deceased was of serious nature. Under these circumstances, it is not possible to take a view that there was negligence in giving treatment to the deceased and the death of deceased took place on account of such negligence. Therefore, the fact that the deceased was shifted from smaller hospital at Chitradurga to Medical College and Hospital at Bellary indicates that all efforts were made to give the best treatment to the deceased. It may be that the deceased being a resident of Sriramasetthihalli village, Sandur Taluk, Bellary District which is nearer to Medical College and Hospital, Bellary, he was shifted to Medical College and Hospital at Bellary. Further, it cannot be disputed that Medical College and Hospital at Bellary had better facilities for treatment than the Government Hospital at Chitradurga. Exh. P24 shows that the deceased died on account of tetanus. The term 'tetanus' is described in Webster's Dictionary as follows:

“Tetanus is an infectious, often a fatal disease, due to a specific bacterium, *Clostridium tetani*, which has gained entrance to the body through wounds, characterized by more or less violent tonic spasm and rigidity of many or all the voluntary muscles.”

In the instant case, there cannot be any dispute that the deceased had developed tetanus as a result of the injuries sustained by him in the accident in question. It is not the case of the insurance company that the deceased was not admitted to the Government Medical College and Hospital, Bellary and that he did not die in the hospital. The averments made in the petition is supported by evidence of PW 2 who is the widow of the deceased. There is proximity to the date of the accident and the date of death. It cannot be disputed that but for the injuries sustained by the deceased in the accident in question, there was no occasion to admit him to hospital for treatment. There is no material placed on behalf of

the respondent to show that the death of the victim of accident has taken place on account of negligence of Shanmukhappa or his legal heirs who were attending on him. When the evidence on record shows that the deceased was admitted to Government Hospital, Chitradurga and thereafter from the said hospital, he was removed to Government Medical College and Hospital, Bellary and he died in the hospital, the only inference that can be drawn in the absence of any other evidence is that the deceased had died as a result of the injuries sustained by him in the accident in question. It is necessary to point out that when the victim of the accident is admitted to a hospital neither he nor his close relatives including his legal heirs will not have direct control or the capacity to assess or review the nature of treatment given to the victim of the accident in the hospital. In such situations, even if there is any lapse on the part of the doctors treating the victim of the accident, that cannot be a ground to deprive either the victim of the accident and in case of his death, his legal heirs the compensation to which they are entitled to in law. The entire matter will have to be viewed keeping in view that the provisions under the Act are made for award of compensation to relieve the hardship either of the victim of the accident or the legal heirs that are likely to be put in case of death of the victim of the accident and the object of the legislation being beneficial intended to protect the victim of the accident. But for the injuries sustained by the deceased Shanmukhappa, in the normal course, there was no scope for him to develop tetanus which is stated to have been the cause for his death. If the matter is so viewed, we have no hesitation to take a view on the basis of evidence on the record that Shanmukhappa had died as a result of injuries sustained by him in the accident. Under these circumstances, we have no reason to disbelieve the evidence of PW 2 that the deceased was admitted to the Government Medical College and Hospital, Bellary and he died in the hospital. Therefore, we are of the view that the learned Tribunal was not justified in holding that death was not as a result of the injuries sustained by the deceased.

(emphasis supplied)

13. The High Court of Madras in the case of *The New India Assurance Co. Ltd. vs Malliga and others* CMA No. 2835 of 2002 decided on

01.02.2008, while examining the nexus between the cause of death of deceased and the injuries suffered by him in the accident, held as under:-

7. Deceased Muthumathi sustained injuries in the accident on 19.11.1998 when he was driving lorry. In her evidence, first claimant [AW-1] has deposed that deceased Muthumathi was admitted in Government Hospital, Krishnagiri on 19.11.1998 and after initial treatment, he was admitted in Government Hospital, Chennai on 22.11.1998 for further treatment. Deceased was discharged from Hospital on 14.05.1999 and the deceased died on 23.09.1999 at his residence. In her evidence, PW-1 has stated that even after discharge, the deceased had taken private treatment. While he was in the hospital, he was twice operated upon and only thereafter, discharged on 14.05.1999.

8. In his evidence, AW-2 Dr.Gopalan, Surgeon in Stanley Medical College Hospital has stated that he has examined the deceased one day prior to his death on 22.07.1999 and during his examination, he has found that the deceased had stiff jaw and the cell muscles of the body of the deceased was also found to be stiff. PW-2 further deposed that the deceased developed "Latent Tetanus" and probably due to this cause, the deceased died. Ex.A-2 is the Discharge Summary from which it is seen that left leg was partially amputated and deceased was advised to come for SSG after two weeks.

9. Concededly the deceased Mythumathi sustained injuries on the lateral aspect of left leg on 19.11.1998 while he was on duty in the course of his employment. He was also given treatment for septicemia. During cross examination AW-2 admitted that while deceased was being treated, he was administered Anti Tetanus Toxicide injection to prevent Tetanus at any later point of time. Based on the evidence of PW-2, the learned Counsel for the Appellant contended that the deceased Muthumathi had been injected for anti-tetanus and therefore, it is improbable that the deceased would have developed tetanus. On that score, it was submitted that a doubt must be entertained as to whether Muthumathi's death was due to tetanus resulting from the injury sustained by him in the accident.

10. This doubt sought to be raised by the learned Counsel for the Appellant does not merit acceptance. In his evidence AW-2 has

categorically stated that while he examined the deceased on 22.07.1999, he found that the deceased had developed Latent Tetanus. It may be that anti-tetanus injection administered might have effect for more than a year. Since the deceased sustained crush injury over the entire left leg, tetanus attack cannot be ruled out. Contention of the appellant that there was no nexus between the injuries and the death of deceased is unsustainable. In the light of the evidence of PW-2 there is no difficulty in reaching the conclusion that tetanus infection brought about death must be directly attributed to the injury sustained by Muthumathi in the accident. Cause of death is not remote or unconnected one with the injury sustained by the deceased in the course of his employment. Needless to say that if cause of death is integrally connected with the injury sustained in the accident, cause of death must be attributed to the injury sustained in the accident.

11. It is futile to contend whether at all deceased died due to tetanus. In similar case in 1975 ACJ 215 [Madras] Govind Singh and ors. v. Kailasam and another, deceased sustained injury in the course of his employment. In that case arising under Motor Vehicles Act, the injured developed tetanus during treatment and he succumbed to the disease. Observing that autopsy is not indispensable to determine cause of death and holding that cause of death is not a remote or unconnected one with the injury sustained by the deceased. the Court has held:

"11. ... Having regard to the fact that the setting in of tetanus is a foreseeable and likely consequence of any bleeding injury and in the absence of evidence to show that any other supervening cause brought about the tetanus infection there is absolutely no possibility of Heera Bai's death being caused by novus actus interveniens."

The above observation is squarely applicable to the present case.

(emphasis supplied)

14. The High Court of Chattisgarh in the case of **Oriental Insurance Co. Ltd. vs Sukhyarin and others** 2024 SCC OnLine Chh 7750, where the death occurred due to infection in the amputated injured area as a result of accident, held as under:-

15. In the present case, the deceased sustained injuries in the accident because of rash and negligent driving of the vehicle by respondent No. 4 as a result of which left leg of the deceased was amputated and when he was in the house, it was infected which has caused his death, therefore, it cannot be said that the death was not caused because of rash and negligent driving of the vehicle and if the accident would have not taken place, his left leg would have not been amputated and probability of infection in the body cannot be ruled out. Thus, there is nexus between cause of death and accident. Claimant witness PW/1 Sukhiyarin Bain in her deposition has categorically stated that in the operated place of the deceased body there was bad smell of thick fluid containing dead tissue, cells, and bacteria, which was neither rebutted through cross-examination nor examined any witnesses by the Insurance Company, as such probability of infection in the body of the deceased cannot be ruled out.

16. The issue with regard to nexus between cause of death and accident has come up for consideration before the Hon'ble High Court of Madras in Govind Singh v. A.S. Kailasram, decided on 1-8-1974 wherein it has been held in para 11 as under.

“11. Injury sustained in one accident may be the cause of a subsequent injury. The injury sustained by accident by victims on the operation table is an example of such a situation. So too are cases of suicide resulting from a mental condition produced by an accident (Pigney v. Pointera Transport Service Ltd., [1957] 2 All ER 807). Smith v. Leech Brain and Co. Ltd., [1961] 3 All ER 1159, was a case where the plaintiff had been injured by a splash of molten metal which burnt his lip. He later contracted cancer, underwent operation and died. The defendants were found to be negligent, in causing the burn and the burn was the promoting agency which promoted cancer in the tissues which already had a pre-malignant condition. Lord Parker, C.J., attributed the death to the original accident and found the defendants liable to in respect of that death. Wieland v. Cyril Lord Carpets Ltd., [1969] 3 All ER 1006 was a case where the plaintiff suffered an injury caused by the admitted negligence of the defendants. After attending the hospital, she felt shaken and the movement of her head was constricted by a collar which had been

fitted to her neck. In consequence, she was unable to use her bifocal spectacles with her usual skill and she fell while descending stairs, sustaining further injuries. It was held that the injuries and damage suffered because of the second fall were attributable to the original negligence of the defendants so as to attract compensation from them. Bloor v. Liverpool Darricking & Co. Ltd., [1936] 3 All ER 399 was a case where the deceased employed as a derrickman, volunteered to act temporarily as a shipper on another barge, stumbled” and fell into the hole and sustained minor injuries. He was removed to the hospital and given an anaesthetic under which he collapsed and died. The post-mortem examination revealed that he had a diseased heart. Three learned Judges of the Court of Appeal held that the administration of anaesthesia cannot be deemed to be novus-actus interveniens such as to break the chain of causation between the accident and the death and consequently the death must be attributed to the injuries sustained in the accident. A Bench of this Court had to consider in Mrs. C.P. Francis v. K.S. Shivaji & Co., C.M.A. No. 96 of 1970 of this Court judgment dated 11-2-1974 (Mad.), whether an accident victim who sustained a hit on the right part of his stomach, but did not sustain any visible injury on the abdomen could be deemed to have died as a result of the injury sustained in the accident when, a few days later, his abdomen had to be opened for surgical treatment of his stomach-pain and it was then found that the greater omentum was covering up the loops of intestines going down to pelvis causing an obstruction, a membrane was covering the jejuno-ileal junction and further exploration revealed perityphlitic abscess and lacerated appendix. The victim was operated, but he died of peritonitis. This court held that, in the absence of independent evidence to show that the victim was suffering from appendicitis earlier, the court was justified in presuming that the death of the deceased was the result of appendicitis caused by the rash and negligent act of the driver of the motor vehicle at the time of the accident. The principle in cases of this kind can best be described in the words of Lord Denning, M.R. in Statment v. West African Terminals Ltd., (1954) 2 Lloyds Rep 371 (at page 375):

“..... it is not necessary that the precise contention of circumstances should be envisaged. If the consequence was one which was within the general range, which any reasonable man might foresee (and was not of

an entirely different kind which no one would anticipate) then it is within the rule that a person who had been guilty of negligence is liable for the consequences”.

19. From the above legal position and also considering the evidence brought on record and the opinion given by the Doctor that there was infection in the body of the deceased and his left leg was amputated, which is not in dispute and Infection of the body is consequent to the amputation. Thus, it is quite vivid that the death was caused due to rash and negligent driving of the tractor by respondent No. 4, as such there is nexus regarding cause of death. Also considering the fact that insurance company has not adduced any evidence to rebut the statement of Smt. Sukhiyarin Bai (PW-01), who in clear terms has stated that the left leg of her husband was amputated because of rash and negligent driving of tractor by respondent No. 4 and thereafter he died. Thus, it is clearly established that death was taken place due to rash and negligent driving of the vehicle causing amputation of the left leg of the deceased. Thus, the submission made by the learned counsel for the appellant, that it was natural death and the claimants have not examined any Doctor to prove that death was caused due to amputation deserves to be rejected.

(emphasis supplied)

*15. In similar facts and circumstances where the death occurred due to septicemia because of infection in the injured area as a result of accident, the High Court of Madras in the case of **National Insurance Co. Ltd. vs Anthony @ Rakesh and others 2014 SCC OnLine Mad 480**, held as under:-*

9. The ratio in the Judgments reported in Vatsala v. Meenakshi, 2005 (1) TN MAC 62 (DB) : 2005 (1) LW 560; Maricar Motors Ltd. v. Neelambal Ramaswamy, 1982 ACJ (Supp) 570, and the Judgment in C.M.A. No. 1305/2012 are that when factually it is established that the death was not unconnected to the injury, when sufficient materials are placed before the Tribunal to show that the deceased was taking continuous treatment and

when no contra evidence is produced, the claim must be allowed.

10.****

11. *The next contention of the Counsel for 2nd Respondent is that the death of Anthony alias Anthony Rakesh was not due to the injuries suffered by him. According to the Counsel for the 2nd Respondent unless a Post-mortem report was produced, it could not be said that the death had a nexus with the injury. The Counsel for the Claimants has relied upon the following Judgments to contend that Post-Mortem Report is not necessary to prove that the death was caused by the after effects of the injury.*

12. *In the Judgment reported in Govind Singh v. A.S. Kailasam, 1975 ACJ 215, this Court has held as follows:*

“9. ... In a case where the patient had been clinically diagnosed as suffering from tetanus or lock-jaw and had succumbed to the disease despite treatment, an autopsy is not an indispensable test to determine the cause of death. ...

10. ... It is needless to say that if the cause of death is integrally connected with the injury sustained in the accident and is one in the chain of causa causans the cause of death must be attributed to the injury sustained in the accident, however trivial or minor the injury, by itself, may be.”

13. *In the Judgment reported in Khairullah v. Anita, 1994 ACJ 1017, the Andhra Pradesh High Court has held as follows:*

“4. It is vehemently contended by Mr. P. Rama Rao, learned Counsel appearing for the Appellants, that no autopsy was conducted over the dead body of the deceased to arrive at the cause of death. It may be remembered that the deceased died during the course of Medical treatment after about 25 days after the accident and he succumbed to the injuries. As already stated, Exh. A-10, the in-patient discharge ticket of the Hyderabad Nursing Home, where the deceased was undergoing treatment at the time of his death, shows that due to cardio-respiratory failure the deceased had died which is a consequence and secondary to

head injury. The head injury was sustained by the deceased at the time of the accident. It is not a case under Section 302, Penal Code, 1860, wherein the conducting of Post-Mortem examination to know the cause of death may be necessary. In this case, the cause of death is known from the documentary evidence, especially Exh. A-10 and also from the evidence of PW 2. The evidence of PW 2 is convincing. In the light of both oral and documentary evidence available in this case, the failure to conduct Post-Mortem examination over the dead body of the deceased cannot be taken as a circumstance against the Claimants, who are claiming Compensation for the death of the deceased.”

14. The ratio in the Judgments are squarely applicable to the present facts of the case. As stated above, the deceased was under continuous Medical treatment. Exhibits P-4 to P-10 also reveal the presence of infection which is also corroborated by the evidence of PW 3. No contradictory evidence has been let in by the 2nd Respondent. Applying the ratio in the above cases, I hold that the production of Post-Mortem Report is not compulsory as the reason for the death can be inferred from other documents namely P-4 to P-10.

16. From the above law laid down by the various High Courts, it is well-settled that where there is a nexus between the injuries caused and the cause of death of the deceased, then certainly compensation can be awarded for the death of a person, who suffered injuries in a motor accident. It is apparent that in the instant case, due to the accidental injuries suffered on 21.01.2008, the deceased developed tetanus, which is incurable, and he died subsequently during treatment on 12-2-2008. Had the deceased not suffered injuries in the accident for which he was operated upon, he certainly would not have been infected with tetanus and would also not have died, due to it. As such, the contention of the appellant that there was no nexus between the injuries suffered in the accident and the cause of death of the deceased, is **rejected**. The tribunal has rightly held that the deceased died due to the injuries suffered in the accident, and the accident was due to the sole negligence of the offending car driver.

17. No other issue was pressed by the learned counsel for the appellant-

insurance company.

18. The contention of the claimants-respondents that the tribunal has awarded inadequate compensation cannot be examined in this appeal since no cross-appeal or cross-objection has been filed by the claimants.

19. Accordingly, this appeal has got no merit and is liable to be dismissed.

20. **The appeal is dismissed.** The impugned judgment and award of the Tribunal dated 25-1-2011 is affirmed.

21. Office is directed to remit back the statutory deposit made by the appellant-insurance company to the tribunal concerned, forthwith.

22. Interim order, if any, stands vacated.

23. It was submitted by the learned counsel for the claimants-respondents that during the pendency of the appeal, respondents no. 2, 3, and 4 have died, as such, Smt. Luxmi Devi- respondent no. 1, is entitled to receive the remaining amount of compensation along with interest, which has not been deposited by the appellant-insurance company due to the stay order of this Court dated 13-5-2011.

24. Since the respondents no. 2, 3, and 4 have died, as such, the Tribunal is directed to pay the remaining amount of compensation to the surviving legal heir, i.e., respondent no. 1, Smt. Luxmi Devi, in accordance with law.

25. Office is directed to send back the lower court record, forthwith.

(Sandeep Jain,J.)

January 22, 2026

Rama Kant