IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2826 of 2017
and C.M.P.No.16161 of 2017

Bajaj Allianz General Insurance Company Ltd.,
No.15, 1st Floor, Kullam Complex, 1st Floor,
Sukuri Complex Opposite,
Alagapuram, Salem - 4 ... Appellant /2nd Respondent

..vs..

1. Perumal
2. Rajamani
3. Pappathi
4. Palanisamy ..Respondents 1 to 4/Petitioners 1 to 4
5. B.Philip Ashok Karunakaran
... 5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree, dated 07.06.2016 made in M.C.O.P.No.1966 of 2011 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr. Srinivasan Ramalingam

J U D G M E N T

With the consent of the learned counsel appearing for both sides, the Civil Miscellaneous Appeal is taken up for final disposal, at the admissions stage itself.

2. The Appeal has been filed by the Insurance Company challenging the liability as well as the quantum of compensation awarded by the Claims Tribunal.

2.1. The claim pertains to the death of one Perumayee, aged 65. The Legal Representatives, namely, husband, two sons and one daughter, have filed the claim petition for compensation claiming a sum of Rs.5,00,000/-. The Tribunal, on a consideration of the materials, has passed an award for a sum of Rs.1,74,590/- under the following breakup details.

3. Fixing the age of the deceased as 75, monthly income at Rs.3,000/-, deducting 1/3rd towards the personal expenses, fixing the monthly contribution at Rs.2,000/- and adopting the multiplier of 5, the loss of contribution to the family has been estimated at Rs.1,20,000/-. The loss of consortium to the first claimant is awarded at Rs.20,000/-. The loss of love and affection to each of the P-2 to P-4 has been awarded at Rs.30,000/-, i.e., at the rate of Rs.10,000/- to each of them. The medical bills are awarded at Rs.4,590/-. Thus, the total amount of compensation has been awarded at Rs.1,74,590/-. Challenging the liability to pay this amount of compensation as well as the quantum, the Insurance Company has filed this Appeal.

4. The learned counsel appearing for the appellant / Insurance Company would submit that the death of the deceased was not on account of the injuries sustained in the accident and therefore, the Insurance Company is not liable to pay any compensation. The second contention is that, no postmortem was conducted on the deceased and as there are no documents produced pertaining to medical records to establish that the death of the deceased was on account of the result of the injuries sustained by her in the accident, the Insurance Company is not liable and that in any event, the amount of compensation awarded is excessive.

5. Whether these contentions are justified based on the documents, is the only issue to be decided in this Appeal.

6. The learned counsel appearing for the appellant / Insurance Company had produced the discharge summary issued by Kurinchi Hospital, Salem.

6.1. A perusal of the discharge summary would go to show that from the very local examination of the body of the injured, the following injuries have been found:-

> "Badly lacerated wound of about 5x2 cm in frontal region.
> Lacerated wound of 1 cm, 2 cm in right shoulder.
> Lacerated wound of 3 cm in right elbow.
> Tenderness, swelling (+) in right shoulder.
> Punctured wound of about 1 cm in right leg mid 3rd.
> Tenderness and deformity (+) right leg mid 3rd."

6.2. Diagnosis reveal that there is a fracture on both bones of right leg and Grade I compound fracture proximal humerus right and surgery performed was Interlocking Nailing Right Leg and Wound debridement and suturing right arm has also been performed. A further perusal of the discharge summary would go to show that the wound wash has been given with plenty of saline, with sutures and U Slab Applied.

6.3. Under the circumstances, when the date of admission was 09.05.2011 and the date of discharge was 19.05.2011 and the death being on 24.05.2011, i.e., five days after the surgery, then the presumption is that the death must be the natural outcome of the injuries sustained and the consequent surgery performed.

7. It is necessary to consider the evidence of Dr.Jeyaraman (R.W.1) who would state that there was severe head injury for which scan has been taken; implant surgery has been performed for the fracture in the legs and there was injury over the right shoulder and after cleaning the wound, plaster of Paris has been applied; she has been in the Intensive Care Unit for several days. It is specifically stated that there was no sugar or Blood Pressure for the patient and during cross-examination, the Doctor would admit that the patient was suffering from pain and there was no sleep for her. When the doctor has been questioned to state whether the patient could have been died on account of her problem, the Doctor replied that it is not possible to give any opinion on that. When he was further questioned as to whether the injuries could have been the cause for the death, he has stated that it is not possible.

8. It is not known, at the age of 65 to 75, when the patient has suffered injuries as well as surgeries with native treatment also, whether the Doctor can give such an opinion, which cannot be termed as an expert opinion. Under the circumstances, the Insurance Company should have raised such an issue before the Tribunal. Without framing such an issue, it is not open to the Insurance Company to raise such a contention, for the first time, before this Court.

9. Further, a perusal of the judgment of the Tribunal would go to show that no such issue has been raised or argued by the Insurance Company and excepting the evidence available on record, there is nothing to indicate that the death of the deceased could not have any relationship with the injury sustained by the deceased.

10. In such circumstances, the award passed by the Tribunal is very reasonable and does not require any interference by this Court. In the absence of any issue having been framed and in the absence of any arguments having been advanced, it is not open to the Insurance Company to raise such an issue for the first time before this Court.

11. In the result, the Appeal has no merits and the Appeal is dismissed. No costs. Consequently, the connected CMP is closed.

12. The appellant / Insurance Company is directed to deposit the amount of compensation, as determined by the Claims Tribunal, along with interest at 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. The Tribunal is directed to transfer the amount to the Savings Bank Accounts of the major claimants, through RTGS, as per the ratio of apportionment made by the Claims Tribunal.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

srk

To
1.The Presiding officer
Motor Accident Claims Tribunal, Special District Court, Salem.

2. The Section Officer, V.R.Section, Madras High Court,
Chennai 104

+1 CC to Mr. Srinivasan Ramalingam, Advocate sr 68416.

C.M.A.No.2826 of 2017
& CMP No.16161 of 2017

PVS(CO)
SP(05/04/2018)