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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 17th August, 2017

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MAC.APP. 531/2008

THE ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr.S.P.Jain, Advocate

versus

OMWATI & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (Suit No.215/2004) was instituted on 19.08.2004 by the first to fifth respondents (collectively, the claimants) seeking compensation on account of death of Sahib Singh due to injuries suffered in a motor vehicular accident that had occurred on 29.10.2002 involving motorcycle bearing registration No.DL-4SY-3404, admittedly insured against third party risk with the appellant insurance company (insurer).

2. The Motor Accident Claims Tribunal (the tribunal), by judgment dated 01.03.2008, upheld the said claim and awarded compensation in the sum of Rs.5,56,814/- fastening the liability on the insurer with interest levied at seven per cent (7%) per annum.

3. The insurer filed this appeal questioning the finding returned by the tribunal as to the death being on account of the injuries suffered in the motor vehicular accident. It is noted that the accident had occurred on 29.10.2002 and the deceased was taken to GTB hospital where he remained under treatment till discharge on 03.11.2002. The evidence would show that on account of some complications he was re-admitted to the hospital on 02.12.2002 and died during indoor treatment on 19.12.2002. It does appear that the death certificate indicates chronic renal failure and uremic encephalopathy to be the immediate cause of death.

4. The tribunal, however, rejected the plea of the insurer about there being no nexus between the injuries suffered in the accident and the death, based on the opinion given by Dr. Vipin Gupta (R3W2) and observed that though the deceased may have been an old case of polycystic kidney disease, the possibility of the renal failure having been triggered by the medicines administered during the treatment on account of injuries could not be ruled out.

5. The evidence of R3W2, in the facts and circumstances of the case, was apparently nothing but an opinion which was not based on examination of the deceased at any stage or of his medical records. This opinion has been rendered only on the basis of MLC (Ex.R3W1/D) and, therefore, does not deserve to be acted upon. The insurance company had the opportunity and could have summoned the doctors who would have treated the deceased in the hospital to derive more reliable opinion. Having regard to the close proximity of the

two periods of hospitalization and the death in relation to the episode of accident in which injuries were sustained, this court finds no good reason to interfere with the conclusions reached by the tribunal.

6. The appeal is, therefore, dismissed.

7. The learned counsel for the appellant submits that the award has already been satisfied by requisite payment to the claimants. If there is any deficiency, the claimants are at liberty to take out appropriate proceedings before the tribunal.

8. The statutory amount be refunded to the appellant insurance company.

AUGUST 17, 2017
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R.K.GAUBA, J.