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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.1775 of 2013

and

M.P.(MD).No.1 of 2013

The Divisional Manager,
M/s.New India Assurance Company Limited,
Kamarajar Salai,
Madurai. ... Appellant/
2nd respondent

Vs.

Krishnan (died) ... Deceased /
1st petitioner/1st claimant

1.Pandiammal
2.Muniammal
3.Mariammal
4.Meenakshi
5.Arumugam
6.Manikandan
7.Mahalakshmi ... Respondents 1 to 7/
Petitioners 2 to 8/Claimants 2 to 8

8.K.Parthasarathi ... 8th respondent/
1st respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 28.02.2013, passed in M.C.O.P.No.206 of 2005 by the Motor Accident Claims Tribunal / I-Additional Subordinate Court, Madurai.

For appellant : Mr.D.Sivaraman

For respondents 1 to 7 : Mr.A.Theethar

JUDGMENT

It is a case of fatal. On 30.07.2004 at about 6.00 a.m., the deceased 1st claimant by name Krishnan was riding his bicycle near Harvipatty bus-stop and at that time, the 8th respondent's lorry bearing Registration No.TN.01.S.7099, which came in the same direction and drove by its driver in rash and negligent manner, dashed against the deceased first claimant, due to which he sustained multiple injuries and his left leg amputated. The deceased first claimant filed claim petition claiming Rs.4 lakhs as compensation. During the pendency of the claim petition, the deceased first claimant died, due to the injuries sustained in the accident. Hence, the respondents 1 to 7 herein, who are LRs of the deceased first claimant, were impleaded as claimants 2 to 8. The Tribunal, after considering the oral and documentary evidence, has

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awarded Rs.4,40,000/- as total compensation and directed the appellant/Insurance Company to pay the entire compensation with 7.5% interest from the date of petition till the date of realization. Now, the appellant / Insurance Company has filed this appeal only questioning the liability.

2. The learned counsel appearing for the appellant / Insurance Company would submit that there is no nexus between the death of the deceased and the injuries sustained by him in the accident and therefore, the Tribunal ought not to have considered the claim as a death case and awarded Rs.4,40,000/- as compensation. Thus, he prayed to set aside the award and remit the matter back to the Tribunal.

3. The learned counsel appearing for the claimants would submit that the doctor, who examined as PW5 has categorically stated in his evidence that the deceased died due to the injuries sustained in the accident. The Tribunal has also rightly taken into account the same and awarded the compensation and therefore, this Court need not interfere in the award passed by the Tribunal. Thus, he prayed to dismiss this appeal.

4.Heard the learned counsel appearing for the parties and perused the records carefully.

5. The accident was occurred on 30.07.2004. At the time of accident, the deceased first claimant was aged about 55 years. It is not in dispute that in the accident, the left leg of the deceased first claimant was crushed and he sustained head injury and multiple injuries all over the body. It is also equally not in dispute that due to the injuries sustained in the accident, the left leg of the deceased first claimant upto below the knee was amputated. The deceased first claimant took treatment in the Government Hospital as inpatient from 30.07.2004 to 27.09.2004 at Government Rajaji Hospital, Madurai. After about six months, the deceased first claimant died. According to the claimants 2 to 8, it was due to septicemia in the injury sustained in the accident. Dr.Sankarlal, who was examined as PW5 has stated in his evidence that since sepsis spread in all over his body, the deceased first claimant took treatment from 01.10.2004 to 28.01.2005 in a private hospital, but he died due to the complication of the septicemia.

6. It is common knowledge that septicemia, which is also known as sepsis, is a life threatening complication and it can easily affect the person suffering from long term illness and recently undergone surgery. Admittedly, in this case, the deceased first claimant was aged about 55 years and due to the injuries sustained in the accident, he underwent a surgery by which his left leg was removed. As per Ex.P6 - medical certificate issued by one Dr.Jeyaraj, the deceased first claimant had been taking treatment as outpatient from 01.10.2004 to 25.01.2005 in the form of daily dressing, injunction and antibiotic tablets for amputated injury

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and that he advised the deceased first claimant to take treatment in GRH. From the evidence of PW5 and Ex.P6, it is very clear that the deceased first claimant had been taking continuous treatment for the injuries sustained in the accident and due to septicemia in the injury caused in the accident, the deceased first claimant died. Therefore, the contention of the appellant/Insurance Company that there is no nexus between the injuries and death, cannot be accepted.

7. Though it is contended by the appellant/Insurance Company that even assuming that the deceased died due to septicemia, it can be considered only as an effect of medical negligence, this Court is not inclined to accept the same, in view of the fact that the deceased first claimant was in continuous treatment for the injuries sustained in the accident and it would not be the intention of anybody to cause any infection, which would deteriorate the health.

8. In view of the above, this Civil Miscellaneous Appeal is liable to be dismissed and accordingly, dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant 2 to 8 are permitted to withdraw their respective share, as apportioned by the Tribunal, by filing an application before the Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

To
The I-Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

Copy to:
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-72501[F] dated 01/07/2019)
+1 CC to M/s.A.THEETHAR, Advocate (SR-72853[F] dated 02/07/2019)

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