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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 19.07.2019*

+ **MAC.APP. 1122/2017 & CM APPL. 46976/2017**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Pradeep Gaur, Advocate.

Versus

MEENAKSHI GUPTA & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns compensation in MACT No. 3975/16 dated 31.10.2017 awarded by the learned MACT on the ground that it is devoid of any basis and is not supported by any medical evidence. According to the appellant, the claimants have placed no medical records or the post-mortem Report to substantiate their claim that the death of the injured/victim, six months after the accident, was related to the accident itself.

2. The learned Tribunal dealt with this issue as under:-

“20. It was argued on behalf of insurance company that in the absence of any postmortem report, it cannot be held that the injured died due to the accidental injuries, more so when the death took place after about six months of the accident. This argument is bereft of merit. It is true that there is no postmortem report on record to show that the death took place due to accidental injuries but the widow of the deceased has

stated on oath that the said death was due to the accidental injuries. The insurance company was free to bring any evidence on record contrary to this averment but no such evidence was brought on record by the insurance company and hence, the version of widow of the deceased that the death of her husband took place due to accidental injuries cannot be disbelieved, particularly in the absence of any evidence to the contrary, it, is thus, held that the deceased died as a result of injuries sustained by him in the accident.”

3. On examination of the Trial Court Records, the Court finds that the widow, had stated that her husband had died on account of injuries suffered by him in the pelvic region. She had presented medical prescriptions and reports in support of the same. She withstood the cross-examination of her testimony that her injured husband visited the hospital at least 2-3 days daily till April, 2011; that her husband received grievous injuries on his leg, urinary bladder and spinal column; that he expired on 08.07.2011. She had not filed his post-mortem report. She denied the suggestion that her husband expired on account of some other ailment or that his death is not attributable to the injuries sustained by him in the accident.

4. The Court would note that the claimant has filed documents from January upto April, showing purchase of medicines as prescribed by attending doctors. Indeed, such receipts are at pages 159 to 170 of the LCR, showing purchase of medicines till 16.04.2011. The deceased passed away on 08.07.2011. One of the medicines prescribed was Roliflo, which comprises of Tamsulosin and Tolterodine. These two salts are stated to calm the enlarged muscle of the prostate area and the bladder and assist in the flow of urine. The fact that the deceased had suffered a serious injury in his

pelvic region and had to undergo a complicated surgery, is not in dispute. His frequent visits to the hospital are an indication that he had developed complications during his surgery. The non-availability of post-mortem report will not defeat the case of the claimant as has been held by the Madras High Court in ***Abdul Rahim & Anr. vs. Sundaresan & Anr.*** C.M.A. (MP) No. 898 of 2008 decided on 30.07.2009. The said case had relied upon a judgment of this Court in ***Klaus Mittelbachert vs. East India Hotels Ltd.*** AIR 1997 Del 201. It held *inter alia* as under:-

“9. The counsel also relied upon the decision of the Delhi High Court in Klaus Mittelbachert v. East India Hotels Ltd. AIR 1997 Delhi 201, wherein it is stated as follows:

“128. In words & Phrases, Permanent Edn Vol. 21 at page 448 , ‘ injury causing death’ has been defined as under:

“ If an employee but for an injury would not have died at the time of which and in the way in which he did die the accident though it merely hastened a deep- seated disorder is regarded as resulting in an “ injury causing death” within the Workmen’s Compensation Act.”

129. ‘Death resulting from injury’ has been defined in Vol. XI page 46-47 (CAPP) ibid as follows:

“Death resulting from an injury covers cases in which an injury aggravates or accelerates an existing condition so that death ensues earlier than it would in the ordinary course, even though the existing condition would have ultimately resulted fatally”.

130. In Pegney v. Pointers Transport Services Ltd., 1952 (2) All England Law Reports 307 relying on Re: Polemis & Furnace, 1921 (3) KB 560, 577 LORD PILHER has said: “

if death is directly traceable to the injury in the accident for which the defendants are responsible., the chain of causation is not broken”.

131. In plain words, if an injury hastens or accelerates the death, directly and not remotely, then in law the injury in one causing or resulting’ in death.”

By relying upon those paragraphs, learned counsel for the appellants submitted that any injury which forms the nucleus resulting in a death, has to be taken as cause for the death.

10. He also relied upon “RATANLAL & DHIRAJALAL’S THE LAW OF TORTS” to speak about the connection between the act and the death. From the Chapter “1. Damages”, he relied on the following paragraph:

1(B) Causation

“If the damage alleged was not caused by the defendant’s wrongful act the question of its remoteness will not arise. In deciding the question whether the damage was caused by the wrongful act, the generally accepted test is known as ‘but for’ test. This means that if the damage would not have resulted but for the defendant’s wrongful act, it would be taken to have been caused by the wrongful act. Conversely it means that the defendant’s wrongful act is not a cause of the damage if the same would have happened just the same, wrongful act or no wrongful act. Thus when a doctor is negligent is failing to see and examine a patient and give him the proper treatment, the claim will still fail if it is shown on evidence that the patient would have died of poisoning even if he had been treated with all due care. The doctor’s negligence in such cases is not the cause of the patient’s death.”

11. He quoted another judgment of the Honourable Supreme Court in *Ramathal v. Managing Director, Cheran Transport Corporation* AIR 2004 SC 3445: (2003) 10 SCC 53. In that case, the deceased was originally injured on 14.1.1991 and was hospitalized for one week and subsequently, he was discharged from the hospital. Thereafter, after one year he died on 26.2.1992. Originally, the victim filed the claim for compensation. Since, he subsequently died, the dependants filed amendment application and sought for a sum of Rs. 5,33,000/- as compensation. The Tribunal awarded Rs. 3,59,508/-. On appeal, this Court reduced the compensation of Rs. 76,000/-. The claimants therein preferred appeal before the Honourable Supreme Court enhanced the compensation of Rs. 2,00,000/- . While reversing the judgment of the High Court, the Honourable Supreme Court in paragraph 15 of the judgment stated as follows:

“15 Unfortunately, the High Court did not discuss the materials on record in detail. It is not in dispute that the deceased was an indoor patient from 14.1.1991 to 21.1.1991. He thereafter was being treated in Government Hospital, Palladama. He died there. The medical certificate shows that the cause of death was due to the primary disease hypoxic encephalopathy and immediate cause of death was due to cardiorespiratory arrest. The doctor examined on behalf of the claimants categorically stated that the accident might have been the cause of death of the deceased. The doctor examined on behalf of the deceased. The respondent did not bring any material on record to show that there was no link between the accident and the death. The finding of the High Court that there was no proper medical treatment and, therefore, cause of death is not attributable to the accident does not appear to be based on any material on record. In any event, it cannot be said to be the correct approach adopted by

the High Court particularly when the Tribunal on the basis of the materials brought on record by the parties came to a contrary finding. No strong and cogent reason has been assigned by the High Court in support of its judgment reversing the findings of the Tribunal. It accepted the submission made on behalf of the respondent herein without analysing the materials and without arriving at a clear finding of fact.”

5. On the basis of the conjoined reading of the evidence of the claimants and the medical reports, the Court concluded that injuries suffered by the victim on 13.08.1972 resulted in his death on 27.09.1985. In the present case, the same conclusion would be drawn as discussed hereinabove.

6. Interestingly, in **Abdul Rahim** (supra) reference was made to the decision of the Patna High Court in **Vijaylaxmi Devi & Ors. vs. Ram Naresh & Ors.** 2003 ACJ 1140, in which neither the post-mortem report nor Medical Reports from the doctor, who had examined the deceased and declared him dead, were produced to prove that he had died due to the injuries sustained by him in the accident. Furthermore, in **Abdul Rahim** (supra) the Court had also referred to the decision of the Andhra Pradesh High Court in **Khairullah vs. Amita** 1994 ACJ 1017, wherein the injured died 25 days after the accident but no post-mortem was done, yet it was held that the accident could be deduced as the cause of death from the Death Certificate as well as evidence of the public witnesses. In effect, failure of the doctors to either perform a post-mortem or the same not being issued by the hospital for any reason, cannot be a ground to stop a claim for compensation.

7. In the present case too, the non-filing of the post-mortem report would not defeat the claimants' case, as all the other medical reports, post surgery medication, bills of medicines, frequent follow up visits of hospitals clearly indicate that his injured condition worsened with the passage of time, to which he ultimately succumbed.

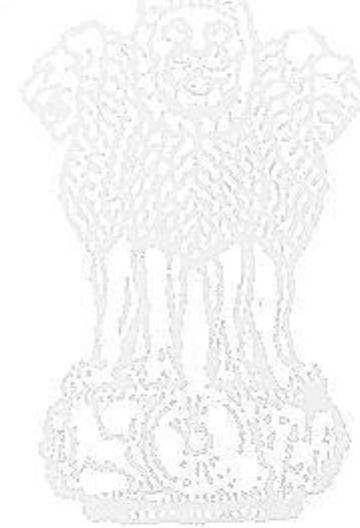
8. In view of the above, the petition is without merit and is accordingly dismissed.

9. Statutory amount be returned to the appellant.

JULY 19, 2019

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NAJMI WAZIRI, J.



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